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“REIMAGINING SAME-SEX MARRIAGE UNDER HINDU MARRIAGE ACT IN AN ERA OF EXPANDING LGBTQ+ RIGHTS IN INDIA”

AUTHORED BY - ROHIN VERMA

2nd Year Student

University Institute of Legal Studies, Chandigarh University

CO-AUTHOR - MS. RITU MALIK

Assistant Professor

University Institute of Legal Studies, Chandigarh University

ABSTRACT

Marriage has been a central part of Indian society since ages; the foundation of family establishes after two soul gets married. Human beings have certain needs such as economic stability, want for companionship, sexual needs and spiritual enlightenment through ethereal bond of marriage¹. Hindu Marriage Act 1955 also shows this dichotomous idea through its definition of marriage with terms like “bride” and “bridegroom,” which automatically excludes same-sex and gender-diverse relationships from being recognized². This discrimination persists even though there has been an attempt to change this understanding regarding gender and individual freedom through various landmark decisions. The Supreme Court recognized the legitimacy of queer relationships but declines to extend marriage rights, leaving the matter to Parliament. This paper considers that is India’s progressively transforming LGBTQ+ jurisprudence as well as constitutional and legal basis provide sufficient backing to redefine the definition of marriage in Hindu Marriage Act.

This paper examines the right of the LGBTQ+ community in India to get their marriage legalized through study of constitutional law, legislations and judicial decisions. The results show that there is a gap between judicial decision and legislative reform which is depriving LGBTQ+ individuals from right to marry. Despite increasing global recognition of gay

¹ Shivani Singh, Evolution of marriage rights in India with respect to homosexuality, 10 IJRAR 785, 785 (2023).

² Hindu Marriage Act, Act No. 25 of 1955 (India).

marriage, from right to marry. Despite increasing global recognition of gay marriage, discrimination against the LGBTQ+ community persists in India as their sexualities are regarded as a form of psychological illness, they face mockery and are required to get their psyche "corrected". The problem is exacerbated by the fact that the Trans Bill 2026 represents a backward step from self-identification to state validation. This paper concludes there shall be equality in matrimonial rights for marriage irrespective of gender, aligning domestic personal laws with the transformative constitutional ethos.

Keywords: LGBTQ+ community, Same-sex relationships, Judicial decisions, Trans Bill 2026 and psychological illness.

INTRODUCTION

Same-sex marriages have emerged as a controversial issue not only in India but globally, challenging traditional norms and legal framework. While many countries have moved towards recognizing and legalizing same-sex marriages, India's stand on this matter remains rigid, conservative and complex, India recognizes the LGBTQ+ rights and their personal liberty, but matrimonial rights are not yet granted to them³. The definition of homosexuality according to dictionary is **"the fact of being sexually attracted to male if you are a male or female if you are a female"**⁴ and the definition of same-sex marriages according to dictionary is **"marriage between two people of the same sex"**⁵. The institution of marriage exists as a socio-legal and civil institution in India which provides numerous rights, protection and societal benefits which are as follows: inheritance, succession, tax, maintenance, adoption and guardianship. However same-sex couples experience negative consequences because their union is not yet recognized and legalized that's why they are barred from such rights and benefits⁶. This cohesive exclusion is a major contributor for social marginalization as there are estimated 135 million LGBTQ+ individuals which is 10% of India's 1.4 billion population⁷, though India has neglected a comprehensive survey for LGBTQ+ population but according to the records and statistics over online 135 million individuals identifies themselves as non-binary and they are barred from marrying to each other that is because the same-sex marriage is not legalized in India.

³ Anshika Singh & Kirti Shankar, Unfolding the landscape of same-sex marriages in India, 6 IJLSI 585,585-586 (2024).

⁴ Homosexuality, Cambridge Dictionary, Cambridge.org (last visited Oct. 03,2026).

⁵ Same-sex marriages, Cambridge Dictionary, Cambridge.org (last visited Oct. 04, 2026).

⁶ Ankita Dash, LGBTQ+ rights and same-sex marriage in India, 7 IJLLR 8002, 8003 (2025).

⁷ Sharon Sarah Thawaney, India's pink economy, observer research foundation, Mar. 02,2024, <https://www.orfonline.org/expert-speak/indias-pink-economy>.

HISTORY OF LGBTQ+ COMMUNITY

India has a long history of acknowledging and recognizing diverse gender identities and sexual orientations other than the usual binary gender. Ancient Hindu scriptures contained detailed understanding of human sexuality, recognizing the existence of various gender identities, beyond the binary and describing same sex eroticism, these scriptures are the Vedas and the Kamasutra. The concept of “Ardhanarishvra”, is a composite form of the Hindu deities **Shiva and Parvati**, depicted as a single individual divided vertically down the middle, with the right half representing Shiva (male) and the left half representing Parvati (female)⁸ In simple, it is the blend of both Masculine and Feminine energies⁹.

The Traditional Hindu texts acknowledge a spectrum of gender identities and sexual orientation; still societal norms had been heteronormative largely declining the homosexuality in society. The influence of colonial law worsened the condition of LGBTQ+ individuals, because of Section 377 of Indian Penal, 1860 code criminalized “unnatural” sexual acts, which includes sexual relationship between same gender it was seen as a violation of the order of nature and the individual liable for this offence was punished with imprisonment for life or imprisonment which may extend for 10 years and also liable for fine¹⁰, the same-sex couple relationship criminalization perpetuated stigma and discrimination against the LGBTQ+ community¹¹.

Homosexuality can be traced back to around 1500 BC during Rig Veda era, there are few famous examples from Hinduism listed below:

In the Hindu scripture that is Ramayana it states an interesting story regarding the King Dilip who had two wives queen Chandra and Mala (or Keshini and Sumati), he passed away without leaving an heir, leaving royal lineage incomplete. Lord Shiva came in the dream and informed the widowed queens that if they made love to each other, they would be able to produce a child. Lord Shiva’s decree was followed by the queens and one of them became pregnant and gave birth to a kid named Bhagirath, who is known to bring the Ganga from the Heavens to the Earth¹².

⁸ Wikipedia: Ardhanarishvara, wikipedia.org (last visited Oct. 04, 2026).

⁹ Anshika Singh & Kirti Shankar, Unfolding the landscape of same-sex marriages in India, 6 IJLSI 585, 586 (2024).

¹⁰ Indian Penal Code, § 377 (1860).

¹¹ Anshika Singh & Kirti Shankar, Unfolding the landscape of same-sex marriages in India, 6 IJLSI 585, 586-587 (2024)

¹² Mehak Arora, Bhagirath born story: son of two mothers, eksukoon, <https://astrolore.eksukoon.com/bhagiratha-born-story-son-of-two-mothers/>.

Another story is of birth of Lord Ayyapa which is known as Hari-Hara's son of two male deity of Hinduism Lord Vishnu and Lord Shiva, which could be traced back to Samudra Manthan as well as mentioned in the Matsya Purana in which it is written that Lord Vishnu transformed into the form of a beautiful woman named Mohini, to fool the Asuras (demons) from getting the Amrit (Elixir of immortality). Lord Shiva fell deeply in love with Lord Vishnu as Mohini and a child was born as an outcome of their marriage, Lord Ayyapa he is a famous god in South India known as child of Hari-Hara (Lord Vishnu and Shiva) and he killed a powerful demoness Mahishi¹³.

The story of Iravan (the god of trans gender community), begins in the Mahabharata he was son of Arjuna and naga princess Ulupi. During the Great war of Kurukshetra, Lord Krishna decided to make a human sacrifice of a person bearing 36 auspicious signs must be made to please the war goddess Kali. During that time there were only three warriors possessing those signs that were on the Pandavas' side. Those were Arjuna, Krishna, and Iravan. Iravan was a great warrior and had no problem sacrificing his life, but he was unmarried and he did not want to die unmarried. There was a problem that no woman was ready to marry a man who would die the very next day of their marriage, so lord Krishna transformed into Mohini and spent a night with Iravan and the very next day Iravan willingly sacrificed his life for the victory of Pandavas. Iravan is a famous god for Transgender community as they consider him as their husband¹⁴.

Lord Rama's devotee and companion, Hanuman, is reported to have witnessed Rakshasa ladies kissing other women in the Valmiki's Ramayana¹⁵.

Shikhandini is an important part of Mahabharata, she was daughter of Raja Drupad of Panchal and sister of Draupadi, she was reborn previously she was Amba and she came back to kill Bhishma Pitamah. She took birth as a female, but she was brought up as a male or she transformed into male.

In Mahabharata when the Pandavas where in exile, in the last year when they had to hide their identity it is said that Arjun was assumed to took form of Transgender.

These were few of the prominent examples from the Hindu scriptures and from these examples it can be inferred that homosexuality was not considered as a sin back then and even After the

¹³ The divine origins of Lord Ayyappan: mythology of Sabarimala temple, (last visited on Oct. 04, 2026), <https://www.keralatourism.org/sabarimala/mythology>.

¹⁴ Rahul, Iravan – The God of the Transgender Community in India, Hinduism facts, Apr. 03, 2025, <https://hinduismfacts.org/hindu-gods-and-goddesses/iravan/>.

¹⁵ Shivani Singh, Evolution of marriages rights in India with respect to homosexuality, 10 IJRAR 785, 788 (2023).

end of Vedic era it was normal to have Hermans (Young boys) by the Hindu nobles and Muslim

Nawabs but the homosexuality started declining during the colonial rule by the Britishers and imposition of Section 377 of Indian Penal Code, 1860¹⁶, as the LGBTQ+ community faced hostility during that time physical and psychological harm from the society.

LEGAL TRANSFORMATION: FROM CRIMINALIZATION TO RECOGNITION OF LGBTQ+ RIGHTS

The LGBTQ+ individual's situations have been changed overtime, from their rights lacking recognition to getting recognized under the Landmark judgments of Honorable Supreme court and High courts as well as the struck down of Section 377 of Indian Penal Code, 1860, which criminalizes same-sex sexual relationship and individual committing this offence was punished¹⁷, the judgment aforesaid are, Naz foundation V. Government of NCT of Delhi 2009¹⁸, National Legal Services Authority vs Union of India 2014¹⁹ and Navtej Singh Johar V. Union of India 2018²⁰.

In the case of **Naz foundation vs Government of NCT of Delhi 2009**, the Delhi High court gave the judgment that Section 377 of Indian Penal Code, 1860, which criminalizes unnatural offences that are voluntarily carnal intercourse against the order of nature that includes unnatural intercourse with any man, woman or animal, shall be punished with life imprisonment, or with imprisonment of which may extend to ten years, and shall also be liable to fine²¹. The judgment stated that this section 377 of IPC will govern only the non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors and will not govern the consensual same-sex sexual relationships in private as it is the violation of Articles 14, 15 and 21. Only the individual above the age of 18²² would be considered an adult and would be able to give consent for the sexual relationship and individual below the age of 18 would be considered a minor and incapable of giving such consent²³.

Hence this judgment is important as it accepted the consensual same-sex sexual relationship of an adult.

¹⁶ Indian Penal Code, § 377 (1860).

¹⁷ Indian Penal Code, § 377 (1860).

¹⁸ Naz Foundation v. Government of NCT Delhi, 160 DLT 277, (2009).

¹⁹ National Legal Services Authority v. Union of India, 5 SCC 438, (2014).

²⁰ Navtej Singh Johar v. Union of India, AIR 2018 Supreme Court 4321, (2018).

²¹ Indian Penal Code, § 377 (1860).

²² The Indian Majority Act, 1875, No. 9, Acts of Parliament, 1875 (India).

²³ Naz Foundation v. Government of NCT Delhi, 160 DLT 277, (2009).

In the case of **National Legal Services Authority vs Union of India 2014**, is an important case because of this case the third gender was legally recognized pan India due to the landmark judgment of the Hon'ble Supreme court which declared that Hijras, Eunuchs, as a separate gender called "Third gender" apart from the gender male and female because for the main purpose that was safeguarding their rights conferred under Part III (Fundamental rights) of our Constitution and the laws made by the Parliament and the State Legislature. In this judgment, the Court also directed the Central and State government to formulate laws and policies for their welfare, and they should be provided with facilities as directed by the Court in this case such as reservations, separate toilets, etc. It was the right of Transgender to self-identify their gender and it was directed to the Central and the State government to grant them legal recognition as Male, Female and Third gender. This case is landmark as it was for the first time that transgender individuals got legal recognition and were also assured better facilities in India by the Hon'ble Supreme Court²⁴.

In the case of **Navtej Singh Johar vs Union of India 2018**²⁵, the Hon'ble Supreme Court delivered a transformative judgment which decriminalizes the sexual conduct between two consenting adult under Section 377 of IPC as it is violative against Articles 14,15,19 and 21, but Section 377 of Indian Penal Code, 1860²⁶, was not totally struck down as it was still applicable for sex with minors, non-consensual sexual acts, including rape and bestiality. This case recognized the personal autonomy and inherent dignity of an individual and in simple this judgment broadens the personal rights and liberty of an individual²⁷.

These were few of the landmark judgments which recognized the LGBTQ+ individuals' personal autonomy, rights as well as they recognized the transgender as the third gender in India. These judgments granted the recognition and rights but still the matrimonial rights were not granted to the LGBTQ+ individuals, which shows the gap between Judicial decision and Legislative reforms.

HINDU MARRIAGE ACT FRAMEWORK RECOMMENDATIONS

The Hindu Marriage Act is a central law which came in enforce on 18 May 1955 and this act codifies the Hindu law and governs the divorce, maintenance, validity, etc. regarding a Hindu individual. The framework of Hindu Marriage Act is conservative as it only applies to binary

²⁴ National Legal Services Authority v. Union of India, 5 SCC 438, (2014).

²⁵ Navtej Singh Johar v. Union of India, AIR 2018 Supreme Court 4321, (2018).

²⁶ Indian Penal Code, § 377 (1860).

²⁷ Navtej Singh Johar v. Union of India, AIR 2018 Supreme Court 4321, (2018).

gender and does not answer to the contemporary needs of LGBTQ+ individuals and their right to marry. Though there will be hurdles and challenges for legalizing the same-sex marriages, but those challenges can be resolved by the Parliament with the help of amendments as well as other tactics such as campaigns, awareness, etc. to show that homosexuality is not psychological issue nor it is a mental illness and giving them right to marry someone they really want to spend their rest of the life irrespective of the gender of both the parties won't harm the societal structure rather it ensures harmony and peace in society as it would ensure equality in marriage after years of the socio-legal battles they got their same-sex marriage legalize in India. Section 5 of Hindu Marriage Act, talks about the conditions for valid Hindu marriage²⁸, under this section the sub-section (iii) talks about the age capacity of the parties for the bridegroom its 21 years age and for the bride its 18 years age, this should be amended and changed into the parties in valid marriage should have completed the age of majority as per the Indian majority act²⁹ and have consented for the marriage.

Section 7 which talks about the ceremonies for a Hindu marriage

7(1) Mentions the marriage's solemnization in accordance with the customary rites and ceremonies of either party; this sub-section is gender neutral and needs no change.

7(2) which mentions about the rites and ceremonies where the Saptapadi (it is a ceremonial ritual that includes bride and bridegroom to take seven steps before the sacred fire) is included it becomes complete and binding when the last or the seventh step is taken, it should not be compulsion as it should be at the discretion of the parties whether they want to perform saptapadi or not because it is seen as mandatory provision and if it is not performed the marriage is invalid but that should not be compulsory because if same-sex marriage gets legalize saptapadi may get performed by the same-sex couples or may not as well as it should be taking seven steps before the sacred fire by the couples or parties³⁰.

The other sections do not have the specific mention of bride and bridegroom in them except section 6 regarding guardianship in marriage which is now repealed by the child marriage restraint act, 1978³¹, these other section use gender neutral words like petitioner, respondent and parties but these and the Hindu Marriage Act is perceived to be binary because of section 5 that is compulsion for a valid Hindu marriage that states about bridegroom(male) and bride (female) their marriage solemnization and not the marriage solemnization of two consenting adults.

²⁸ Hindu Marriage Act, Act No. 25 of 1955, § 5 (India).

²⁹ The Indian Majority Act, 1875, No. 9, Acts of Parliament, 1875 (India).

³⁰ Hindu Marriage Act, Act No. 25 of 1955, § 7 (India).

These were little recommendation for the modification in Hindu Marriage Act provisions as they should be gender-neutral and the LGBTQ+ individuals should enjoy their Articles 14 to 18 Right to equality; the most important fundamental rights conferred to the individuals by the Part III of the Constitution of India, 1950³², which ensures equality in India but there is partiality in the conferring of right to marriage as it is only conferred to the male and female, rejecting the other sexualities and identities.

JUDICIAL DECISIONS IN RESPECT TO SAME-SEX MARRIAGE

This section of the paper will deal with the judicial decisions that are related to the same-sex marriages.

In the case of **Lata Singh V. State of Uttar Pradesh, 2006**³³, the Hon'ble Supreme Court ruled that it is a fundamental right to choose a life partner given to the consenting adults, and they can marry outside the caste or religion. The brief of this case is that a major girl married a boy outside her caste, and the brothers of the girl harassed them as well as the relative of that boy and in this case the court gave the judgment that it is a democratic and free country, and once an individual becomes major, he is free to marry whosoever he/she likes and if the parents does not approve the inter-caste or inter-faith marriage they can cut ties with their ward but they can't threat or commit acts of violence and harass that couple, the one who is found committing this offence would be liable for strict punishment. This judgment though does not explicitly mention about same-sex marriages, but it gives individual a choice to whom they want to marry once they become major and it is there fundamental right to choose their own partner³⁴.

In the case of **Shafin Jahan V. Asokan K.M., 2018**³⁵, the Supreme Court held in this case that it is the integral right of the individual to marry the person they love as per Article 21 of the Indian Constitution 1950, which deals with the right to life and personal liberty, as well as the Constitution guarantees right to practice, profess and propagate religion. In this case the brief is that a woman married a man of different religion as well she converted her religion to his religion and the Kerala High Court annulled their marriage that was later restored and marriage was considered valid by the order of Supreme Court. In this case there is also mention of Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty, this provision simply states that a man and woman

³¹ Hindu Marriage Act, Act No. 25 of 1955, § 6 (India).

³² INDIA CONST. art 14-18.

³³ Lata Singh v. State of U.P. & Another, 2006 (5) SCC 475, (2006).

³⁴ Lata Singh v. State of U.P. & Another, 2006 (5) SCC 475, (2006).

³⁵ Shafin Jahan v. Asokan K.M. and Ors., AIR 2018 SC 1933, (2018).

are free to choose their own life partner irrespective of any discrimination on the basis of race, religion or nationality, they have right to marry and form a family, their marriage should be consensual as well as the family is a natural institution that needs protection from the society and the state. This case is also in support of the individual's right to marry the person they love³⁶.

In the case of **S. Sushma v. Commissioner of Police, Greater Chennai Police, 2021**³⁷, the Madras High Court gave the judgment of this case, which banned the “conversion therapy” in India as it attempts to cure or change the sexual orientation of an individual though it lacks a reliable evidence and medical science institutions have stated that these conversion therapy practices are ineffective as well as potentially harmful. The brief about this case is that two women fell in love and eloped from their home their parents were not supportive and they filed a missing complaint and the police found them and harassed them which led them to approach the court to protect their rights and autonomy. The court also issued mandamus to the state to act against medical practitioners which do conversion therapy as well as to do awareness campaigns, parents counselling and to make gender-neutral restrooms in schools and colleges. This judgment didn't punish the lesbian couple, but it protected their personal autonomy and liberty and issued mandamus to the state for the protection of LGBTQIA+ community, this is a landmark case law as it bans the conversion therapy in India and it stops recognizing homosexuality as mental illness and tries to change the societal bias towards the homosexual individuals³⁸.

In the case of **Arunkumar vs The Inspector General of Registration, 2019**³⁹, the Hon'ble Madras High Court gave the judgment, in which it recognized a transgender woman as a bride or in other words as a woman under section 5 of Hindu Marriage Act, 1955, and directed the registrar office to register their marriage as well as in this case the Court directed the Secretary to Government of the Health and Family Welfare Department, Government of Tamil Nadu, to issue an order to prohibit the performance of sex reassignment on intersex infants and children. In this case there was discussion regarding the sexuality, gender, sexual orientation, etc. as well as it was stated there are not only two genders in our society there are 58 gender variants, but they are also put under the umbrella of transgender. The category of intersex child whose genitals is different from the male and female, as they have typically specific genitals, but in case of intersex individual they can have both genitals and it can vary as well, they can be

³⁶ Shafin Jahan v. Asokan K.M. and Ors., AIR 2018 SC 1933, (2018).

³⁷ S. Sushma v. Commissioner of Police, Greater Chennai Police and Ors., W.P. No. 7284 of 2021.

³⁸ S. Sushma v. Commissioner of Police, Greater Chennai Police and Ors., W.P. No. 7284 of 2021.

³⁹ Arun Kumar v. Inspector General of Registration, W.P. (MD) No. 4125 of 2019.

reassigned a single gender after medical assistance and it is typically conducted when they are infant, it is a serious situation as it is dangerous and can hurt the child badly, the intersex infant should be given time to grow and choose its own gender later, that's why court is in opinion to prohibit the sex reassignment on the intersex infant because it's dangerous. In this case, Justice G.P. Singh's Principles of Statutory Interpretation is that the court is free to apply the current meaning of a statute to present day conditions. In this case it can be interpreted that under Section 5 of Hindu Marriage Act, 1955, the term "bride" and "bridegroom", would include the intersex/transgender person who identifies herself as woman or himself as man. This is a landmark case law as it can be said that for the first time the marriage of a transgender was legally validated by the Madras High Court in 2019. It can be seen as a first milestone of legalizing non-binary marriage⁴⁰.

These were few of the landmark case laws or judgment that talk about the individual's right to marry a person they love as well as their personal autonomy to choose their partner. The same-sex marriages are not yet legalized but as per these case laws it is their right to choose their partner, and they should have a dignified life with their partner.

In the case of **Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023**⁴¹, the Supreme Court held that the right to marriage is not granted to an individual because it is not a fundamental right as well as right to choose a partner is a fundamental right and there is a distinction between the right to choose a partner and right to marry⁴². In the judgment it was mentioned that only the right to choose a partner is a fundamental right, while right to marry for queer couples could be granted by the state through enactment of law that recognizes their marriage so that they could enjoy the benefits that are granted to heterosexual couples. The Court held that Section 4 of Special Marriage Act, 1954, deals with the conditions for solemnization of special marriages and Section 4 of Foreign Marriage Act, 1969, deals with the conditions for solemnization of foreign marriages, only recognizes marriages between heterosexual couples as well as intersex and transgender individuals in heterosexual relationship can marry under these laws. This judgment held that to receive the same benefits as heterosexual marriages, it requires the recognition of their marriages that could be done by the act of Parliament. The fact about this case is that across many Indian High Courts there were numerous petitions filed for recognition of LGBTQIA+ couples right to marry. The verdict came in 3:2, the right to marry for LGBTQIA+ community was declined, and they stated that it does not violate Articles 15

⁴⁰ Arun Kumar v. Inspector General of Registration, W.P. (MD) No. 4125 of 2019.

⁴¹ Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

⁴² Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

and 21, as their recognition of unions does not hamper their right to choose a partner as well as their right to privacy along with autonomy is not violated⁴³. This is an important judgment as it declined the right to marry for queer couples and stated that it could not be recognized by them, but by the State or in simple by the act of Parliament⁴⁴.

The last stated case law is a landmark judgment because it declined the recognition of LGBTQIA+ individuals right to marry, it stated that non-recognition of their marriage does not violate their fundamental rights along with it was also held that right to marry is not a fundamental right granted by the Constitution, though right to choose is a fundamental right⁴⁵. This judgment states that the state can recognize their marital relationship or union through an act made by Parliament, though Judiciary has progressively transformed the jurisprudence in respect to the LGBTQIA+ community with delivering many landmark judgments on many key areas in interest of LGBTQIA+ individuals such as the decriminalizing of Section 377 of Indian Penal Code, 1860, recognizing their identity, their personal autonomy, right to privacy and many more, but recognizing their right to marry is beyond the Judiciary scope as it is the subject matter of the Central government as well as the State government because subjects such as marriage and divorce are in concurrent that means on these subjects both of government can create law. This means that the Judiciary cannot legalize or recognize or protect queer couple marriage until and unless there is a statute or law made by the state. So, the matter regarding legalizing the marriage of queer couples is left at the option of State or Parliament, but till now no initiative has been taken by the Central government nor the State government in this regard.

ARGUMENTS FOR RECOGNITION OF SAME-SEX MARRIAGE

The contemporary world is changing day by day and many changes have been accepted in the social domain of a society, like female employment, female education, household work is not solely women work, girl child is equal to boy child, and many more changes have come in the society that could have not been previously anticipated, but society adapts the changes to sustain its existence. The case of homosexuality or being identifying themselves as a member of LGBTQ+ community is still persistently seen as a form of mental illness or psychological issues and the member of these communities have to face the social evils as the society does not accept them as an individual normal human being though they are absolutely normal because there is no scientific study that states that homosexuality is mental illness and can be cured

⁴³ Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

⁴⁴ Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

⁴⁵ Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

through conversion therapy. There are many new rare cases in which the parents accept their child and don't care what he/she wants to identify as, this modern thinking is rare because due to lack of parental support these individuals used to hide their identity and orientation because the society won't accept them, their parents will be ashamed of them or they would be forced to get conversion therapy if found out by their parents, these kinds of thought used to persist lately but due to the recognition of the LGBTQ+ community they are bit relaxed because they got their identity recognition for which they had to fight for many years as well as their rights, autonomy, etc. are safeguards granted by judiciary time to time but still the right to marry has not been granted to them till now. There are 39 countries globally which has legalized same-sex marriages according to the Our World in Data records⁴⁶ and the first country to legalize same-sex marriage was Netherland in the year 2001 and Last year Thailand and Liechtenstein also did the same, but in India which has the History of LGBTQ+ in Vedic time and post Vedic time too did not took any action till now and it is not the case that it would hamper the growth of economy as many countries in this list are developed countries which have legalized same-sex marriage such as United States, United Kingdom, Germany, France, and others and it can be done in India to if Parliament tries to and grant matrimonial right as well as the social stigma would decline in regard to homosexuality if there is a legal backing behind done by the government.

Till now Parliament has not taken any action or initiative regarding legalizing same-sex marriages, but Parliament passed the Transgender Persons (Amendment) Bill, 2026⁴⁷, that worsened the conditions of these individuals as their self-identification has been ceased no they require state verification in which they first need to apply to District Magistrate for issuing of their transgender identity then after that medical board will examine them and submit their report after which they would be identified as Trans or not. This bill removes transman, transwoman and gender queer people from this act, the definition has been narrowed down, and self-perceived identities have also been eliminated that means to identify as an individual of transgender gender you need to undergo surgery or medical assistance to legally identify as a transgender now. This bill has faced backlash because of state verification as the state may or may not approve, these individuals are more prone to harassment by the police officers and medical board as well as many individuals if they don't want to undergo surgery this bill mandates it. Instead, of a progressive legislation for LGBTQ+ individuals this bill has been passed down by the Parliament in 2026. This violates the National Legal Service Authority V. Union of India, 2014⁴⁸, which established the self-identification of transgender individuals without undergoing surgery. The Judiciary as protector of rights should ensure justice and direct

or recommend state to accept the queer people marriage and grant right to marry to every individual.

Excluding queer individuals from their marriage discriminates based on sexual orientation that can be interpreted as a violation of Article 15 of Indian Constitution⁴⁹ as well as not providing LGBTQ+ individuals right to marry is unjust as the heterosexual couples enjoy right to marry but they don't, it is a clear violation of Article 14 of Indian Constitution⁵⁰.

Marriage law has evolved over time such as child marriage which was permitted before is now prohibited as per The Prohibition of Child Marriage Act, 2006⁵¹, current act that penalizes and prohibit child marriages, inter-caste and inter-faith marriages are legally acceptable though societal acceptance is less but legally every individual have a right to choose their own partner as per many precedents and widow remarriage which was not permitted previously is also now practiced as per The Hindu Widows' Remarriage Act, 1856⁵², which ensures marriage of widow after the death of her husband she can legally marry. The same-sex marriages should also be accepted in the marriage law because without the legal recognition of queer couples' union they won't be able to enjoy the access of joint adoption, spousal inheritance, joint bank accounts, relief in taxation, and many other rights are enjoyed by heterosexual couples.

The definition of marriage should be amended to provide LGBTQ+ individual right to marry under the Hindu Marriage Act, 1955, though there would be few hurdles but those difficulties in amending won't be more than the deprivation from right to marry for the LGBTQ+ individuals as well as their dignified life which has been ignored for more than decades shall be prioritized so that they could enjoy a dignified life with their spouse without any hiding from society and law. The Hindu Marriage Act, 1955, amendment would also lead to amendment in other statutes to such as adoption law, taxation law, maintenance law, inheritance law, succession law, etc. The government should be vigilant should provide this right to marry to the LGBTQIA+ individuals as they should also be treated as normal citizen like other binary individuals treated including this right to marry, if the government feels like it is impossible to do so many amendments in personal laws they should enact a new act in respect to LGBTQIA+

⁴⁶ Hannah Ritchie & Pablo Arriagada, almost 40 countries have legalized same-sex marriage, Our world in data, Feb. 24, 2026, <https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage>.

⁴⁷ The Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026 (India).

⁴⁸ National Legal Services Authority v. Union of India, 5 SCC 438, (2014).

⁴⁹ INDIA CONST. art. 15.

⁵⁰ INDIA CONST. art. 14.

⁵¹ The Prohibition of Child Marriage Act, 2006, No.6, Acts of Parliament, 2007 (India).

⁵² The Hindu Widows' Remarriage Act, 1856, No. 15, Act of Legislative Council of India, 1856 (India).

individuals right to marry, divorce, maintenance, adoption, succession, and many other area of interest that are enjoyed by binary individuals or heterosexual couples.

CONCLUSION

Homosexuality is not a mental disorder or illness that could be treated by conversion therapy, on the contrary conversion therapy does not ensure scientific results and medical institutions has stated that these therapies are dangerous for an individual, that's why the court the court ordered to prohibit its use in the case S. Sushma V. Commissioner of Police in 2021⁵³.

In India homosexuality is not a new concept, India has a deep-rooted history that includes other sexual identity and sexual orientation, few of such examples are birth of lord Ayyappa, birth of king Bhagirath, Shikhandini, Aravan, Khajuraho sculptures, and many more examples are present in the Vedic era and Post Vedic era, the homosexuality was not a punishable offence in the medieval history too because the Hindu Nobles and Mughal Nawabs had Herman (young boy) with them but it later got punishable under British rule as they enacted Section 377 of Indian Penal Code, 1860, that deals with Unnatural offences under which the sexual acts against the natural order are punishable and the offender would be punished with imprisonment or fine or both.

Later the Judiciary progressively transformed the LGBTQ+ jurisprudence by delivering judgment in support of their recognition and their personal autonomy.

The right to marry is not granted as a fundamental right, but the right to choose a partner is a fundamental right that has been held in the case of Supriyo @ Supriya Chakraborty V. Union of India, 2023⁵⁴, as well as this case judgment refused to grant right to marry to the LGBTQIA+ individuals and the Hon'ble Supreme Court stated that only the State can grant them the recognition of their union, but till now no action is taken regarding legalizing same-sex marriages.

India is still silent in this matter for legalizing same-sex marriage whereas other 39 countries as per the records of Our World in Data⁵⁵, which also includes developed nations such as Unites States, Canada, France, Germany, United Kingdom, and others. India should also acknowledge that right to marry should be conferred to everyone irrespective of their gender and sexual orientation.

⁵³ S. Sushma v. Commissioner of Police, Greater Chennai Police and Ors., W.P. No. 7284 of 2021.

⁵⁴ Supriyo @ Supriya Chakraborty & Anr V. Union of India, 2023 INSC 920, (2023).

⁵⁵ Hannah Ritchie & Pablo Arriagada, almost 40 countries have legalized same-sex marriage, Our world in data, Feb. 24, 2026, <https://ourworldindata.org/data-insights/more-than-30-countries-have-legalized-same-sex-marriage>.

If parliament is not taking any action in this regard the judiciary should intervene and provide right to marriage to queer people as it is a basic right that everyone should enjoy. The parliament should amend the statutes regarding marriage so that the LGBTQ+ individuals enjoy each right that comes along with right to marry such as adoption, succession, inheritance, tax relief, etc. If amending statutes is not possible it should legislate a new act regarding their marriage and rights and obligations coming along with it.

Changes are natural in a society because of law of nature, and the law should not remain static it should answer the needs of people and positively adapt the evolving changes for the betterment of people and to ensure peace, justice and liberty in a society. This is the moment that India realizes that it is unjust to keep the LGBTQIA+ individuals deprive from right to marriage, their marriages should be legalized in India and should enjoy equal status as a marriage of heterosexual couples.

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