

# LEGAL AND SOCIAL PERSPECTIVE OF SAME-SEX MARRIAGE IN INDIA

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**Abstract:** The justifiable and societal troubles are mostly acquaintance by the Queer/LGBTQ individuals in India. Same-sex marriage establish the relationship between two individuals of same-sex and marriage in the modern generation and bygone times also-ran the sacrament that each one of the individuals be obliged to be the part of the sacrament. The leading-edge matter of contention is the same-sex matrimony in India. After the decimalization of Section 377 of Indian Penal Code 1860, Same-sex relationship emerges with a boom. But large number of people conclude it's a shameful act fore 2014. By the same token some states assure rights to the third gender persons. There are many institutions for the transgender in India but no such institution or any authorities are there for the same-sex couples. This Article focuses to leave no stone on sociable and lawful countenance of same-sex marriage in India.

**Key words:** Queer/LGBTQ, same-sex marriage, decimalization, third gender, legal recognition.

## 1. Introduction

Marriage is not purely a statutory relationship that is counterfeit partners for gaining legal aid and rights for each other's. It is equally a crucial factor for giving recognition to the relationship legally and socially. The social status which is given by marriage is equally powerful to the same-sex couples as to the heterosis couple. According to Britannica the same-sex marriage is a practice of celebrating a matrimonial ceremony between two male and two females. The same-sex marriage is regulated from the law, religion and custom itself only recognized states of the world. It is very much convincing that the indispensable notoriety requisite on legitimize homoerotic acts. There is a desire of statutory admission of same-sex associations commensurate over heterosis society and is objected towards the equality of the heterosis engender the male dominant society. But after the legalization of the homosexual acts on 2018 by the Supreme Court of India, the society admires the fact of same-sex relationship. Numerous human-beings attributes that the same-sex marriage should be legalized in the territory of India. After one year of legalization the Queer community wants freedom on same-sex marriage and civil rights. There is no Right to Marry in the Indian Legislative but amendment can be made in specific conditions. Recently the Madras High Court upheld the legal joining of a man and a trans-woman, where for the first time Article 21 of the Constitution (Right to Life and Personal Liberty) ratify in case of Arun Kumar<sup>1</sup>. There are no current laws which expressly prohibit the same-sex marriage nor allow the same-sex marriage and many obstacles are in front of the same-sex marriage to be legally recognized in India. Different religion has their own set of perception about marriage. According to the Hindu religion marriage is a sacrament between two pure souls which may extend beyond the lifetime and have a continuation up to seven years. Similarly, according to Islam, the marriage is a gift of Allah where a single individual is connected with either a male slave or a female salve who are fit. And according to Christianity the marriage is a relationship between husband and wife which is created by god itself.

## 2. Same-sex Marriage in Personal Laws

In India relationship between individual and marriage ceremony have a strong religious and sociable importance. Wedding ceremony is thought to be a holy matrimony and religious celebration which are a basic element of the marriage. In this ambience, the most appetizing chase would be assertion to the same-sex marriage under the Indian individual laws. In India for Hindu, Christians and Muslims having different personal laws in acquaintance to marriage and amelioration. The Hindu Marriage Act which represents Hindu, Jains, Sikhs and Buddhists postulate that the age of man should be twenty-one years and the woman should be eighteen years of age. The Christian Marriage Act also provide the age of the man should be twenty-one and the woman age should be eighteen years. The Muslim Marriage Act provide the age should be nineteen years for both the individuals. But all the Indian Personal Laws seem to foresee marriage as heterosexual event. However, the State of Goa is the only state in India where there is unified marriage law. So, the Goa's Uniform Civil Code permits the marriage of opposite sex. In India LGBT Community marriage can be recognized by own customs and rituals. In the State of Tamil Nadu, the Arya Samaj and the Anti-Brahmin Self-Respect movement forged their own matrimony rituals and practices. The Self-Respect Marriage would be recognized if a provision is inserted like, Section 7-A in Hindu Marriage Act 1955 by Tamil Nadu. But it could be very difficult for the members of LGBT community to follow it as their rituals and practices are different from that of Arya Samaj and Anti-Brahmin. Such insertion would raise a controversy for the hostility to LGBT unions for same-sex matrimony. Indian Legislative System doesn't recognize same-sex marriage in present but it is a hope that in future it can be possible that the opinion of the people in India may change in favor of the same-sex marriage.

## 3. Same-Sex Marriage Under Civil Unions

In some of the countries the alternate option to matrimony being Civil Unions or partnerships, they carry out all the aid and safeguard the marriage and also the amenability of the matrimony. Some legislations had been enacted for recognizing the Civil Unions in States like United States of America and many countries of Latin America and Europe, Australia and New Zealand. In some States of USA, city council and private companies have recognized the spousal gain to the same-sex partners of their working employees. The Supreme Court of Vermont and New Jersey upheld that the same-sex couples cannot be denied from the aid of the marriage but it's upon the state for the aid conferred for marriage in case of Baker in 1999 and in case of Lewis in 2006. In the year 1999 the France Government enacted civil unions into their law but the same-sex marriage was legislatively recognized on 18<sup>th</sup> May 2013. Furthermore, England and Wales also identified

the Civil Unions in 2004 but legally accepted the same-sex marriage on 17<sup>th</sup> July, 2013. The country Austria had admitted the civil partnership in the year 2010 to the gay and lesbian couples but legally recognized the same-sex marriage on 1<sup>st</sup> January 2019. The Finland Parliament also approved the bill for legalizing the same-sex unions in November 2014 but the same-sex marriage finally legalized in 2017. If the Civil Union Model will be adopted by India in future then it would enact new law for governing civil unions but it can be opposed on the ground for sanctioning the non-marital that is live-in relationship for both the homosexual societies and hetero-sexual societies which is antithetical to the Indian civilization.

#### 4. Live-in Relationship Under Same-sex Marriage

Live-in Relationship i.e. A relationship where two individual live together on long term basis or permanent basis and are connected emotionally, mentally, and sexually in relation. Mostly the termed is frequently used for unmarried couples. People come to live together for many reasons as to test the compatibility, or unable to marry legally, or they belong from same-sex. The Apex Court lastly express about the domestic living between the homosexual partners but this living would not lead to the matrimony of the same-sex in India. But many same-sex couples are living together as for a hope that same-sex marriage should be legalized in India in future. In many a times it happens that a good bonding gets a relation that urges to come up in society as a live-in relationship couple. In society some of the people have a fear for not getting support from their families or for job opportunities and come together to live in live-in relation. In recent months many same-sex couples who lived in live-in got engaged and make their relationship status as permanent. By this all perspective there is a big issue in the Indian society that people get in touch frequently in live-in relation. The law should be needed to govern the same-sex couples as the guys come into same-sex relation and settle up in live-in relation for two to three years. When they think its not working then jump to another relation that causes a hindrance in minds of the guys and there is option for suicide. Live-in Relationship is fruitful for same-sex marriage but it also causes harm to it so same-sex matrimony should be recognized.

#### 5. Legalization of Same-sex Marriage in India

A spectacular verdict given by the Apex Court of India on September 2018 i.e. in case of Navtej Singh Johar<sup>2</sup>, decriminalizing homosexuality means the part of section 377 of IPC is invalid and makes the homosexual legal in India. After 2years of legalization of homosexuality, petition filed by LGBT community for legalization of same-sex marriage in India. On 7<sup>th</sup> February 2020 the Government clearly stated that there is no scope for legalization of same-sex marriage in India. As per Indian Laws same-sex couples cannot register their marriage in any register office of the country and there is no proposal for it. A petition was filed in Kerala High Court recently by the same-sex couples as to make a recognition for same-sex in the Special Marriage Act. As per the Special Marriage Act the same-sex marriage is not prohibited according to Section 4(c) of the act. But the correction should be done in the act for the recognition for the same-sex marriage. As the same-sex couples need the protection in the society and for legally being waded. If the marriage is recognized legally then there would be possible that the harassment of gays or lesbians in workplace would be stopped.

#### 6. Same-sex Marriage Under Official Recognition

There is a lack of official recognition that means the register officer don't recognize the same-sex marriage. They deny to register the marriage under existing laws of the country. The officer puts up question to the couples whether there is any law for same-sex marriage or not, or pretends that the same-sex marriage is a disease or a crazy thing to get married to same-sex unions. But the couples get married according to the Hindu and Christian religion and also save all the evidence of the marriage they have done. If in the future times the law of India changes and the legalization of the same-sex unions takes place then the couples can register their marriage. In present days the same-sex unions are celebrating engagement ceremony and with official disclosure of the relationships but are not being recognized by the office for the registry.

#### 7. Observation

##### 7.1. Social Perspective of Same-sex Marriage in India

In the country the same-sex marriage is not been recognized by the Government but only the rights of LGBT Community or for Homophobia's Community have been recognized. If the same-sex marriage has been given the legal status then it could bring another joy to LGBT people and the people who are inclined to the Homophobic as well. In the society many people are facing problem as well. Some people are changing their gender for love and relationship as because the same-sex unions are not been recognized. The people whether man or women are transforming them into third gender for marriage purposes as the third gender marriage has a legal status in the eyes of law in India. If the same-sex matrimony gets legalized then the harassment of the Gay couples will be decreased and there will be less chance of being raped by people in the society. There are number of rapes of boys and men's but the cases are not being registered and are not known in the society as for shame. According to Times of India a cab driver has been raped by a policeman/ cop as because the cab driver denied to give lift to the man. This prove that the male dominating society or the homophobias are not in safer side in the country. Most of the people have same-sex fantasies and are also involve in physical activities after their marriage. Some people don't get confidence to put up the relationship status to the family and have a fear whether the same-sex relationship would be accepted of not for that reason they come together for the live-in relationship. In some cases, people even get married with a lady by force from the family beside having the same-sex relationship with a man. But those people are not satisfying with their decision for getting married with a lady and commits suicide or after marriage give divorce to that lady. This is a common problem in Indian society face by the LGBT community. If the same-sex matrimony is legalized the society would be in the safer side as the male prostitution would decrease in number and the rape would come to an end. The other aspects which have given a rise to the male prostitution are the gay dating apps and sites. From that apps and sites people are earning money and fulfilling their sexual desires. This is a major problem which affecting in the health of the guys and are detreating day by day for involving in this type of activities. There are many movies or short films on LGBT community in support of same-sex marriage for creating awareness in the Indian society. Most people even think it a joke and pass comment or use abusive language to the people who are in the same-sex relationship in society. After the legality of the same-sex in 2018 there is no awareness to the people and the people think the LGBT Community as a separate world. So, the people should be aware with the recent developments in society in the informative ways. Every man and woman love child or have a fantasy for child after getting married, if the same-sex unions are being recognized by the government it would be possible that the same-sex couples could adopt child. This will give a benefit to the child

orphanage as there will not be any child who will be without the parents. The child can get proper guide and upbringing in the lap of the same-sex couples. If it happens in future prospect then no child would be called as burden to their parents and that would be better for the society. In the society there will be a chance for decrease in divorce rates as the understanding between the same-sex couples is up to a mark and for that reason no domestic violence or dowry cases will be filed up in the courts that will help the society for being crime free. If the marriage is legalized then the LGBT Community people will get employment which will boost up the economy of the country. The LGBT people will get social recognition and have handful of earning ability. Then they will become as productive as heterosexual people are. The Business tycoons will get more dedicated employees for work. This will boost the LGBT Community to come forward in the society and think to be the part of the country. Then the LGBT people can lead a better life in society like in workplace, school, colleges etc. where they will be treated as a normal people. In the society the same-sex unions will not have to struggle for the rights any more and they can live with the dignity with the freedom and independently as per the Fundamental Rights given by the Constitution of India. They don't have to think twice or thrice or for several times for getting married with same-sex civilians and can be lived freely with their family members in the society. If the same-sex marriage is recognized by India then people of the LGBT Community may not have to migrate to other countries from India where the same-sex marriage has a legal status like United States of America, France, Canada etc. this would develop the economy of the country.

## 8. Conclusion

From the beginning of twenty first century many states have recognized the common unions in the world. There is a huge asymmetry in simple unions marriage and common unions marriage. The same-sex couple fall under common unions where are prevented, to that of calming the rights which accomplish the marital rights. The verbal statement of same-sex union marital rights doesn't have evidentiary value until it's attained the authorization from the law. From the ancient times only the same-sex interests got its value as a piece of history. There is no legitimacy in the society of India about the same-sex marriage. In the society the same-sex marriages are treated to be the unnatural phenomenon and it's not holly in nature. The real aspects are that the previous generation people think it's unethical and think to be a disease but the present generation people think it's not un-natural but thinks to be natural. The younger people are in support for the legalization of the same-sex matrimony. In the society of India there is a huge generation gap in the modern techno-savvy world for this reason the rights of LGBT Community are recognized lately in the country. The general civilians of India have a sympathy for homosexual people but they are silence on the part of reservation for rights. They think it to be a shameful act and treated them to a coward at times. However, India has legalized homosexual activities but the mind set of the society have no been changed yet. India falls under the category of developing nations. If there is a development in homosexual rights then the country can touch the sky in future as it's an issue of development. It cannot be sure whether in future or in present the law will change. But it is very much required to pass a legislation where all the rights of homosexuals will be recognized by Government of India. As in the country there is approximate 15% of the population who falls in the category of the LGBT Community and Transgender people. However, it is hoped for the best and recent developments in the Law of India.

