

The Legal Recognition of Same Sex Marriage: An Analytical Study

Dr Savita Kumari¹, Dr Sonia²

¹Assistant Professor, Department of Political Science, South Point College of Law Sonipat

²Assistant Professor, Department of Law, South Point College of Law Sonipat

Abstract:

Research on same-sex relationships has informed policy debates and legal decisions that greatly affect American families, yet the data and methods available to scholars studying same-sex relationships have been limited. Homosexual individuals in India confront lawful and social troubles not experienced by non-LGBT people. Sexual action between individuals of a similar sex is illicit and same sex couples legitimately can't wed or acquire a common association. Before 2018, be that as it may, the Supreme Court is good to go to rethink whether to sanction same-sex sexual action and a draft Uniform Civil Code. Same-sex sexual action lawful status decriminalized in 2009, decriminalized in 2013, illicit under Section 377 of the Indian Penal Code Punishment up to life imprisonment or with imprisonment of either description which may extend to 10 years and shall also be liable to fine. Most LGBT individuals in India stay in the wardrobe, in dread of separation from families, who consider homosexuality to be shameful.

Keywords: Homosexual, same-sex marriage, legal recognition, personal laws, decriminalize, sexual act, gay, lesbian, bisexual, transgender, marriage and close relationships, relationship processes

It is unarguable that the underlying spotlight must be on decriminalizing con-erotic sexual acts. This in itself won't end the segregation looked by people who are occupied with long haul submitted associations with others of their own sex. It would require lawful same-sex associations, comparable to heterosexual relational unions. The target of looking for equality with heterosexual connections itself might be evaluated in light of the fact that heterosexual relationship union and family connections are instilled with the outdated estimations of male dominated society. A family is viewed as a microcosm of society; one can't look for to accomplish radical changes in the public eye while looking for acknowledgment into its traditional family standards. It is relevant to watch that same-sex relationship unions are not unlawful in India. Section 377 of the Indian Penal Code criminalizes sexual acts between people of a similar sex. Marriage laws in India don't describe about same sex marriage .Various people states that same sex marriage should be legalized, despite the fact that these prohibitions have been shown scientifically to be artifacts of social and political context. Even well-educated Americans are often startled to learn that the government dismissed more homosexuals than communists at the height of the McCarthy era. It's likely you were startled to learn that there was a legal ban on plays with lesbian or gay characters" (Chauncey 2004).

They adopted the slogan “**Gay is Good**,” modeled on “**Black is Beautiful**,” along with many of the same political strategies such as marches and demonstrations (Dobson 2004).

“By 1971, therefore, the framework for a gay-liberal case for same-sex marriage was in place” (Eskridge 2006).

“The APA had stopped calling homosexuals *International Journal of Pure and Applied Mathematics Special Issue 2946* mentally ill in 1973; but in 1986, the Supreme Court effectively announced that they could still be called criminals”(Spedale 2004)

Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, fidelity, and family” (Bonauto 2005).

A number of factors point to similarly significant advances in data and research on same-sex relationships in the near future. First, the number of individuals in same-sex unions is significant; recent data from the U.S. Census indicate that about 6,50,000 same-sex couples reside in the United States, with 1,14,100 of those couples in legal marriages and another 1,08,600 in some other form of legally recognized partnership (Gates, 2013).

The **OBJECTIVES** of the study is

- To examine individuals in same-sex relationships and those that examine same-sex couples
- To analyze about the legal recognition given to same sex marriage under various statutes
- To study about Same Sex marriage under Special Marriage Act
- To study about parental status and kinship systems
- To discuss promising strategies for future research on same-sex relationships

Hypothesis

- ✓ The Supreme Court has not given important with reference to recognition for same sex marriage in India.
- ✓ The Supreme Court has given important with reference to recognition for same sex marriage in India.

Methods and Materials

This research paper is an analytical analysis form secondary data. The secondary data includes books, research journals, research articles, international publications from various websites which gave importance to same sex marriage. This research is based on doctrinal method.

Observation:

Same-sex marriages refer to marriages between two individuals of the same gender. In India, same-sex marriages are not legal. This topic is important because it relates to the fundamental human rights of LGBTQ+ individuals and the recognition and protection of their relationships. Legalizing same-sex marriage would not only provide legal recognition and protection for LGBTQ+ couples but also promote greater social acceptance and reduce discrimination against the community. It is an important issue for LGBTQ+ rights activists and advocates around the world, and its significance extends beyond the legal sphere to broader social and cultural attitudes towards the LGBTQ+ community.

The Indian legal system does not recognize same-sex marriages, and the country's laws define marriage as a union between a man and a woman. Section 377 of the Indian Penal Code, which criminalized homosexuality, was struck down by the Supreme Court of India in 2018, which was a major victory for LGBTQ+ rights in the country. However, the decriminalization of homosexuality did not legalize same-sex marriages. Several legal cases have been filed in Indian courts seeking to legalize same-sex marriage, but, the courts have not yet granted legal recognition to same-sex couples. In 2017, the Delhi High Court declared that same-sex couples are entitled to be in a stable relationship, but stopped short of legalizing same-sex marriage.

In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again. In 2019, the Transgender Persons (Protection of Rights) Act was passed, which aimed to protect the rights of transgender individuals and provide them with legal recognition.

There have been some recent developments in the Indian legal system that could have implications for the future of same-sex marriages in India. In 2020, the Indian Government introduced the Personal Data Protection Bill, which includes a provision that recognizes the right to privacy as a fundamental right. Some legal experts believe that this provision could be used to argue for the legalization of same-sex marriage, as it recognizes the right of individuals to have control over their personal lives.

The decriminalization of homosexuality in India, through the landmark *Navtej Singh Johar v. Union of India* judgment in 2018, has had a significant impact on the LGBTQ+ community in the country. It has marked a historic shift towards recognizing the fundamental rights and freedoms of LGBTQ+ individuals in India. Before the ruling, homosexuality was criminalized under Section 377 of the Indian Penal Code, which had been in place since colonial times. This law had been used to harass, intimidate, and discriminate against LGBTQ+ individuals, and had a severe impact on their lives, including limiting their access to healthcare, education, and employment opportunities. The decriminalization of homosexuality has ended this criminalization and has allowed for greater acceptance and visibility of the LGBTQ+ community.

However, while the decriminalization of homosexuality is a significant milestone for the LGBTQ+ community in India, it is only the first step towards achieving full equality and legal recognition. There is still much work to be done to address the discrimination and marginalization faced by LGBTQ+ individuals, including addressing legal and policy gaps and changing societal attitudes. Overall, the decriminalization of homosexuality has had a significant impact on the LGBTQ+ community in India, marking a significant shift towards greater acceptance, visibility, and advocacy for their rights and freedoms.

Proponents of legalizing same-sex marriage argue that denying individuals the right to marry based on their sexual orientation is a violation of their fundamental rights and freedoms. They make several arguments in support of the cause.

- Firstly, they argue that denying individuals the right to marry based on their sexual orientation is a violation of their fundamental rights and freedoms and that all individuals, regardless of their sexual orientation, should have the right to choose who they marry and should be allowed to enjoy the same legal benefits and protections as heterosexual couples.

- Secondly, that legalizing it would promote equality and inclusivity in society as denial of same-sex marriage perpetuates discrimination against the LGBTQ+ community, which is already marginalized and faces social and legal challenges. Legalizing same-sex marriage would provide equal rights and protections to all individuals, regardless of their sexual orientation, and would help in creating a more equitable society.
- Thirdly, proponents of same-sex marriage argue that it would benefit the society as a whole as legalizing same-sex marriage would have a positive impact on the mental health and well-being of LGBTQ+ individuals, who currently face high rates of discrimination, harassment, and violence. Additionally, it would help in creating a more accepting and tolerant society and would reduce the stigma and discrimination that the LGBTQ+ community currently faces. Lastly, it is consistent with the principles of secularism and democracy, which India is founded on as the Indian constitution guarantees equality and freedom to all citizens, regardless of their sexual orientation, and legalizing same-sex marriage is a necessary step towards fulfilling this promise of the constitution. It is important to note that these arguments are not unique to India and have been made in other countries as well.

The Indian Constitution does not explicitly mention sexual orientation, and homosexuality was decriminalized in 2018 by the Supreme Court, but same-sex marriage is still not legal. LGBTQ+ individuals do not have the same legal rights as heterosexual couples, including the right to marriage, adoption, and inheritance.

- LGBTQ+ activists and organizations in India have been working tirelessly to promote greater legal recognition and protection of their rights.
- LGBTQ+ activists and organizations have been challenging Section 377 of the Indian Penal Code, which criminalized homosexuality, for years. In 2018, the Supreme Court finally struck down the law, decriminalizing homosexuality in India.
- Several LGBTQ+ organizations are working towards creating awareness and advocating for greater rights and protections for the community. They organize rallies, protests, and campaigns to raise awareness of issues faced by the community and to promote equality and acceptance.
- Organizations like the *Naz Foundation* and the *Humsafar Trust* are working towards policy and legal reforms to protect the rights of the LGBTQ+ community. They are advocating for anti-discrimination laws, inclusive policies, and legal recognition of same-sex relationships, including marriage.
- Several organizations provide counseling and support services to the LGBTQ+ community. These services help individuals deal with issues such as discrimination, bullying, and mental health problems.
- LGBTQ+ organizations are also working towards building a sense of community and support within the community. They organize events, social gatherings, and support groups to create a safe and welcoming space for the community.

The Indian government and judiciary have played a significant role in shaping the country's approach to LGBTQ+ rights and same-sex marriage. Here are some of the key developments:

- In September 2018, the Indian Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized homosexuality. This was a significant milestone for LGBTQ+ rights in India, as it removed the threat of criminal prosecution for consensual same-sex relationships.
- In 2014, the Supreme Court recognized transgender individuals as a third gender and ordered the government to provide them with equal rights and protections. In 2019, the government introduced the Transgender Persons (Protection of Rights) Act, which provides legal recognition to transgender individuals and protects their rights.
- The Indian government has not legalized same-sex marriage. However, in 2017, the Delhi High Court ruled that the right to marry is a fundamental right and that denying same-sex couples the right to marry is a violation of their rights. This decision was later overturned by the Supreme Court, which held that the issue of same-sex marriage should be left to the legislature.
- The Indian government has not passed comprehensive anti-discrimination laws to protect LGBTQ+ individuals from discrimination in employment, housing, and public accommodations. However, some states, such as Tamil Nadu and Kerala, have introduced anti-discrimination laws that include protections for LGBTQ+ individuals.

The Indian government and judiciary have taken some steps towards recognizing and protecting LGBTQ+ rights, there is still a long way to go towards achieving full equality and acceptance for the community. The legal recognition of same-sex marriage and comprehensive anti-discrimination laws are still pending, and there is a need for further advocacy and awareness-raising efforts to ensure that the rights of the LGBTQ+ community are fully protected.

There have been recent positive developments, such as the inclusion of gender identity in the country's census and the decision by several state governments to provide transgender individuals with job quotas and reservation benefits. The Indian government is also considering to legalizing same-sex marriage in the future, particularly in light of the growing global trend towards marriage equality. The recent legalization of same-sex marriage in neighbouring countries like Nepal and Taiwan could put pressure on India to follow suit.

However, it is important to note that there is still resistance to LGBTQ+ rights in India, particularly from conservative religious groups. Any attempts to push for greater legal recognition and protection of LGBTQ+ rights could face opposition from these groups, leading to potential legal and political battles. Overall, the future of LGBTQ+ rights in India remains uncertain. While there are positive developments and potential for progress, there are also challenges and obstacles that need to be overcome. It is important for LGBTQ+ activists and supporters to continue advocating for their rights and pushing for change, while also working to raise awareness and promote greater acceptance and understanding in society as a whole.

Same sex marriage under personal law in India

Relational unions and weddings have a solid religious and social significance and also social significance. Marriage is thought to be a sacrament and the religious functions are a fundamental piece of the marriage. This may be clarifies the numerous cases of lesbian relational unions, including performance of religious services, trade of festoons in sanctuaries or semi le-lady companionship contracts (maitri karar) in a few revealed cases. Ruth Vanita For example, in 1988, two policewomen

wedded each other in a Hindu service. Though their marriage couldn't be enlisted and they were suspended from their employments, their marriage was acknowledged and bolstered by their families and community. It is intriguing International Journal of Pure and Applied Mathematics Special Issue 2947 that the various announced lesbian relational unions have been to a great extent between residential communities, bring down white collar class, non-English talking ladies who are not associated with the LGBT movement. In this milieu, the most palatable course would be the acknowledgment of same-sex relational unions under Indian individual marriage laws. In India, Christians, Muslims and Hindus have different laws in connection to marriage, progression and so forth the Hindu Marriage Act that represents Hindus, Sikhs, Jains and Buddhists expresses that a marriage might be solemnized between any two Hindus. The Christian Marriage Act gives that the age of the man should be twenty one and the age of the lady eighteen. Since Muslim relational unions are not administered by a statute, there is no statutory definition of *marriage*, however they are regularly thought to be an agreement with the end goal of procreation. All Indian individual laws seem to visualize marriage as just a hetero association. Acknowledgment of same-sex relational unions under Hindu laws can be acquired by any of the accompanying methodologies:

- translating the current law to allow same-sex relational unions,
- deciphering that the LGBT community constitutes a different group, the traditions of which allow same-sex relational unions,
- perusing down the Hindu Marriage Act, 1956 to permit same-sex connections, on the ground that it would somehow or another be rendered illegal, or
- altering the Act to allow same-sex connections.

Since the Act is sexually unbiased aside from in the utilization of the terms lady of the hour and husband, it is conceivable to contend that same-sex couples can get their relational unions solemnized under the Act gave one of them is portrayed as the lady of the hour and alternate as the prepare. It is approach has been attempted by lesbian couples, where one accomplice introduced herself as the lady of the hour and alternate as the lady of the hour groom. When connections International Journal of Pure and Applied Mathematics Special Issue 2948 between hetero life partners are being re-designed to make them more equivalent, this elucidation will strengthen customary severe sex generalizations that sexual orientations are naturally different, that two people in a marriage have pre-set parts and that even same-sex couples need to acknowledge traditional parts with a specific end goal to get married. Brahmin development, they are not joined by a want to achieve special changes in Hindu wedding functions. The third approach is request perusing down of the arrangements in the enactment overseeing Hindu and Christian marriage laws by the judiciary with the goal that same-sex relational unions are perceived, on the ground that a pursuing of these laws as disallowing such relational unions, would render the applicable professional dreams illegal by segregating based on sexual introduction.

Same Sex marriage under Special Marriage Act

A choice which should not to raise religious temper is to look for a correction to the Special Marriage Act, 1954 to allow same-sex relational unions. In its current shape, the Special Marriage Act appears to apply to hetero couples, since it gives that the male ought to have achieved the time of twenty-one years and the female the age of eighteen years.

The Final choice is to look for a legal decision that the Special Marriage Act must be perused as allowing same-sex relational unions on the ground that else it would be oppressive against same-sex couples and subsequently unlawful. There are a few global points of reference in help of this suggestion. Three State Supreme Courts in the United States, those of Massachusetts, Connecticut and Iowa have held that a marriage law that did not allow same sex couples to wed was illegal. B.N. Sampath, Each of the three courts summoned both due process and equivalent security conditions and indicated out that the privilege wed is an individual freedom right that likewise includes a uniformity segment. A gathering of individuals can't be prevented the privilege from claiming marriage allowed to others, without an extremely solid justification, which, the court held, did not exist. It generally constructs its choices with respect to **Constitutional structure that gives the States** specialist over the definition of marriage. The Constitutional Court of South Africa has held that marriage laws that did not allow same-sex relational unions were violative of Section 9(3) of the Constitution, which states that the state may not unjustifiably segregate specifically or by implication against anybody on at least one grounds, including race, sex, pregnancy, conjugal status, ethnic or social root, shading, sexual introduction, age, incapacity, religion, still, small voice, conviction, culture, dialect and birth. Nonetheless, even a large number of the individuals who bolster the above legitimate and constitutional standards and acknowledge the above strategic thinking, would think about whether courts ought to be drawn closer instead of equitably chose bodies Forrest. In any case, as Martha Nussbaum has brought up, it is sensible that courts have a legitimate part to play in this disruptive zone, defending minorities who are in danger in the majoritarian political process. The cavalier perception of the Court with respect to a 'miniscule minority' is strange of Indian courts and Koushal is a variation in such manner. It must be recalled that even the transient decriminalization of gay acts came fairly late to India and was not accomplished by authoritative activity but rather by the legal playing out its obligation of maintaining protected rights.

Decisions about the definition and composition of comparison groups in studies that compare same-sex relationships to different-sex relationships are critical because same-sex couples are demographically distinct from different-sex couples; individuals in same-sex couples are younger, more educated, more likely to be employed, less likely to have children, and slightly more likely to be female than individuals in different-sex couples. For example, researchers may erroneously conclude that relationship dynamics differ for same and different sex couples when it is in fact parental status differences between same and different sex couples that shape relationship dynamics. Three specific comparison group considerations that create unique challenges and opportunities for research on same-sex relationships include (a) a shifting legal landscape, (b) parental status, and (c) unpatented individuals.

Shifting legal landscape

The shifting legal landscape introduces significant challenges, in particular for scholars who attempt to compare same-sex couples with different-sex couples, because most same-sex couples have not married, whereas most different-sex couples have had ample opportunity to marry. One strategy for addressing this complexity is to collect data in states that legally acknowledge same-sex partnerships.

A related challenge is that same-sex couples in legal unions may have cohabited for many years but been in a legal union for a short time because legal union status became available only recently. This limits investigation into the implications of same-sex marriage given that marriage is conflated with

relationship duration. One strategy for dealing with this is to match same- and different-sex couples in the same legal status on total relationship duration rather than the amount of time in their current status (e.g., cohabiting, married, or other legal status). An additional complication is that historical changes in legal options for persons in same-sex relationships contribute to different relationship histories across successive birth cohorts, an issue we address later, in our discussion of relationship biography and directions for future research. Future studies might also consider whether access to legal marriage influences the stability and duration of same-sex relationships, perhaps using quasi-experimental methods.

Parental status and kinship systems

Individuals in same-sex *relationships* are nested within larger kinship systems, in particular those that include children and parents, and family dynamics may diverge from patterns found for individuals in different-sex relationships. For example, some studies suggest that, compared with individuals in different-sex relationships, those in same-sex relationships experience more strain and less contact with their families of origin. Marriage holds great symbolic significance that may alter how others, including family members, view and interact with individuals in same-sex unions. Past research shows that individuals in different-sex marriages are more involved with their family of origin than are those in different-sex cohabiting unions. Future research should further explore how the transition from cohabitation to marriage alters relationships with other family members for those in same-sex unions. Although a full discussion of data and methodological issues concerning larger kinship systems is beyond the scope of this article we focus on one aspect of kinship—parental status—to demonstrate some important comparison group considerations. Parental status varies for same- and different-sex couples and can confound differences between these two groups as well as within groups of same-sex couples.

FUTURE DIRECTIONS ON RESEARCH ON SAME SEX RELATIONSHIP

We now turn to three strategies that may help catalyze current theoretical and analytical energy and innovation in research on same-sex relationships: (a) gendered relational contexts and dyadic data analysis, (b) quasi-experimental designs, and (c) the relationship biography approach.

Gender almost certainly plays an important role in shaping relationship dynamics for same-sex couples, but gender is often conflated with gendered relational contexts in studies that compare same- and different-sex couples. For example, women with men may experience their relationships very differently from women with women, and these different experiences may reflect the respondent's own gender. A gender-as-relational perspective suggests a shift from the focus on gender to a focus on gendered relational contexts that differentiates four groups for comparison in qualitative and quantitative research: (a) men in relationships with men, (b) men in relationships with women, (c) women in relationships with women, and (d) women in relationships with men.

Numerous states have authorized common associations since 2000. There is an immense measure of contrasts in a marriage and common association. A same-sex couple in a common association is prevented the all from claiming the rights that accompany marriage. The verbal confrontation over same-sex marriage will everlastingly seethe until the point when it progresses toward becoming authorized. Same-sex connections have been a piece of history since the antiquated circumstances.

Same-sex marriage ought to be sanctioned so couples will have the privilege to settle on choices with respect to their accomplices wellbeing and therapeutic treatment and also enabling them to receive each other's kids. Planning the bill a specific way will empower to chapel to remain uninvolved, since religious reasons are the most widely recognized explanation behind individuals being against samesex marriage. Legitimizing same-sex relational unions will make equity for all individuals in a relationship and annihilation the bad form among same-sex couples.

References

1. American Sociological Association. *Brief of amicus curiae American Sociological Association in support of respondent Kristin M. Perry and respondent Edith Schlain Windsor*. Washington, DC: Author; 2013
2. Badgett MVL, Durso LE, Schneebaum A. *New patterns of poverty in the lesbian, gay, and bisexual community*. Los Angeles: The Williams Institute; 2013
3. Biblarz TJ, Savci E. Lesbian, gay, bisexual, and transgender families. *Journal of Marriage and Family*. 2010, 480–497.
4. Center of Excellence for Transgender Health. *Recommendations for inclusive data collection of transpeople in HIV prevention, care, and services*. 2014
5. Goldberg AE, Smith JZ, Kashy DA. Preadoptive factors predicting lesbian, gay, and heterosexual couples' relationship quality across the transition to adoptive parenthood. *Journal of Family Psychology*. 2010, 221–232.
6. Lau CQ. The stability of same-sex cohabitation, different-sex cohabitation, and marriage. *Journal of Marriage and Family*. 2012; 973–988.
7. Human Rights Campaign. (2007). Promising Practices in Adoption and Foster Care. Human Rights Campaign
8. Tasker, F., (2005). Lesbian mothers, gay fathers and their children: A review. *Developmental and Behavioral Pediatrics*, 3, 224-240
9. Allen, M., & Burrell, N. (2008). Comparing the impact of homosexual and heterosexual parents on children: Meta-analysis of existing research. *Journal of Homosexuality*, 32, 19-35.
10. Institute of Medicine. *The health of lesbian, gay, bisexual, and transgender people: Building a foundation for better understanding*. Washington, DC: National Academy of Sciences; 2011