



## SAME SEX MARRIAGES IN INDIA – SOCIETAL PERSPECTIVES AND LEGAL CHALLENGES

**AUTHOR** – PRATHAM SHAH, STUDENT AT KES SHRI JAYANTILAL H. PATEL LAW COLLEGE, MUMBAI

**BEST CITATION** – PRATHAM SHAH, SAME SEX MARRIAGES IN INDIA – SOCIETAL PERSPECTIVES AND LEGAL CHALLENGES, ILE MULTIDISCIPLINARY JOURNAL, 4 (1) OF 2025, PG. 904-910, APIS – 3920-0007 | ISSN – 2583-7230.

### ABSTRACT –:

With an emphasis on India's changing situation, this article examines the historical, philosophical, legal, and social aspects of same-sex relationships and marriage.

Despite what many people think, gender diversity and same-sex partnerships are not new; they have occurred in ancient societies such as Mesopotamia, Egypt, India, Greece, and Indigenous cultures. Gender fluidity and romantic same-sex relationships are reflected in religious writings and traditions, especially in Hinduism and Christianity.

This challenges the idea that such unions are out of line with tradition. In India, public sentiment is gradually improving, especially among younger and urban groups. The lack of adoption rights, civil union recognition, and safeguards under current marriage laws are examples of legal obstacles.

The government continues to oppose LGBTQ+ representation in the media and education, calling marriage equality a "urban elitist" idea.

The article makes the case that legal recognition is a basic right based on the constitutional ideals of equality, dignity, and freedom rather than just a luxury by contrasting global legal systems and cultural changes. It ends by stating that institutional support, public education, and legislative reform are necessary steps on India's journey to same-sex marriage.

The article aims at providing an overview upon same sex marriages and highlight the importance of its legality.

### I. Introduction –:

The concept of gender diversity and same sex relationships is not of recent times but can be traced thousands of years through various cultures and civilizations, However, the official acceptance of same-sex unions is a relatively new development, influenced by changing political, social, cultural, and legal factors. Examining both historical precedent and the religious indications is necessary for understanding the beginnings of same-sex marriage and the LGBTQ community.

#### A. Historical Context of the Existence of LGBTQ in Different Civilizations –:

1. Prehistoric art: Male figures are shown in close pairs in Sicilian cave paintings

dating from around 9600 BCE, indicating early awareness of same-sex relationships.

2. Ancient civilizations: Sumerian records from Mesopotamia mention priests of different genders who served the goddess Inanna. Two men are shown in loving postures in ancient Egyptian tombs, such as that of Khnumhotep and Niankhkhnum. Men's same-sex relationships were chronicled in Greek and Roman cultures, when leaders such as Emperor Hadrian publicly lamented his male lover, Antinous.
3. Asian traditions: Hindu mythology include gender-changing deities, and



books such as the Kama Sutra in India recognize same-sex love. Emperor Ai's love for his male companion, Dong Xian, is documented in the Han period of China. Shudō, or romantic ties between soldiers and their trainees, were accepted by the samurai society of Japan.

4. Indigenous cultures: Two-Spirit people, who exhibit both masculine and feminine characteristics, are honored in many Native American tribes. There were comparable third-gender identities in South Asia (hijra) and Polynesia (fa'afafine).

B. Religious Indications of LGBTQ Community –:

1. Hinduism

- i. A combination of Shiva and Parvati, Ardhanarishvara represents the fusion of feminine and masculine forces depicting gender fluidity.
- ii. Krishna and Aravan: According to Tamil customs, in order to taste love before passing away, Krishna takes on the shape of Mohini, a woman, and marries Aravan, who will be sacrificed. The Koovagam festival honors this occasion by having Hijras, a recognized third gender, act on the marriage.
- iii. Vedic scriptures depict intimate interactions between the male deities Agni and Soma, indicating early acceptance of same-sex unions.

2. Christianity

- i. Saints Sergius and Bacchus: were known as "erastai" (lovers) in ancient literature, their firm association has been interpreted by some researchers as a romantic one.
- ii. In Eastern Orthodox Christianity, adelphopoiesis is a ritual of "brother-making" that some historians believe may have

authorized same-sex partnerships.

- iii. Saint Sebastian: Frequently portrayed in homoerotic art, he has gained popularity among LGBTQ populations.

II. Origin of Same Sex Marriages and Global Movement –:

Late in the 20th century, the movement to legalize same-sex marriage started to gather traction

A. First Legal Recognition:

In 2001, the Netherlands became the first nation to allow same-sex unions.

Prior to that, domestic partnerships, sometimes known as civil unions, had been established in a number of nations and localities, providing certain legal rights but excluding complete marital equality.

B. Global Movement –:

Countries in which Same Sex marriages are legal include –: Andorra, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Liechtenstein, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, the United Kingdom, the United States of America and Uruguay.

The latest one being Liechtenstein.

III. Same Sex Marriage In India –:

A. Current Status –:

1. In India, same-sex marriage is still prohibited as of April 2025. The Supreme Court of India refused to legalize same-sex unions in a landmark ruling on October 17 2023, arguing that Parliament, not the courts, should have jurisdiction over the issue.
2. The Court underlined that the Indian Constitution does not guarantee LGBTQ+ people a basic right to marry, even while they have the freedom to form



partnerships and should not be subjected to discrimination. Additionally, the bench did not order the government to allow same-sex couples to adopt or create civil unions.

B. Societal Perspective –:

1. Public opinion and societal attitudes –:

i. According to recent studies, the Indian population is becoming more accepting of same-sex marriage. According to a Pew Research Center study from 2023, over 53% of Indian citizens are in favor of legalizing same-sex marriage, while 47% are against it.

ii. This represents a substantial shift from prior years, indicating an increasing level of openness, especially among younger and urban populations.

iii. Establishing inclusive atmospheres has been greatly helped by educational institutions. Numerous academic institutions, including the Indian Institutes of Technology (IITs), have set up LGBTQ+ support groups, which has helped students become more aware and accepting.

2. Government and legal stance –:

i. The Indian government maintains a conservative stance in spite of changing public sentiment. Proposals to legalize same-sex marriages were characterized by the government in April 2023 as "urban elitist views," claiming that these unions are incompatible with the Indian family model.

ii. This attitude was reinforced in October 2023 when the Supreme Court denied to legalize same-sex marriage, declaring that the question belonged under the legislative jurisdiction.

3. Cultural and religious influences –:

i. Different viewpoints on same-sex marriage are influenced by India's

diverse cultural and religious environment. Traditional views frequently stress heterosexual relationships, and some religious leaders have expressed opposition to same-sex marriages.

ii. But in some religious and cultural contexts, LGBTQ+ rights are becoming more widely acknowledged, which promotes thoughtful conversations about acceptance and inclusiveness.

4. Media representation –:

i. LGBTQ+ people are now better portrayed in the media, appearing more frequently in television, movies, and books. Stereotypes have been challenged and same-sex partnerships have been more accepted thanks in large part to this representation.

ii. Activists and advocacy organizations continue to fight towards legal recognition and public acceptance, frequently overcoming great challenges but also attaining significant achievements.

5. In Conclusion –:

Even though same-sex marriage is still not legally recognized in India, opinions in society are slowly changing in favor of it. The conversation surrounding same-sex marriage is still shaped by the interaction of public opinion, political regulations, cultural standards, and media portrayals. Fostering an inclusive society that respects and defends the rights of every individual requires constant advocacy and discussion.

C. Legal Challenges –:

1. Legal non-recognition of Same-Sex Marriages:

i. Hindu Marriage Act (1955), Muslim Personal Law, and the Special Marriage Act (1954) are among the Indian laws that firmly





- define marriage as a union between a man and a woman.
- ii. Due to this legal structure, same-sex couples are not granted the same rights and protections as heterosexual marriages, such as joint adoption, spousal benefits, and inheritance.
2. Judicial deference to legislative authority:
    - i. The Supreme Court recognized the discrimination LGBTQ+ people experience in the historic case *Supriyo v. Union of India* (October 2023), but it declined to legalize same-sex marriage, arguing that such a decision belongs in the legislative branch.
    - ii. This position demonstrates the judiciary's hesitancy to amend marriage laws in the absence of clear legislative action.
  3. Absence of a legal framework for Civil Unions:
    - i. As of right now, same-sex domestic partnerships and civil unions are not recognized in India.
    - ii. Due to this lack of legal recognition, LGBTQ+ relationships are impacted in terms of property rights, medical decisions, and next-of-kin status.
    - iii. The privileges granted by marriage are not equivalent to the limited recognition of same-sex live-in partnerships by certain courts.
  4. Social and Political opposition:
    - i. A number of social and political groups oppose attempts to legalize same-sex unions.
    - ii. The government labeled the marriage equality movement in 2023 as a "urban elitist view," which reflected a larger cultural reluctance to accept LGBTQ+
- rights. Legal recognition is hampered by this opposition, which also affects legislative inertia.
5. Exclusion from adoption rights –:
    - i. According to Indian law, same-sex couples are not yet permitted to adopt children together.
    - ii. In addition to denying LGBTQ+ people the ability to start families, this restriction raises questions regarding the welfare and legal standing of children raised in these types of homes. The absence of adoption rights highlights same-sex unions wider legal invisibility.
  6. Inadequate legal protections against discrimination: –:
    - i. Although decriminalizing homosexuality was a major step, there are still no comprehensive anti-discrimination legislation that protect LGBTQ+ people in settings including the workplace, housing market, and educational system.
    - ii. This legal loophole prevents LGBTQ+ people from fully integrating into society and reinforces systemic prejudice.
- IV. Key Case Studies in accordance with Same Sex Marriages –:
    - A. *Shakti Vahini v. Union of India* (2018)

The Supreme Court of India rendered a historic ruling in *Shakti Vahini v. Union of India* (2018), addressing the serious problem of honor murders and upholding people's basic freedom to choose their life partners.

      1. Background –:

Under Article 32 of the Indian Constitution, the non-governmental organization Shakti Vahini petitioned the Court in 2010 to stop honor crimes, especially in Western Uttar Pradesh, Punjab, and Haryana. These crimes frequently included families or



community organizations, such as Khap Panchayats, using violence against couples who chose to marry outside of caste or communal standards. The petitioner drew attention to the rising number of these murders and the fear that they cause in young couples.

2. Judgement –:

Chief Justice Dipak Misra, Justice A.M. Khanwilkar, and Justice D.Y. Chandrachud made up the three-judge panel that rendered the following unanimous decision on March 27, 2018 –:

- i. Right to Choose: In accordance with Articles 19 and 21 of the Constitution, the Court upheld the basic right to select one's life partner. It said, "When two adults consensually choose each other as life partners, it is a manifestation of their choice recognized under Articles 19 and 21 of the Constitution."
- ii. Khap Panchayat Condemnation: The Court ruled that it is completely "illegal" for Khap Panchayats or similar assemblies to try to stop or wreck a marriage between two consenting adults.

3. Relevance –:

- i. This ruling is significant because it challenges regressive social conventions and upholds individual liberty and autonomy in marriage decisions. It establishes a precedent for defending personal preferences by highlighting the fact that social or familial honor cannot supersede constitutional rights.
- ii. The case advocates for the following – Affirmation of Individual Autonomy, Rejection of Societal Interference, Precedent for Legal Protection, Foundation for Marriage Equality Advocacy.

B. Navtej Singh Johar v. Union of India (2018)

A major step forward for LGBTQ+ rights in India was made in 2018 when the Supreme Court of India issued a historic ruling in Navtej Singh Johar v. Union of India, decriminalizing consensual homosexual conduct between adults.

1. Background –:

Section 377 of the Indian Penal Code (IPC), enacted in 1860, criminalized "carnal intercourse against the order of nature," which was interpreted to include consensual homosexual acts. This provision was challenged by Navtej Singh Johar, a renowned dancer, along with other members of the LGBTQ+ community, who argued that it violated their fundamental rights under the Constitution.

2. Judgement –:

A five-judge Constitution Bench of the Supreme Court unanimously ruled on September 6, 2018, that Section 377 was unconstitutional since it made consenting sexual relations between adults of the same sex illegal. The Court decided that:

- i. Fundamental liberties protected by Articles 14, 15, 19, and 21 were infringed by Section 377.
- ii. A person's sexual orientation is a fundamental component of who they are and is protected under their right to privacy.
- iii. Sexual orientation discrimination is extremely insulting to a person's dignity and sense of worth.

3. Relevance –:

The LGBTQ+ community in India saw a huge win with this ruling since it:

- i. Consensual gay actions were decriminalized, enabling people to express their sexual preference without worrying about facing legal consequences.
- ii. affirmed that everyone, regardless of sexual



- orientation, has the right to equality, dignity, and privacy.
- iii. Establish a standard for upcoming legislative changes meant to guarantee the LGBTQ+ community's equal rights and protections.

C. *Supriyo v. Union of India* (2023)

The Supreme Court of India addressed the legal recognition of same-sex marriages in the historic case of *Supriyo v. Union of India* (2023).

1. Background –:

*Supriyo Chakraborty* and *Abhay Dang* were among many same-sex couples who submitted applications in November 2022 to have their weddings recognized legally under the Special Marriage Act, 1954 (SMA). Articles 14 (equality), 15 (non-discrimination), 19 (freedom of expression), and 21 (right to life and personal liberty) of the Indian Constitution were allegedly breached by the SMA's exclusion of same-sex couples, according to the petitioners. These petitions were combined by the Supreme Court, which heard arguments in April and May of 2023.

2. Judgement –:

A five-judge Constitution Bench unanimously decided against legalizing same-sex weddings on October 17, 2023, arguing that the Parliament, not the courts, should make the decision.

Among the judgment's main points are:

- i. No Fundamental Right to Marry: The Court ruled that since the right to marry is not guaranteed by the Constitution, the judiciary cannot require same-sex couples to recognize it.
- ii. Civil Unions and Adoption Rights: In a 3–2 ruling, the Court denied same-sex couples the ability to adopt children and refused to recognize civil unions.

- iii. Transgender People: The Court unanimously upheld the legal right to marriage of transgender people in heterosexual partnerships.
- iv. Government Committee: The Court suggested that a powerful committee headed by the Cabinet Secretary be established to investigate giving same-sex couples legal rights and advantages such as joint bank accounts, family members status, and succession rights.

3. Relevance –:

The *Supriyo v. Union of India* (2023) case is noteworthy because it recognized the equality and non-discrimination rights of LGBTQ+ people while postponing the legality of same-sex marriage until Parliament. This ruling emphasizes the necessity of passing legislation in order to establish marital equality in India.

V. Conclusion –:

India's path to equal rights for same-sex marriage involves a complicated interaction between changing social views, legal obstacles, and constitutional interpretations. The *Supriyo v. Union of India* (2023) decision represented a significant but disappointing pause, with the Supreme Court sending the issue back to Parliament. This was in contrast to the *Navtej Singh Johar* (2018) ruling, which decriminalized same-sex partnerships and upheld the dignity, equality, and privacy of LGBTQ+ people. Even with growing popular acceptance, especially from young people, same-sex marriage is still prohibited, and civil unions and adoption rights are not formally recognized. The right to select a life partner has been upheld by cases such as *Shakti Vahini* (2018), however current personal laws still prohibit LGBTQ+ couples from being married legally. Major obstacles include the lack of broad anti-discrimination provisions, legislative delay, and opposition from conservative social groups. Nonetheless, persistent advocacy, open dialogue, and court support point to a future road toward legal equality and recognition.



## References –:

1. <https://www.britannica.com/topic/lesbian-gay-bisexual-transgender-and-queer-community>
2. [learnsociology.in/blog/sociological-analysis-of-the-same-sex-marriage](https://learnsociology.in/blog/sociological-analysis-of-the-same-sex-marriage)
3. [Legalizing Same-Sex Marriages in India](#)
4. [A Brief LGBTQ History | Lesbians, Gays, Bisexuals, Transgenders, Queers](#)
5. [HRC | Marriage Equality Around the World](#)
6. By Nikhil Rampal, 14 June, 2023, [53% of Indians are accepting of same-sex marriage, finds global survey by Pew Research](#)
7. By Arpan Chaturvedi, April 17, 2023, [India government calls same-sex marriage appeals 'urban elitist views' | Reuters](#)
8. By Harshita Shanker, [Case Comment on S.P. Mittal v. Union Of India](#)
9. [Shakti Vahini vs. Union Of India \(2018\) : case analysis - iPleaders](#)
10. By Harry Rana, September 9<sup>th</sup>, 2021, [NAVTEJ SINGH JOHAR v UNION OF INDIA Case Summary 2018 SC - Law Planet - Legal News, Law Updates & Law Exams Preparation](#)
11. [Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 8 January, 2018](#)
12. [CASE ANALYSIS: SUPRIYO VS UNION OF INDIA » Lawful Legal](#)
13. [India: Failure to legalise same-sex marriage a 'setback' for human rights - Amnesty International](#)

GRASP - EDUCATE - EVOLVE