

GENDER, HOMOSEXUALITY AND THE RIGHT TO MARRIAGE IN INDIA: A CRITICAL ANALYSIS

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Abstract

Throughout history, same-sex relationships in India have been stigmatized and repressed as a result of profoundly entrenched cultural and societal conventions. Nonetheless, as judicial and legislative entities in India and society as a whole become more cognizant of the issue of legalizing same-sex marriage, it has garnered considerable attention due to the growing recognition of human rights and the global LGBTQ+ rights movement. A marriage inequality that is predicated on sexual orientation and gender constitutes a transgression against the fundamental rights of the LGBTQ+ and homosexual communities as a whole. Modifying the provisions of the Hindu Marriage Act and the Special Marriage Act is insufficient; a constitutional declaration of marriage comparable to that of the heterogeneous group is required. Society will eventually embrace same-sex marriage as a result of the Supreme Court's recognition of it; therefore, the Supreme Court must exert pressure on society to recognize same-sex marriage for the betterment of the society. As a result, the focus of this research is to analyse the recognition of the right to marriage for homosexuals in India, given that this practice has been observed in Indian culture since antiquity and is currently legal in a great number of other nations as well. In addition, it will assess the consequences of such rights' recognition and propose strategies to promote their legal and social approval in India.

Keywords: Gender, Homosexuality, Marriage, Decriminalisation, Human Rights, global LGBTQ+ rights movement.

Introduction

The LGBT community in India reached a noteworthy milestone on September 6, 2018, as it worked towards the decriminalization of "consensual sex" among individuals of the same gender. The Supreme Court, in the revolutionary *Navtej Singh Johar v Union of India*¹, overturned the stipulations outlined in Section 377 of the Penal Code, 1860. In essence, this provision rendered homosexuality illegal through its explicit exclusion of consensual carnal intercourse from its purview. As a result, the ban on engaging in homosexual activities has

¹ (2017) 9 SCC 1.

been repealed. In adherence to a directive from the Central Government, the Supreme Court restricted its analysis of transgender community rights to the constitutionality of the Indian Penal Code, Section 377 of 1860. The matter of acknowledging the civil rights of the LGBT community was brought up without any thoughtful consideration. However, the subject was re-examined by the Supreme Court in the *Supriyo v. Union of India*² case after a petition was filed. The legislation in question, specifically the Special Marriage Act of 1954, the Hindu Marriage Act of 1955, and the Foreign Marriage Act of 1969, were subject to criticism for their failure to include provisions concerning the registration and recognition of same-sex marriages. It was determined that this breach violated Articles 14, 15(1), 19(1)(a), and 21 of the Indian Constitution. Significant public attention has been directed towards the Supreme Court of India since April 18, 2023, when it began deliberating on a series of petitions petitioning for the legalization of same-sex marriage in India. The Constitution Bench of the Supreme Court is composed of five judges, one of whom is Chief Justice of India D.Y. Chandrachud, Justices S.K. Kaul, Ravindra Bhat, Hima Kohli and Narasimha.

And finally, the Supreme Court of India in 2023 held that the right to marry is a statutory right, not a constitutional right. Therefore, only Parliament can recognize the marriage between non-heterosexual couples. Transgender individuals in heterosexual relationships can marry under existing marriage laws, including all personal (religious) laws.³

The author posits in this paper that mere decriminalization of same-sex acts is inadequate; legal recognition of same-sex relationships must also be pursued. To achieve this aim, the author investigates a range of potential strategies for obtaining the aforementioned level of recognition.

Relevancy of gender and sexuality in the concept of marriage

Throughout the annals of time, matrimony has perpetually held the preeminent and most significant position in human society. Across various cultures and historical periods, it has been documented in a multitude of forms, serving to legitimize sexual unions between the opposite sexes and establishing the groundwork for the establishment of the family, the most fundamental social unit.⁴ Patriarchal society delineates the functions of marriage as encompassing control over sexual conduct, procreation, upbringing, safeguarding,

² W.P. (C) 1011/2022.

³ *Ibid.*

⁴ Nambi S. Marriage, mental health and the Indian legislation, *Indian J Psychiatry*. 2005 Jan-Mar;47(1):3–14. doi: 10.4103/0019-5545.46067. PMID: PMC2918313.

socialization, consumption, and the perpetuation of racial identity. Beyond sexual orientation and gender, discrimination in these domains is a common occurrence within the institution of marriage.⁵ The legal and cultural definitions of matrimony generally confine its applicability to partnerships involving heterosexual individuals. Individuals who identify as non-binary, queer, or transgender are excluded from this union. The regulations about sexuality are particularly stringent; for instance, the institution of matrimony is limited to those who openly identify as cisgender.

Gender identity pertains to an individual's profoundly felt internal and personal perception of their gender, which might or might not align with the sex labelled to them at birth. This includes the subjective evaluation of one's own body, which may involve purposeful alteration of physiological functions or physical appearances through medical, surgical, or alternative methods; further indicators of gender include behaviour, speech, and demeanour. Consequently, gender identity pertains to the deliberate categorization of an individual as either male, female, transgender or an explicitly designated additional category.

Conversely, sexual orientation pertains to the long-lasting physical, romantic, and emotional allure that an individual feels towards another. Sexual orientation encompasses a wide range of individuals, including transgender or gender-variant individuals with a discernible sexual orientation, homosexual, bisexual, heterosexual, asexual, or those who experience no discernible change in sexual orientation throughout or after gender transmission. As previously stated, gender identity and sexual orientation are two discrete concepts. Gender and self-identified sexual orientation are intrinsic components of an individual's dignity, autonomy, and self-determination. The imposition of medical procedures, such as sterilisation, hormonal therapy, or sex reassignment surgery (SRS), on individuals to obtain legal recognition of their gender identity shall be deemed unlawful.⁶ Ex-Australian High Court judge Michael Kirby provided the subsequent in his illuminating definition of LGBT-⁷ "Homosexual individuals are those of either gender who experience sexual, emotional, and romantic attraction to others of the same sex." Individuals who identify as both masculine and female and experience attraction to both sexes are categorized as bisexual. Lesbians are those who establish intimate partnerships with other women. The term "gay" is occasionally applied to encompass all individuals who are attracted to males of the same sex. Gender identity, in contrast to sexual

⁵ *Ibid.*

⁶ (2014) 5 SCC 438], SCC 465).

⁷ (2018) 10 SCC 1.

orientation, pertains to an individual's self-definition as either masculine or female. This identity may persist irrespective of the degree of "conformity or non-conformity" between an individual's physical, biological, or natal sex and psychological sex, as indicated by their conduct, physical attributes, and outward appearance. This regulation applies to all individuals residing in the Indian subcontinent, irrespective of their ethnic heritage (such as hijra, kothi, or any other similar designation). Intersex individuals are defined as those born with physical characteristics or chromosomal arrangements that prevent them from being categorized according to the conventional male-female binary. Male sexual companions make up the MSM membership. This expression is commonly employed within United Nations circles. This terminology exclusively refers to sexual activity occurring within the masculine body. The rationale for employing this terminology is supported by the fact that certain nations, including India, permit males to partake in sexual activities using their own sex, notwithstanding their lack of homosexual identification or acknowledgment of romantic or relational sentiments.⁸

History of Homosexuality in India: Speaking from Literary Evidence Hindu Scriptures

In ancient India, the notion of gender fluidity among both humans and yakshas was recognized. Among other facets of Indian history, queerness was evident in medieval prose, poetry, art, and architecture, as well as in primordial epics and scriptures. The following examples underscore the pervasive prevalence of homosexuality and the societal stigmatization associated with homoeroticism in India.

As stated in the Ramayana by Valmiki, upon his return from Lanka following his encounter with Goddess Sita, Lord Hanuman observed rakshasa women indulging in ardent embraces and caresses. The epic Krittivasa Ramayana offers an elaborate narrative concerning the life of King Bhagiratha, an individual descended from the union of two female progenitors. It has been said that through the transportation of the river Ganga from heaven to earth, he attained the status of a renowned monarch.⁹

The Mahabharatha attributes the demise of Deveratt Bhishma to either Shikhandini or Shikandi. Although she was born into a royal lineage, Drupad, she underwent socialization and

⁸ J. Michael D. Kirby, "Sexual Orientation & Gender Identity — A New Province of Law for India", Tagore Lectures, 2013.

⁹ D'Cunha, J., "Queer Activism in India: A Story in the Anthropology of Ethics." (2018) University of Pennsylvania Press, <https://books.google.co.in/books?id=ZUqMAQAAQBAJ&printsec=frontcover#v=onepage&q&f=false>, (15 Jan 2023).

development into a male. Subsequent to her youth, she experienced a malevolent transformation facilitated by a yaksha in order to confront Bhishma on the Kurukshetra battlefield.¹⁰

The Matsya Purana contains a compelling narrative that describes the metamorphosis of Lord Vishnu into the aesthetically pleasing being recognized as 'Mohini'. His aim was to exert control over the demons in order to gain their agreement regarding the gods' ingestion of the entire amrut. Moreover, following their first encounter, Lord Shiva was deeply enthralled by Mohini, and their union ultimately resulted in the formation of Lord Ayyappa.¹¹ The ninth chapter of Vatsyayana's Kamasutra delves into subjects including sexual activities among transgender individuals, auparashtika (oral sexual acts), and homosexuality. The Rig Veda makes frequent allusions to the narrative of Mitra-Varun, which revolves around Varun and Mitra. Being of the same gender, they are considered to be the embodiments of the lunar halves.¹²

Same-sex relationships are repugnant in Hindu mythological texts, in contrast to other accounts. The Narada Purana, Manusmriti, and Arthashastra, to name a few, delineate the consequences that are linked to such conduct. Regardless, this provides evidence that homosexuality existed during that specific period.

Graphic Evidence

Moreover, literary and visual remnants of homosexuality abound throughout the annals of Indian history. These documents are portrayed across the nation in the form of sculptures, paintings, and other works of art. An example of such a chronicle can be found in the Khajuraho sanctuaries, constructed during the reign of the Chandela dynasty from 950 to 1050 AD. The temples contain sculptures depicting male and female figures engaging in sensual embraces and sexual activity, respectively.¹³ Similar motifs can be found on the thirteenth-century Surya Devalaya Sun Temple, which was built in Konark, eastern Orissa. The Sun Temple, which is dedicated to the Hindu Sun deity, features sculptures adorning its exterior that portray sensuous scenarios from the Kamasutra.¹⁴ Furthermore, representations of explicit homosexual couples can be found in the Tanjore and Puri Temples. A statue located at the Rajrani temple in

¹⁰ *Ibid.*

¹¹ Ruth Vanita, *Queering India: Same-sex Love and Eroticism in Indian Culture and Society* (2002 Routledge).

¹² *Ibid.*

¹³ Khajuraho Temples, Sculptures, Architecture, Britannica, (30th November 2023).

¹⁴ Dr. Shobha Gulati, Dr. Navpreet Kaur, Marriage Equality Around the World: A Myth or Reality, <https://doi.org/10.22214/ijraset.2024.59007>, (20 March 2024).

Bhubaneswar portrays two women involved in oral sexual activity.¹⁵ The historiography of Gautama Buddha is depicted in cave paintings unearthed at the Buddhist monastic sites of Ajanta and Ellora. The architectural brilliance is exemplified by the sculptures and murals. It is crucial to recognize that within the canon of Buddha's paintings are specific examples that portray scenes of sensuality and erotica. These artistic creations depict opposite-sex individuals engaged in sexual activity.¹⁶ Every assumption concerning the non-existence of homosexuality in Indian society is refuted by these visual recordings. Moreover, these explicit portrayals of sexuality greatly troubled the British colonizers, who sought to exert control over such vivid sexual expressions. The British colonisers had a profound impact on India's understanding of sexuality, which extended beyond the proscription of "perverse" forms of sexual activity. Furthermore, they distorted India's ethical perspective. Therefore, contrary to popular opinion, homosexuality does not violate our cultural values and customs. Moreover, the aforementioned instances provide support for the claim that India had acknowledged the LGBTQIA+ community prior to the era of British colonial rule.

The Equality of Marriage: A Comparative Analysis

The first nations to enact legislation permitting same-sex marriages were Belgium and the Netherlands. An increasing number of thirty-five countries have embraced legalization processes to same-sex unions. In twenty-two countries, same-sex marriage has been sanctioned through homegrown legislative measures. Switzerland, Australia, and Ireland are among the nations that have ratified legislation legalizing same-sex marriage after their national elections. Following the Netherlands' pioneering move in 2001, over thirty additional nations have since passed laws legalizing same-sex marriage. On February 15, 2024, Greece started the process to become the first Orthodox Christian nation to legalize such partnerships. Estonia's legalization of the practice in January 2024 made it the first country outside the Soviet Union to do so, which caused the headlines. Currently, marriage equality is mostly established in nations situated in North America, Oceania, and Europe. South Africa and Taiwan are the only nations in Africa and Asia, respectively, that have officially recognised same-sex marriage.¹⁷

¹⁵ *Supra* note 14.

¹⁶ *Supra* note 13.

¹⁷ Josephine Rozzelle, Brianna Navarre, and Megan Trimble, Same-Sex Marriage Legalization by Country, U.S. News, Feb. 15, 2024, <https://www.usnews.com/news/best-countries/articles/countries-where-same-sex-marriage-is-legal>, (29 February 2024).

The United States of America

Although historical records suggest that same-sex marriage has been observed since 867 A.D., Samuel Alito, a justice of the United States, argues that. The decisions of the Supreme Court postponed the legalization procedure until the year 2000. Initially, L.G.B.T. individuals found fulfillment in the realms of civil unions and domestic partnerships. In *Oberge Fell v. Hodges, Director, Ohio Department of Health*,¹⁸ a pivotal and paradigm-shifting case, resulted in the Supreme Court of the United States of America establishing the legal permissibility of same-sex unions. The constitutional protection of due process precludes the prohibition of same-sex marriages, as stated in the majority opinion (5:4). According to the ruling of the court, "*The Fourteenth Amendment requires a State to license a marriage between two individuals of the same sex and to recognize a marriage between two people of the Same-Sex where their marriage was properly licensed and performed outside of State.*"¹⁹ The United States legalization of same-sex marriage marked a substantial turning point in the progression of LGBTQ+ rights.

England and Wales

A measure endorsing same-sex marriage in England and Wales was granted the "Royal Assent" of Queen Elizabeth II on July 17, 2013. This legislation is solely applicable in England and Wales, as Scotland and Northern Ireland are semi-autonomous regions governed by separate legislative bodies tasked with regulating diverse domestic matters, including the definition of marriage. February 2014 saw the unanimous approval of a resolution by the Scottish Parliament to legalize same-sex marriage. On the contrary, in April 2014, the Northern Ireland legislature rejected an analogous proposition.²⁰

Legal Status of Marriage Equality in India

Although homosexuality is presently acknowledged as a legal status in India, matrimony remains prohibited between two adults who identify as homosexuals. However, despite this shift, the dominant viewpoint regarding sexuality and sex continues to be conservative. Activists assert that a significant proportion of LGBTQ+ individuals harbor apprehensions

¹⁸ 576 U.S. 644 (2015).

¹⁹ Gaurav Pathak, 'Breaking; US Supreme Court legalizes same-sex marriages' (26 June 2015, Live Law), <https://www.livelaw.in/breaking-us-supreme-court-legalises-same-sex-marriages-read-the-judgment/>, (13 Oct 2023).

²⁰ Frances Rosemary Burton, Formalised Cohabitation: A critical and comparative study of an element of English Law in a normative regime, https://researchonline.ljmu.ac.uk/id/eprint/4446/1/158301_burtonphd.pdf, (17 January 2024).

regarding their disclosure, even to their closest loved ones, while incidents of assault targeting same-sex couples persistently dominate the news. As a result, considerable interest is centered on the ruling of the highest court; a favorable verdict would designate India as the 35th nation to pass legislation legalizing same-sex unions, thereby instigating profound societal transformations. On the contrary, imposing a ban on homosexuals from entering into matrimony would violate their fundamental liberties.

i. Violation of the Dignity and Right to Marry the Person of One's Choice under Article 21

As an inherent component of the right to life and liberty, the right to enter into matrimony with the individual of one's preference is affirmed in Article 21 of the Indian Constitution. The following judgment was made by the Constitution Bench of the Honourable Supreme Court in

***Common Cause v. Union of India*²¹**

"The foundation of our autonomy is the capacity to make free decisions regarding whom to love and partner, as well as a multitude of significant and minute details that affect our daily lives."

Additionally, this was reaffirmed in *Shakti Vahini v. Union of India*²² with respect to *Shafin Jahan v. Ashokan K.M.*²³. Moreover, within K.S. In the seminal case *Puttaswamy v Union of India*²⁴, a nine-judge division of the esteemed Supreme Court determined that the fundamental tenets of the Indian Constitution are the pursuit of liberty, the equality of all individuals, and the dignity of the individual. According to Article 21 of the Constitution of India, the notion of dignity encompasses the ability to exercise agency in matters such as matrimony, procreation, family, and sexual orientation, among others. The failure to recognize same-sex marriages undermines the autonomy and dignity of individuals who identify as same-sex.

ii. Failure to adhere to Article 14

Generally speaking, a law that is blatantly arbitrary is deemed to be violating Article 14 of the Indian Constitution. In *Navtej Singh Johar v. Union of India*²⁵, the Constitution Bench nullified Section 377 of the Indian Penal Code, 1860, on the basis of its manifest arbitrariness.

²¹ [2018] 5 SCC 1.

²² [2018] 7 SCC 192.

²³ [2018] 16 SCC 368.

²⁴ [2017] 10 SCC 1.

²⁵ [2018] 10 SCC 1.

According to the Court's statement, "In *Shayara Bano v Union of India*²⁶, paragraph 101, it was stated that the punishment for consensual gay intercourse under Section 377 is manifestly arbitrary in light of Article 14." Furthermore, the Court contended that life sentences for such individuals would be an egregious and disproportionate violation of Articles 14 and 21 of the Constitution.

When same-sex marriages are not recognized, homosexual minorities, who have an equal opportunity to develop and cultivate their human capabilities, social, economic, and legal concerns, are considered second-class citizens in contravention of Article 14 of the Indian Constitution. Contrary to Article 14 of the Indian Constitution, discriminatory treatment of equals is established when same-sex married couples and opposite-sex married couples are categorized according to the sexual orientation of their spouses.

iii. Article 15 Concerning Gender and Sexual Orientation has been violated.

The Honourable Supreme Court in *National Legal Services Authority v. Union of India*²⁷. In accordance with a Supreme Court decision, gender identity is now considered discriminatory on the basis of "sex" as defined in Article 15 of the Indian Constitution, in addition to biological characteristics. The Constitution Bench of the Honourable Supreme Court ruled in *Navtej Singh Johar v Union of India*²⁸ that sexual orientation incorporates the broader definition of "sex" as specified in Article 15. Furthermore, the court decision affirmed negligence or intentional discrimination on the basis of "sex."

iv. Contravention of Article 19(1) (a)

The ruling in *Navtej Singh Johar*²⁹, Supreme Court determined that Section 377 of the Indian Penal Code, 1860, insofar as it imposed an arbitrary restriction on the freedom of expression of LGBT individuals, violates Article 19(1)(a) of the Constitution. This conclusion was based on the decisions of the 9-Judge Bench of the Hon'ble Supreme Court in *K.S. Puttaswamy case*³⁰ and the ruling in *NALSA*³¹ case.

In the matter of *Shafin Jahan*³², the Hon. Supreme Court made the following rulings:

The Constitution recognizes "*The right to make decisions that define one's personhood and*

²⁶ [2017] 9 SCC 1.

²⁷ [2013] 5 SCC 438.

²⁸ [2018] 10 SCC 1.

²⁹ *Ibid.*

³⁰ *Ibid* (n 16).

³¹ *Ibid* (n 19).

³² *Ibid* (n 15).

identity is recognised by the Constitution as being a form of liberty and autonomy. A person's choice of partners is their own, and neither the State nor the law can impose restrictions on that freedom."

Same-Sex and Recent Development in India

Two same-sex couples petitioned the Supreme Court on November 14, 2022, in the case of *Supriyo v Union of India*³³, for the legal recognition of same-sex marriages in India. The central issue raised in the petitions pertained to the constitutionality of the Special Marriage Act 1954 (Later the Act). The initial petition was submitted by Abhay Dang and Supriyo Chakraborty. The second petition was submitted by Uday Raj Anand and Parth Phiroze Merhotra.

The petitioners argued that Section 4(c) of the Act discriminatorily disregards same-sex couples by only recognizing matrimonial unions between "males" and "females." As a result, same-sex couples are unable to obtain matrimonial benefits including employment, retirement, surrogacy, and adoption. The petitioners requested that Section 4(c) of the Act be deemed unconstitutional by the court. A number of supplementary petitions challenging analogous personal laws have been enclosed with the plea. The statutes in question are the Foreign Marriage Act of 1969 and the Hindu Marriage Act of 1955. On the grounds that the lack of recognition concerning same-sex marriage infringes upon their rights to equality, freedom of expression, and dignity, the petitioners assert. They relied on the landmark legal cases *NALSA v. Union of India*³⁴ and *Navtej Singh Johar v. Union of India*³⁵, which established a framework for legal recognition of non-binary gender identities and ensured that homosexual individuals were entitled to equal rights. A directive was promulgated on November 25, 2022, by a division of the Supreme Court comprising Justice Hima Kohli and Chief Justice D.Y. Chandrachud. The issuance of this order mandated that the Union provide a reply to the petitions. Comparable petitions have been lodged with the High Courts of Kerala and Delhi. Chief Justice D.Y. Chandrachud and Justices P.S. Narasimha, and J.j., comprised the three-judge tribunal. The convening took place on January 6, 2023. Pardiwala was entrusted with nine pending petitions from the Delhi and Kerala High Courts that dealt with similar issues. On March 13, 2023, a three-judge panel presided over by CJI D.Y. Chandrachud referred the case to a five-judge Constitution panel.

³³ *Supra* Note 2.

³⁴ *Supra* Note 27.

³⁵ *Supra* Note 1.

The case was first deliberated by this Bench on April 18, 2023. The Supreme Court delayed its decision on the recognition of same-sex marriage and the legal and social concerns raised by the aforementioned petitions after ten days of deliberation.³⁶

The five-judge Constitution Bench, authored four opinions on the subject of same-sex marriage/marriage equality, in which they expressed dissenting and concurring views. In an extensive, 366-page verdict replete with jargon, every judge unanimously opined that the right to marry was not fundamental and that the Supreme Court lacked the authority to enact judicial legislation amending the Special Marriage Act to include gender-neutral language. Parliament was entrusted with the responsibility for this procedure by the Court.³⁷

The fundamental aim of the Special Marriage Act was to acknowledge the importance of personal autonomy and non-conventional matrimonial unions. In support of establishing the Special Marriage Act's endorsement of marriage privileges for LGBTQIA+ couples, it would be advantageous to employ the term 'spouse' instead of 'husband' and 'wife'. The original intent of the Special Marriage Act, contrary to conventional wisdom, was to recognize marriages between heterosexual couples of any denomination or affiliation. Taking measures to recognize non-heterosexual marriages would run counter to the intentions of the legislators. An amendment to the Special Marriage Act would inevitably impact more than 160 additional statutes. Parliament alone has the authority to enact such a modification.³⁸ In addition to bestowing individuals with ancillary rights, matrimony ensures social recognition, protection from discrimination, and security. The provision of ancillary rights fails to adequately safeguard the substantive equality of LGBTQIA+ individuals in the absence of matrimony. Notwithstanding this, specific "administrative adjustments" that are "lawfully permissible" may be implemented in order to guarantee the granting of ancillary rights. Confronting the issue of the freedom to marry under these conditions is superfluous.³⁹ Infant welfare and the legal recognition of marriages between LGBTQIA+ individuals may be negatively impacted. On the contrary, the capacity of LGBTQIA+ couples to adopt and provide

³⁶ Arvind Narrain, Supreme Court's LGBTQIA+ rights verdict ignites debate on justice and equality, *Frontline Magazine*, Nov 02, 2023, <https://frontline.thehindu.com/the-nation/lgbtqia-queer-community-marriage-supreme-court-verdict-supriyo-vs-union-of-india/article67461341.ece>, (January 4 2024).

³⁷ Padmakshi Sharma, Supreme Court Directs Ministry Of Law & Justice To Conduct Judicial Impact Assessment Of All Tribunals At The Earliest, 22 Mar 2023, *Live Law*, <https://www.livelaw.in/top-stories/supreme-court-directs-ministry-of-law-justice-to-conduct-judicial-impact-assessment-of-all-tribunals-at-the-earliest-224458>, (20th December 2023).

³⁸ Akshita Rohatgi and Lavanya Gupta, Constructing India's Special Marriage Act to include LGBTQ Couples, *Jurist*, FEBRUARY 17, 2023, <https://www.jurist.org/commentary/2023/02/rohatgi-gupta-special-marriage-act-lgbtq/>, (5th December 2023).

³⁹ *Ibid.*

care for a child is equivalent to that of heterosexual couples. Parental unions consisting of biologically heterosexual men and women are widely accepted and offer the most promising prospects for the well-being of children. Any additional unions are considered exceptional.⁴⁰

Conclusion

In Western nations, the volume of scholarly inquiry and discourse concerning homosexuality increased dramatically during the 20th century. The prevailing notion was that it constituted a mental condition or disorder. Nevertheless, the ongoing discourse surrounding same-sex marriage within the international community underscores the core truth that marriage, irrespective of gender, is founded upon the principles of companionship, devotion, and affection, with sexual attraction serving as a secondary component. The research findings underscore the significance of equality and human rights with respect to the acknowledgment of same-sex relationships. The legalization of same-sex marriage becomes a matter of fundamental rights because it guarantees equal access to the institution of matrimony and its benefits for all individuals, irrespective of sexual orientation. It fosters social acceptance, inclusivity, and an enhanced perception of equity. Nevertheless, the analysis also recognizes the obstacles and contrasting perspectives that are linked to the societal validation of same-sex marriage. Opponents of legalization have raised concerns regarding implications for social stability, family structure, parental rights, and religious liberty, as well as cultural and religious convictions. Although civil unions and registered partnerships can serve as viable alternatives, they do not offer the identical level of legal recognition and protections as matrimony. While these alternatives might provide momentary relief, they fail to establish complete equality for couples of the same gender. Given the dynamic nature of the legal system, shifting societal perspectives, and established international standards, it is judicious for India to endeavor to obtain legal recognition for same-sex marriage. By promoting social acceptance and inclusion, safeguarding the well-being and rights of LGBTQ+ individuals, and adhering to international human rights standards, the implementation of this measure would be assured.

In order to attain this goal, it is imperative to maintain continuous dialogue among a wide range of stakeholders, such as religious communities, policymakers, and civil society organizations, and cultivate sustained public awareness. The implementation of education and sensitization initiatives is critical in addressing prejudices, dispelling misconceptions, and cultivating a more

⁴⁰ *Ibid.*

inclusive atmosphere regarding LGBTQ+ individuals. In India, the legalization of same-sex marriage would signify a substantial stride in the direction of social progress, non-discrimination, and equality. It would reassert the foundational values of dignity, equity, and inclusion, which are pertinent to every individual regardless of sexual orientation.