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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **RIGHT TO MARRY AND BE A PARENT:** **AFTERMATH OF NAVTEJ SINGH JOHAR JUDGMENT**

AUTHORED BY - EKAMPREET SINGH

## **OBJECTIVES**

The primary goals of a research paper can be of different types depending on its different types of disciplines, the nature of the study, and the intended audience. Here are some common objectives of research papers:

- To contribute to knowledge: Research papers aim to contribute new insights, information, or interpretations to the existing body of knowledge on a particular subject. They strive to advance understanding, address gaps in knowledge, or challenge existing theories or assumptions.
- To answer research questions: Research papers often have specific research questions or objectives that guide the study. The objective is to provide well-supported answers or solutions to these questions through rigorous investigation and analysis.
- To present empirical evidence: Many research papers are based on empirical research, involving the collection and analysis of data. The objective is to present and interpret the findings in a clear, logical, and objective manner, supporting the conclusions with evidence.
- To explore and evaluate theories or concepts: Research papers may aim to examine, evaluate, or test existing theories, concepts, or models. The objective is to critically analyse their applicability, validity, or limitations and contribute to theoretical development or refinement.
- To provide a comprehensive review or synthesis: Some research papers have the objective of providing a comprehensive review or synthesis of existing literature on a particular topic. The objective is to summarize, analyse, and critically evaluate the existing knowledge, identify trends, inconsistencies, or gaps, and offer insights or recommendations.
- To inform policy or practice: Research papers may seek to inform decision-making processes, policies, or practices in a specific field. The objective is to present evidence-based recommendations or implications that can guide policymakers, practitioners, or

stakeholders in making informed choices or improving practices.

- To foster academic discourse: Research papers contribute to academic discourse by engaging with existing scholarly debates, presenting arguments, counterarguments, and engaging with relevant literature. The objective is to contribute to ongoing discussions and generate further research and dialogue on the topic.
- To demonstrate research skills and scholarly competence: Research papers serve as an opportunity for researchers to showcase their ability to conduct independent research, apply appropriate methodologies, critically analyse data, and present coherent and well-structured arguments. The objective is to demonstrate their research skills and contribute to their academic or professional development.

It is essential to focus on the specific objectives of a research paper may be different depending on the research line, the nature of the study, and the intended audience. Clear and well-defined objectives help guide the research process, shape the methodology, and structure the presentation of findings.

## **ABSTRACT**

The right to marriage and be a parent is a fundamental aspect of individual autonomy and personal fulfilment. This abstract explores the significance and legal implications of these rights in the context of human rights frameworks and societal norms. Marriage, as a fundamental right, encompasses the freedom to enter into a legally recognized union based on love, commitment, and mutual consent. It includes the rights and responsibilities associated with the marital relationship, such as companionship, emotional support, and the ability to make decisions together. However, the recognition and scope of marriage rights can vary across different jurisdictions and cultural contexts.

The right to be a parent encompasses the freedom to procreate, raise and nurture children, and make decisions regarding their welfare and upbringing. It recognizes the importance of the parent-child bond and the role of parents in providing love, care, and guidance to their children. However, this following right may subject to legal limitations and considerations, such as ensuring the best decisions or interest of the child and protecting all the children from any sort of harm. The abstract further examines the legal frameworks and international human rights instruments that protect and promote the right to marriage and be a parent. These include the International or Universal



Declaration of Human Rights, the Global Covenant on Civil and Political Rights, and regional human rights conventions. These instruments recognize the importance of family life, marital privacy, and the right to found a family.

Additionally, the abstract discusses the evolving understanding of marriage and parenthood in contemporary society. It explores the recognition of same-sex marriages, the rights of unmarried couples, and the expanding definition of the family unit. It also considers the intersection of marriage and parenthood with other human rights, such as gender equality, reproductive rights, and the rights of children. The abstract concludes by emphasizing the significance of the right to marry and be a parent in promoting personal autonomy, emotional fulfillment, and the well-being of individuals and families. It highlights the importance of legal protections and societal support to ensure equal access to these rights for all people, regardless of their gender identity, marital status, or sex orientation etc.

## **INTRODUCTION**

The right to marry and be a parent is an essential aspect of individual autonomy, personal identity, and the formation of familial relationships. These rights encompass the freedom to enter into a legally recognized union, based on love and mutual consent, and to procreate, raise, and nurture children. They are deeply intertwined with notions of human dignity, personal fulfillment, and the ability to form intimate relationships. Marriage, as a fundamental right, holds significant social, emotional, and legal implications. It is a foundational institution that provides a framework for commitment, companionship, and mutual support between two individuals. Marriage also carries various legal benefits and protections, including inheritance rights, access to healthcare, and decision-making authority in matters of the spouse's welfare.

The right to be a parent recognizes the inherent human desire to form and raise a family. It encompasses the freedom to procreate, either naturally or through assisted reproductive technologies, and to participate actively in the upbringing and well-being of children. Being a parent involves nurturing, guiding, and providing love and care to one's children, and it is closely linked to the emotional, psychological, and social development of both parents and children. The recognition and protection of the right to marry and be a parent find expression in the instruments that are related to the international or Global rights. The International Declaration of Human Rights, for instance, recognizes the right to marry and found a family as a fundamental human

right. The Inter Country Covenanting on the Civil and Political Rights further focuses on the right to enter into marriage with the free and full consent of intending spouses<sup>1</sup>.

However, the exercise of these rights is subject to various legal, cultural, and social factors. Different jurisdictions may have varying legal frameworks regarding marriage, such as age restrictions, consent requirements, and recognition of same-sex marriages. Similarly, the right to be a parent may be influenced by legal considerations, including adoption procedures, surrogacy regulations, and custody and visitation rights. Moreover, societal limits or we can say standards and attitudes play a crucial and an important role in shaping the understanding and acceptance of the right to marry and be a parent. Historical traditions, cultural beliefs, and religious perspectives can influence societal expectations and norms surrounding marriage and parenthood. Changes in societal attitudes, such as the recognition of same-sex marriages and non-traditional family structures, have prompted discussions and debates about the scope and boundaries of these rights.

Considering these complexities, this paper aims to explore the significance, legal implications, and evolving nature of the right to marry and be a parent. It will examine the international human rights framework that supports these rights, analyse legal developments in different jurisdictions, and consider the impact of societal norms on their exercise. By delving into these aspects, this detailed research seeks to add up and provide contribution to the ongoing discourse on the importance of these rights in promoting individual autonomy, personal fulfilment, and the well-being of families.

## **RIGHT TO MARRY AND BE A PARENT IN INDIA**

The right of getting married and become a parent holds significant importance in the social fabric of our country India, reflecting the values of personal autonomy, familial relationships, and societal well-being. These rights are enshrined in constitutional provisions and have evolved through legal developments and societal changes. This introduction explores the right to marry and be a parent in India, examining the legal framework, cultural context, and contemporary perspectives.

### **Legal Framework:**

The right of getting married and becoming a parent in our country India is primarily protected

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<sup>1</sup> United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2019,media%20and%20regardless%20of%20frontiers> , (last visited June 22, 2023)

under Article 21 of the constitution of India, which guarantees of having a right to life and personal liberty. The SC of India has consistently interpreted this provision expansively to include the right of getting married and establish a family. In various landmark judgments, the Court has recognized the importance of these rights in ensuring individual dignity, privacy, and fulfilment. Marriage in India is governed by personal laws based on religion and community, such as the HMA, Muslim Personal Law, and Special Marriage Act. These laws outline the requirements, procedures, and legal consequences of marriage, including aspects such as registration, divorce, and inheritance rights. Recent legal developments, such as the decriminalization of adultery and the recognition of live-in relationships, have expanded the understanding of marriage beyond traditional norms<sup>2</sup>.

The right to be a parent in India encompasses the freedom to procreate, raise children, and participate in their upbringing. The legal framework acknowledges this right through provisions related to adoption, guardianship, and custody. According to the juvenile justice act it provides for the protection and welfare of children, ensuring that their best interests are prioritized in matters of parental rights and responsibilities<sup>3</sup>.

### **Cultural Context and Challenges:**

The understanding of the right to marry and be a parent in India is influenced by cultural, religious, and social factors. Traditional values, gender roles, and caste considerations often play a significant role in matrimonial practices and family structures. Arranged marriages and the concept of joint families have deep-rooted cultural significance, although contemporary trends are witnessing a shift towards individual choice, love marriages, and nuclear families.

Challenges persist in the realization of these rights, particularly concerning gender equality and social norms. Women's rights, including issues of dowry, child marriage, and gender-based violence, remain significant concerns. The right to marry and be a parent can be subject to societal pressures, familial expectations, and limitations imposed by conservative attitudes. Additionally, access to reproductive health services, assisted reproductive technologies, and adoption procedures can vary, posing challenges for individuals and couples seeking to exercise their right

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<sup>2</sup> Prateeksha, Sedition: In India the Right to Marry, Legal Service India, (June 21, 2023, 10:00 PM), <https://www.legalserviceindia.com/legal/article-7769-in-india-the-right-to-marry.html>

<sup>3</sup> Equality and Right to Marry Commission, <https://www.equalityhumanrights.com/en/human-rights-act/article-12-right-marry>, (last visited, June 22, 2023)

to be parents.

### **Contemporary Perspectives and Future Directions:**

Contemporary perspectives on the right to marry and be a parent in India are evolving with changing societal attitudes and legal developments. Judicial pronouncements have recognized the rights of LGBTQ+ individuals to marry and establish families, overturning the historical criminalization of same-sex relationships. These landmark judgments have paved the way for more inclusive and diverse understandings of marriage and parenthood in India. Moreover, the recognition of reproductive rights, such as the right to access contraceptives, reproductive health information, and safe abortions, contributes to the broader understanding of the right to be a parent. Assisted reproductive technologies and surrogacy have also gained legal recognition, although regulated by specific laws and guidelines<sup>4</sup>.

## **NAVTEJ SINGH JOHAR JUDGEMENT<sup>5</sup>**

The Navtej Singh Johar judgment refers to a landmark ruling by the SC of India on the date of September 6, 2018. The case challenged the validity of Section 377 of the Indian Penal Code<sup>6</sup>, which helped in criminalized consensual same-sex sexual activity. In a historic decision, there was a five-judge bench of the Supreme Court, headed by then CJ Deepak Misra, unanimously struck down Section 377 as unconstitutional to such an extreme limit that it criminalized consensual sexual acts between adults of the same sex. The court declared that the gender orientation or identity is an intrinsic part of an individual's identity and upheld the rights of LGBTQ+ individuals to equality, dignity, and privacy.

The judgment, authored by Justice Indu Malhotra, recognized that the LGBTQ+ community has been historically marginalized and subjected to discrimination and stigma. The court acknowledged that Section 377 violated the rights of LGBTQ+ individuals, including their right to equality, non-discrimination, freedom of expression, and privacy, as guaranteed by Article 14, 15, 19, and 21 of the Indian Constitution<sup>7</sup>.

The judgment emphasized that constitutional morality and individual freedoms must prevail over

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<sup>4</sup> Yatin Gaur, Evolution of LGBT Rights in India and taking the narrative forward: Living free and equal, iPleaders, (last visited, June 22, 2023), <https://blog.iplayers.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>

<sup>5</sup> Navtej Singh Johar & Ors v. Union of India thr. Secretary Ministry of Law and Justice, AIR 2018 SC 4321

<sup>6</sup> The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860, (India)

<sup>7</sup> INDIA CONST. art. 14, 15, 19, and 21.

societal prejudices. It recognized that sexual orientation is a natural and immutable characteristic and that the LGBTQ+ community deserves the same rights and protections as any other citizen. The Navtej Singh Johar judgment was celebrated as a significant milestone for LGBTQ+ rights in India and marked a departure from the previous conservative approach. It paved the way for greater acceptance, inclusivity, and protection of the rights of LGBTQ+ individuals in various aspects of life, including marriage, adoption, inheritance, and employment.

The ruling was met with widespread acclaim, not only within India but also internationally, as it positioned India as a progressive nation in recognizing and safeguarding the rights of its LGBTQ+ citizens. The judgment has had a transformative impact on LGBTQ+ activism, legal discourse, and societal attitudes, fostering a more inclusive and diverse India. However, it is important to note that despite the decriminalization of same-sex relationships, challenges persist in achieving full equality and eliminating discrimination faced by LGBTQ+ individuals. Efforts are ongoing to secure legal protections against discrimination, recognize same-sex marriage, and address social stigma and prejudices that continue to affect the lives of LGBTQ+ individuals in India.

Overall, the Navtej Singh Johar judgment represents a significant step towards ensuring equal rights and dignity for the LGBTQ+ community in India and has been hailed as a landmark moment in the country's journey towards a more inclusive and tolerant society.<sup>8</sup>

## **EFFECTS OF NAVTEJ SINGH JOHAR JUDGMENT ON RIGHT TO MARRY AND BE A PARENT**

The Navtej Singh Johar judgment had significant effects on the right to marry and be a parent for LGBTQ+ individuals in India. Here are some of the key effects:

- Decriminalization of same-sex relationships: The judgment struck down Section 377 of the Indian Penal Code, which criminalized consensual same-sex sexual activity. This decriminalization created a more favourable legal environment for LGBTQ+ individuals, removing the threat of prosecution and harassment based on their sexual orientation. It provided greater freedom and security for LGBTQ+ individuals in pursuing relationships and forming families.

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<sup>8</sup> Amandeep Kaur, Navtej Singh Johar v. UOI- Judgment which Decriminalized Homosexuality, iPleaders, (June 22, 2023, 9:29 PM), <https://blog.iplayers.in/navtej-singh-johar-v-uoi-judgment-which-decriminalized-homosexuality/>



- Recognition of the right to equality: The judgment recognized that LGBTQ+ individuals have the same rights to equality and non-discrimination as any other citizen. It affirmed that sexual orientation is an intrinsic aspect of an individual's identity and that LGBTQ+ individuals should be treated with dignity and respect. This recognition helped remove legal barriers that hindered LGBTQ+ individuals from exercising their right to marry and be a parent<sup>9</sup>.
- Access to marriage and adoption rights: The Navtej Singh Johar judgment set the stage for LGBTQ+ individuals to seek legal recognition of their relationships and enjoy the rights and benefits associated with marriage. While same-sex marriage is not explicitly legalized at the national level in India, the ruling opened avenues for further legal challenges and discussions on marriage equality. It also positively impacted adoption rights for LGBTQ+ individuals and couples, allowing them to consider adoption as a means to become parents.
- Increased social acceptance and visibility: The judgment played a crucial role in promoting social acceptance and understanding of LGBTQ+ individuals and their right to marry and be parents. It helped challenge deep-rooted societal prejudices and fostered conversations around LGBTQ+ rights. The ruling provided a platform for LGBTQ+ individuals to share their stories and experiences, contributing to a more inclusive dialogue on family, relationships, and parenting<sup>10</sup>.
- Positive impact on mental health and well-being: The decriminalization of same-sex relationships and the affirmation of LGBTQ+ rights have had a positive impact on the mental health and well-being of individuals within the community. It has alleviated the stigma, fear, and discrimination that LGBTQ+ individuals previously faced, promoting a greater sense of self-acceptance and belonging. This, in turn, can positively affect their decision to marry and become parents, allowing them to envision a future with increased confidence and security.
- Ongoing challenges and work ahead: While the Navtej Singh Johar judgment was a significant step forward, challenges persist in achieving full equality for LGBTQ+ individuals in terms of marriage and parenting rights. Same-sex marriage is not yet legally recognized at the national level, and LGBTQ+ individuals may still face social and familial resistance in exercising their right to marry and be parents. Continued advocacy, legal

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<sup>9</sup> Gaargi Tomar, Same Sex Marriage Case Comment on Navtej Singh Johar Case, Vol. 2 Iss 2, International Journal of Legal Science and Innovation, 337, 337-343, (2020)

<sup>10</sup> Rattanmeek Kaur, Analysing Gay Rights in India post the Navtej Singh Johar Judgment, GNLU Journal of Law and Economics, June 22, 2023, 9:29 PM), <http://gile.in/2019/04/05/analysing-gay-rights-in-india-post-the-navtej-singh-johar-judgment/>

reforms, and societal dialogue are needed to further advance the rights of LGBTQ+ individuals in India.

The Navtej Singh Johar judgment has had a transformative impact on the right to marry and be a parent for LGBTQ+ individuals in India. It has provided legal recognition, increased social acceptance, and paved the way for further advancements in LGBTQ+ rights. However, further efforts are necessary to address remaining challenges and ensure full equality for LGBTQ+ individuals and their families<sup>11</sup>.

## CONCLUSION

In conclusion, the Navtej Singh Johar judgment has had a profound and transformative impact on the right to marry and be a parent for LGBTQ+ individuals in India. The decriminalization of same-sex relationships and the recognition of LGBTQ+ rights to equality and dignity have created a more favourable legal environment for individuals within the community. The judgment has opened avenues for further legal challenges and discussions on marriage equality, enabling LGBTQ+ individuals to seek legal recognition of their relationships and enjoy the associated rights and benefits. It has also positively influenced adoption rights, allowing LGBTQ+ individuals and couples to consider adoption as a means to become parents.

Beyond the legal sphere, the Navtej Singh Johar judgment has played a significant role in fostering social acceptance and understanding of LGBTQ+ individuals' right to marry and be parents. It has challenged societal prejudices, contributed to a more inclusive dialogue on family and relationships, and increased the visibility of LGBTQ+ individuals in society. The ruling has had a positive impact on the mental health and well-being of LGBTQ+ individuals, alleviating the stigma and discrimination they previously faced. It has provided a platform for individuals to share their stories and experiences, empowering them to envision a future with increased confidence and security.

However, challenges remain in achieving full equality for LGBTQ+ individuals in terms of marriage and parenting rights. Same-sex marriage is not yet legally recognized at the national level, and societal and familial resistance may hinder the exercise of these rights. Continued advocacy, legal reforms, and societal dialogue are necessary to address these challenges and

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<sup>11</sup> Bar and Bench, <https://www.barandbench.com/columns/litigation-columns/four-years-since-the-supreme-courts-navtej-johar-verdict-matrimonial-rights-still-remain-in-the-closet>, (last visited, June 22, 2023)

ensure the full realization of the right to marry and be a parent for LGBTQ+ individuals in India. The Navtej Singh Johar judgment marks a significant milestone in the ongoing journey towards equality and inclusion for LGBTQ+ individuals in India<sup>12</sup>. It serves as a foundation for further advancements in LGBTQ+ rights, with the hope of creating a society where all individuals can exercise their right to marry and be parents, regardless of their sexual orientation or gender identity.

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<sup>12</sup> Manu Sharma, Striking a balance between Sedition Law and Right to Freedom of Speech & Expression, Vol. 2 Iss 5, International Journal of Law Management and Humanities, (2019)