Reevaluating LGBT Rights Recognition in India: Social Resistance and Perceived Impacts of Marriage Equality in Contemporary Society

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Abstract: *In my view, the journey of LGBT rights in India reflects a delicate balancing act between progressive legal strides and deeply entrenched societal norms. This article delves into the transformative decriminalization of homosexuality through the Navtej Singh Johar verdict, which marked a turning point by affirming dignity and autonomy, yet stopped short of endorsing same-sex marriage. It critically explores the implications of extending marriage equality, arguing that while such a move signals inclusivity, it risks unsettling India's traditional family structures, religious ethos, and legal frameworks. The piece examines how same-sex unions challenge inheritance laws, adoption policies, and reproductive rights, particularly given the heteronormative underpinnings of statutes like the Hindu Marriage Act and the Surrogacy (Regulation) Act. Beyond legal hurdles, it considers societal tensions—cultural resistance, ethical dilemmas surrounding surrogacy, and potential psychological impacts on children raised in non-traditional families. This suggests that a rush toward marriage equality, without nuanced adaptation, could strain India's social fabric. Drawing from Western experiences and offering alternative solutions like civil unions, the article advocates for a measured approach that honors both individual freedoms and collective values.*

Keywords: LGBT rights, same-sex marriage, Indian family law, cultural traditions, legal reform

1. Introduction

LGBT rights in India have witnessed immense legal and social change over the last decades. Traditionally, homosexual relations were criminalized by Section 377 of the Indian Penal Code, 1860, a provision from the colonial era that criminalized "carnal intercourse against the order of nature."[3] The provision was applied to prosecute not just homosexual relations but also other sexual acts not directed towards procreation. The fight for LGBT rights in India has been characterized by court cases, public debate, and activism combating discrimination and demanding equal rights. In spite of constitutional promises of equality under Articles 14, 15, 19, and 21 of the Indian Constitution, LGBT individuals suffered systematic discrimination in a number of fields, such as employment, medical care, and personal life.[4] The courts have been the key in moulding LGBT rights through the acknowledgment of their dignity and autonomy. A watershed judgment in the LGBT rights struggle in India was the reading down of Section 377 by the Supreme Court in Navtej Singh Johar v. Union of India, wherein the Court held that criminalization of consenting adult homosexual relations infringed upon fundamental rights.[5] The ruling not only legalised homosexuality but also asserted the dignity, privacy, and identity of LGBT individuals. After decriminalization, the arguments regarding same-sex marriage have gained strength. Indian law does not have any explicit provisions recognizing same-sex marriages, but a number of petitions have been submitted before the Supreme Court, claiming that same-sex couples cannot be denied marriage rights and this is in contravention of the Constitutional principles of equality and non-discrimination.[6]

Hypothesis

This essay critically analyses the endorsement of LGBT rights and legalization of gay marriage in India, presenting the argument that although such legislative changes can be portrayed as being progressive, they would have extensive adverse societal, legal, as well as ethical implications. The expansion of LGBT rights and calls for same-sex marriage will challenge long-held cultural and religious beliefs, fracture the family institution, and produce legal formalities in areas such as inheritance, adoption, and personal laws. It could also create broader societal tensions, particularly in a country where traditional perceptions of family and gender are central to social order. From a philosophical perspective, the redefinition of family and marriage roles may be at odds with deeply held ethical and religious teachings, potentially undermining the moral fabric of society. By examining these possible implications critically, this paper attempts to present a balanced argument regarding the current legal and societal debate about LGBT rights and gay marriage in India.

2. Scope of the Study

India's marriage, divorce, adoption, and succession laws are inter-twined with religious teachings. Property rights and inheritance also carry legal intricacies. As per the Indian Succession Act, 1925, and the Hindu Succession Act, 1956, property distribution follows a patriarchal model of lineage. Incorporating same-sex partners in property laws may require

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[4] Indian Constitution, Article 14, 15, 19, 21.
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[6] *Supriyo Chakraborty v. Union of India*, Writ Petition (Civil) No. 1011 of 2022 (India).

rehandling current systems at their fundamental level, which can take the form of long-drawn legal woes. In addition, homosexual marriage can make family law disputes more complicated, including child custody and divorce suits. Courts will have difficulty in instances where either of the couples requests alimony or a share of property using laws originally devised for heterosexual marriage.[7] Among the notable effects of gay marriage is its effect on child-bearing and family life. Same-sex couples, as opposed to heterosexual couples, do not have the biological capacity to naturally give birth to children. As a result, they resort to assisted reproductive technologies (ART) such as surrogacy and in-vitro fertilization (IVF). However, India's Surrogacy (Regulation) Act, 2021, restricts surrogacy in married heterosexual couples alone, keeping gay couples away from the same option.[8] The high demand for surrogacy and ART services would result in the commodification of human reproduction, which raises ethical issues on the exploitation of the surrogate mothers.[9] Children conceived through surrogacy are likely to experience social stigma and legal ambiguity on the rights of the parents and the citizenship of the child. Research in the conservative cultures indicated that children raised in non-standard families can encounter higher risks for social exclusion, identity confusion, and emotional disquiet.[10] Additionally, the lack of gender-diverse role models in homosexual parenting may influence the child's interpretation of gender roles and social expectations. Although some studies validate children's well-being under same-sex families, research remains inconclusive, especially in societies where traditional values predominate.[11] India is the world's most populous nation, and its demographic stability closely depends on the traditional family system, where procreation is encouraged. Legalization of same-sex marriage would affect birth rates by discouraging heterosexual marriages, which contribute to population growth naturally.[12] Although same-sex partners can adopt or resort to assisted reproduction, the natural reproduction rate may come down, with an impact on long-term population patterns. Moreover, there are issues regarding the demographic change in aging populations. Nations with declining birth rates tend to have economic slowdowns and higher dependency ratios, with fewer youths to support the increasing elderly population.[13] If same-sex marriage results in lower birth rates, it may lead to the same economic and social issues in India. In addition, policies on population control and family planning by the government might become more complicated. Current programs are for the traditional family setting, and there may need to be some adaptations to

include same-sex couples in adoption processes and reproductive support programs.[14]

3. Traditional Indian Perspective Approach

Indian marriage has traditionally been thought of as a religious institution grounded in deeply rooted religious, cultural, and social traditions. Indian practice varies from Western societies, wherein marriage is thought to be an agreement between two persons, to focus on marriage as union of households that has the key function of maintaining lineage, dharma (duty), and household honour. Hinduism: Marriage (vivaha) is one of the sixteen samskaras (sacraments) that a Hindu has to perform in their lifetime.[15] Marriage is defined by the Dharmashastras and Manusmriti as a religious obligation (dharma), necessary for performing one's duty in the cosmic order (Rta). Its key goal is procreation (praja) and perpetuation of the gotra (lineage).[16] The Hindu Marriage Act, 1955, also conceptualizes marriage as union between a male and a female, affirming its purpose as procreation.[17] Islam: Marriage (nikah) is considered to be a contract in Islamic society, yet a religious and ethical obligation as well. The Quran prioritizes the marriage institution for purposes of childbearing and establishing a stable family: "And We created you in pairs" (Quran 78:8).[18] Hadith teachings corroborate that marriage provides a guarantee of good conduct and continuous lineage. A large number of Islamic scholars purport that homosexuality defies Sharia teachings that support the structure of the family life.[19] Christianity: According to the Bible, marriage is a divine institution ordained by God for procreation and companionship. Genesis 1:28 orders, "Be fruitful and multiply and fill the earth."[20] The Catholic Church and the majority of Christian denominations in India are against same-sex marriage on the basis that it differs from the biblical definition of marriage.[21] Other Indian Traditions: Heterosexual marriage is also valued in Sikhism, Jainism, and Zoroastrianism as a responsibility to provide lineage, family honour, and community stability.[22] The Parsis (Zoroastrians), for instance, observe strict endogamous marriage ceremonies to maintain their ethnic and religious identity. Lineage and Succession: Marriage is to continue one's family line and to fulfil ancestor obligations (pitru-runa). Hindu practice only allows a biological son to do Shraddha (ancestor worship), justifying the institution of marriage for procreation purposes.[23]

[7] Kusum, *Family Law Lectures: Family Law I* 134–38 (4th ed. 2019).

[8] Surrogacy (Regulation) Act, 2021, Section 2(r), 4(iii)(a).

[9] Smriti Parsheera, *The Ethics of Surrogacy in India: A Legal and Social Analysis*, 8 IND. J. MED. ETHICS 23 (2020).

[10] Mark Regnerus, How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study, 41 SOC. SCI. RES. 752, 763 (2012).

[11] Charlotte J. Patterson, Children of Lesbian and Gay Parents, 64 CHILD DEV. 1025, 1032 (1993).

[12] John Bongaarts, *The End of the Fertility Transition in the Developed World*, 49 POPULATION & DEV. REV. 311, 315 (2018).

[13] Ronald Lee & Andrew Mason, *Population Aging and the Economic Growth of Nations: Silver Dividend or Silver Tsunami*, 3 DEMOGRAPHIC RESEARCH 16, 20 (2017).

[14] Government of India, *National Population Policy, 2000*, Ministry of Health & Family Welfare.

[15] Patrick Olivelle, *The Āśrama System: The History and Hermeneutics of a Religious Institution* 102 (1993).

[16] Manusmriti IX: 96–97

[17] Hindu Marriage Act, 1955, § 5.

[18] Quran 78:8.

[19] Sayyid Abul A'la Maududi, *Purdah and the Status of Woman in Islam* 65 (1998).

[20] Genesis 1:28 (Holy Bible).

[21] Catechism of the Catholic Church, § 2333–2359.

[22] W.H. McLeod, *Sikhism and the Indian Society* 76 (2003).

[23] Kane P.V., *History of Dharmaśāstra*, Vol. 2, 412 (1973).

Dharma and Social Order: Marriage is seen as the way to maintain dharma (cosmic and social obligation). The Hindu epics, Mahabharata and Ramayana, extrapolate marriage as the cornerstone of a fair society. [24] Legalizing gay marriage goes against such traditional paradigms as it does not possess the dharma-based element of having children. Inheritance and Property Rights: Indian succession law, especially in the Hindu Succession Act, 1956, is heterosexually-oriented and based upon biological children. Granting legal recognition to gays may result in the need for amending property inheritance laws with ensuing conflicts.[25]

Inheritance and Property Rights: Indian law of succession, particularly under the Hindu Succession Act, 1956, is based on heterosexual unions and biological offspring. If legal recognition were to be extended to same-sex couples, this could, in turn, necessitate the amending of property inheritance laws, with resulting confrontations.[26]

4. Legal Concerns and Inconsistencies

Status in India: The Supreme Court declared Section 377 of the Indian Penal Code, criminalizing consensual homosexual acts, to be unconstitutional. The judgment, however, did not recognize the right of same-sex couples to marry, adopt children, or receive spousal benefits. As compared to most Western democracies in which marriage equality trailed decriminalization, India's legal tradition still distinguishes between decriminalization and full legal recognition. The judiciary has been slow to interpret current marriage laws in Favor of same-sex couples, insisting that legislative action is required.[27] In Supriyo Chakraborty v. Union of India (2023), the Supreme Court declined to legalize same-sex marriage, upholding that the Parliament, and not the judiciary, should make the decision.[28]

Marriage Laws in India and Their Incompatibility with Same-Sex Unions Marriage laws in India are controlled by religion-based personal laws and secular laws like the Special Marriage Act, 1954. The legal acceptance of same-sex marriage in India is fraught with challenges because of inconsistencies in current marriage laws, reproductive rights, and the lack of an overarching legal framework. Although the decriminalization of homosexuality in Navtej Singh Johar v. Union of India1 was a milestone judgment upholding LGBT rights, it did not grant the right to marry. India's legal framework—particularly personal laws, marriage statutes, and family law provisions—remains incompatible with same-sex unions. Furthermore, issues surrounding reproductive rights, surrogacy, and child custody raise additional legal and ethical concerns. In Islamic law, marriage (nikah) is defined as a contract between a man and a woman, with stipulations regarding dowry (mehr) and right to reproductive activities. Given that homosexuality has historically been outlawed in

Islamic law, there is no religious blessing or state endorsement of same-sex marriage.[29]

Special Marriage Act, 1954 allows for secular and intermarriage but maintains marriage as being between a man and a woman.[30] The language of the Act excludes lesbians and gay men, necessitating legislative changes for them to included. Indian Christian Marriage Act, 1872, and Parsi Marriage and Divorce Act, 1936, also presuppose marriage to be a heteronormative institution, keeping same-sex relationships outside the reach of law.[31]

Therefore, without legal amendments, same-sex couples are still excluded from India's marriage law, inheritance, and rights of the spouse.

Adoption Restrictions: The Juvenile Justice (Care and Protection of Children) Act, 2015, permits only married couples to adopt together.[32] As same-sex marriage is not legal, same-sex couples cannot adopt as a couple. An individual LGBT person can adopt, but his/her partner has no parental rights under the law, resulting in inheritance and custody issues.

Surrogacy Issues: The Surrogacy (Regulation) Act, 2021, does not allow same-sex couples, single men, and foreigners to avail themselves of surrogacy services in India.[33] Surrogacy is limited under law to formally married heterosexual couples, excluding same-sex partners from parenthood. Such legal restrictions compel same-sex partners to turn to international surrogacy arrangements, inviting legal issues over citizenship, parental rights, and the legitimacy of the child. he exclusion of gay couples from access to surrogacy is subject to constitutional challenge on grounds of equality (Article 14), discrimination (Article 15), and the right to family life (Article 21). Opponents claim that the law discriminately Favors heterosexual couples, whereas supporters defend it on the grounds of conventional family values and child well-being considerations.[34] In addition, same-sex couples can opt for illegal or unlicensed surrogacy arrangements, and this creates issues of child trafficking, surrogate mother exploitation, and legal confusion in granting parental rights.

5. Societal Challenges and Risks

Increase in Psychological Concerns and Relationship Issues: Same-sex couples tend to experience increased levels of psychological concerns, such as anxiety, depression, and identity crisis, owing to discrimination in society, rejection by families, and absence of support from institutions.[35] Research suggests LGBT persons in India report increased depression and suicidal ideation than their heterosexual peers.[36] Same-

[24] Wendy Doniger, *The Hindus: An Alternative History* 523 (2009).
[25] Hindu Adoption and Maintenance Act, 1956, § 7.
[26] Hindu Succession Act, 1956, § 6–8.
[27] K. S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[28] Supriyo Chakraborty v. Union of India, W.P. (C) 1011/2022 (SC).
[29] Tahir Mahmood, *Muslim Personal Law in India* 62 (2015).
[30] Special Marriage Act, 1954, § 4.
[31] Indian Christian Marriage Act, 1872, § 4; Parsi Marriage and Divorce Act, 1936, § 3

[32] Juvenile Justice (Care and Protection of Children) Act, 2015, § 57.
[33] Surrogacy (Regulation) Act, 2021, § 4.
[34] Indian Constitution, Art. 14, 15, 21.
[35] A. Patel, *Mental Health in LGBT Relationships: A Social Perspective*, 5 Indian J. Psychol. Res. 67 (2020).
[36] N. Mehta, *LGBT Mental Health in India: A Crisis Ignored*, 27 Soc. Psychiatry Rev. 211 (2019).

sex couples in relationships tend to experience acceptance issues, giving rise to relationship insecurity and conflicts.

Lacking legal structures on psychological support, legalization of same-sex marriage would subject couples to new social and emotional difficulties without proper support mechanisms.

Effects on Children Brought Up by Same-Sex Parents Psychological Impact and Identity Confusion: The biggest concern around same-sex parenting is the likely psychological effect on children, specifically in terms of gender identity development and emotional stability. Conventional family arrangements present male and female parental role models, enabling children to gain a healthy perception of gender roles.

Research indicates children brought up by same-sex parents are prone to identity confusion, especially in cultures where conventional gender roles are central.

The lack of both maternal and paternal figures will cause developmental problems because children might never see gender-specific parental intervention.

Indian society is mostly conservative, and children of same-sex couples are likely to undergo social stigma, bullying, and isolation. Among school settings, children are subject to mockery and exclusion because of their origin from a same-sex couple. Peers and teachers can be resistant to same-sex parenting styles, which could lead to discrimination and psychological distress. Lack of social acceptance might cause low self-esteem and social anxiety in same-sex parented children. Without necessary social sensitization steps, the children are likely to grow up being discriminated against, impeding their mental and emotional well-being.

6. Influence of Western Ideologies and Its Consequences

Western Influence on Indian Policymaking: Marriage in Western nations has long been viewed as a contractual union between two people, whereas marriage in India is viewed as a sacrament that is linked with family, religion, and social duty. The Hindu Marriage Act, 1955, and other personal laws view marriage as a union for the sake of procreation and domestic stability, and thus the Western "gender-neutral" conception of marriage is incompatible with Indian juridical traditions. The Indian judicial practice, as seen in Shayara Bano v. Union of India insists on gradual legal changes based upon social readiness, and not by superimposing extraneous legal conceptions. Legalizing same-sex marriage without public consensus and cultural adaptation can create a gap between law and society, which in turn can create legal ambiguities and social resistance.

Western Failures and Consequences: In **United States** LGBT Rights vs. Religious Liberties American legalization of gay marriage by Obergefell v. Hodges, 576 U.S. 644 (2015) generated religious liberty controversies where institutions and businesses refused to serve same-sex couples on grounds of religious objection.

Public institutions were being sued for implementing gender identity policies, particularly in the matter of bathrooms, sports, and parental rights at school.

Cases such as Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 U.S (2018), pushed to the limelight the clash between anti-discrimination law and religious freedom.

Canada: Gender Identity Laws and Their Impact on Parental Rights

In **Canada**, Bill C-16 (2017) had added "gender identity" and "gender expression" as areas of protection for anti-discrimination law, giving rise to contentious legal fights.

Those parents who complained about gender-transition therapies for children were brought before courts, and courts ruled against parental authority favouring children's rights.

In cases like British Columbia v. A.B., a court granted a minor the right to change their gender despite parental objection, setting a troubling precedent for parental rights.

Europe: The Unforeseen Consequences of Gender Identity Policy Several European countries have seen unexpected legal and social consequences following the adoption of liberal LGBT policies. In **Sweden,** gender identity law resulted in rising numbers of detransition, as people attempted to undo gender transition processes, with implications for legal and medical responsibility. The UK's Tavistock Clinic was shut down in 2022 following an investigation which revealed that hurried gender transition therapy was being prescribed to children without medical evaluation. Controversies surrounding education policies with an LGBT-friendly agenda have fuelled parent protests and court litigations in France and Germany, with most parents opposing state-legislated education on gender identity. These case studies highlight the problems and unintended repercussions of Western LGBT legislation, putting a shadow on India's willingness to tread in their footsteps.

7. Need for Re-Evaluating LGBT Recognition in India

Maintaining Indian Social Morality: The Indian Constitution acknowledges individual freedoms and basic rights, but the rights have to be balanced with the interests of society at large. Article 21 of the Indian Constitution promises the right of life and liberty of the person, which has been interpreted as including sexual autonomy. Nevertheless, the right is not absolute and has to be harmonized with public morality and societal values. The Indian Supreme Court in Navtej Singh Johar v. Union of India decriminalized same-sex relationships but stopped short of extending legal recognition to same-sex marriage, recognizing the role of culture and society within family law. Other nations, such as Singapore and Russia, have taken a nuanced approach to LGBT rights, where non-discrimination protections are extended while preserving conventional marriage frameworks. A harmonious approach must be adopted to avoid clashes between constitutional rights and long-standing societal values.

Safeguarding the Heteronormative Structure of Indian Society: India's social fabric is heteronormative family structures, marriage not only an individual choice but also an institution with ties to family, religious tradition, and community obligations. Hinduism, Islam, and Christianity consider marriage a religious institution, with a focus on procreation and duties towards the family. The. Hindu Marriage Act, 1955, and the Muslim Personal Law (Shariat) Application Act, 1937, both define marriage as a union of a man and a woman and represent the traditional gender roles and consideration of lineage. The Special Marriage Act, 1954, even though secular in nature, was intended to facilitate interfaith and inter-caste marriages and not to redefine the basic concept of marriage. Legalizing gay marriages would destabilize these frameworks and cause clashes within inheritance laws, parental rights, and religious traditions.

Alternative Solutions to Legalization of Homosexual Marriage: Instead of grafting Western models of same-sex marriage laws on Indian society, India may adopt other legal approaches which extend legal protections to gay individuals without upsetting the classical institution of marriage. Consideration of Alternative Legal Protection over Full Marriage Rights Various states have also had civil unions and domestic partnership statutes as an option to same-sex marriage that includes legal privileges but does not amend marriage law. The French Civil Solidarity Pact (PACS) recognizes homosexual unions without aligning it with classic marriage. Italy and Greece established civil unions offering inheritance and healthcare privileges but holding marriage as an exclusive heterosexual institution. India might adopt a comparable legal framework wherein same-sex couples can have joint property rights, healthcare decision-making, and access to financial benefits without altering the definition marriage.

8. Conclusion

The profound ramifications of legalizing gay marriage have been subjected to critical scrutiny with special focus placed on its subversive influence on Traditional Values and Family Structures. Indian marriage is firmly based on religious, cultural, and social traditions that place great importance on procreation, lineage, and family obligations. Legalizing same-sex marriage threatens to erode these core values and may result in the weakening of the traditional joint family system. The Hindu Marriage Act, 1955, Special Marriage Act, 1954, and Muslim Personal Law all treat marriage as a heterosexual institution.3 Granting same-sex marriage without thorough legal reforms may cause inconsistencies in laws of inheritance, adoption, and divorce, and hence more litigation and judicial activism. Granting adoption and surrogacy to same-sex couples causes ethical and legal issues based on the best interests of the child, and exploitation in cases of surrogacy arrangements. Psychological problems have been identified among children in non-traditional family arrangements, such as confusion of identity, social stigma, and peer integration. Most Western countries have encountered judicial intricacies upon the recognition of same-sex marriage and gender identity legislation. It is possible that the imposition of Western legalities on India with no regard for its distinctively different socio-cultural texture can be a cause for unintended social mayhem. While individual rights and human rights need to be safeguarded, the legal recognition of same-sex marriage cannot compromise India's societal integrity and judicial stability.

References

Bibliography

[1] R. Sharma, *Marriage in Hinduism: Religious and Social Perspectives*, 17 J. Ind. Cult. Stud. 87 (2021).

[2] S. Gupta, *Heteronormativity in Indian Family Law*, 12 Ind. J. Soc. L. 214 (2020).

[3] P. Kumar, *The Psychological Effects of Non-Traditional Families on Children*, 19 Ind. J. Psych. 301 (2023).

[4] K. Nakamura, *Same-Sex Marriage and Legal Challenges in Western Nations*, 15 Asian L.J. 98 (2021).

[5] P. Bose, *Globalization and LGBT Rights: The Impact of Western Influences on Indian Society*, 22 J. Asian Stud. 189 (2022).

[6] A. Mukherjee, *Legal Dilemmas of Same-Sex Unions in India: A Comparative Analysis*, 14 Ind. L.J. 65 (2021).

Webliography

[1] Ministry of Law and Justice, Government of India, *Report on Marriage Laws in India*, available at https://legalaffairs.gov.in/reports (last visited Mar. 5, 2025).

[2] Law Commission of India, *Consultation Paper on Family Law Reforms*, available at https://lawcommissionofindia.nic.in/reports (last visited Mar. 5, 2025).

[3] United Nations Human Rights Office, *LGBT Rights and Global Policy Trends*, available at https://www.ohchr.org (last visited Mar. 5, 2025).

[4] Supreme Court of India, *Judgments and Orders*, available at https://main.sci.gov.in/judgments (last visited Mar. 5, 2025).

[5] Indian Parliament, *Debates on the Special Marriage Act and Same-Sex Unions*, available at https://parliamentofindia.nic.in (last visited Mar. 5, 2025).

[6] National Human Rights Commission of India, *LGBTQ+ Rights and Policy Recommendations*, available at https://nhrc.nic.in (last visited Mar. 5, 2025).

[7] The World Bank, *Economic and Social Impact of Same-Sex Marriage Recognition*, available at https://www.worldbank.org (last visited Mar. 5, 2025)