

# The Legal and Social Status of Same-Sex Marriage

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'Pick one' they say. They wonder if I like men or women. I am confused, something they can't put in a box. I am either not gay enough for the gay community or I'm not straight enough for anyone else. I think they've forgotten that love can't fit in a box, nor does it discriminate. "

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**Abstract:** *This article, explores the topic of same - sex marriage legalization in India. It begins with a personal reflection on the complexity of sexual identity and society's tendency to categorize love. The introduction highlights that love is a fundamental human trait and historically, the institution of marriage did not exist among primitive humans who lived with sexual promiscuity. The article examines the increasing awareness of sexuality in modern times, emphasizing that love should not be restricted by gender. It defines homosexuality as an exclusive or predominant erotic preference for the same sex, encompassing desire, behaviour, and identity. A significant milestone in India's legal history was the decriminalization of homosexuality by the Supreme Court in 2018, celebrated by the LGBT+ community. However, the struggle for equal rights continues, particularly in the context of same - sex marriage, which remains illegal in India. Despite the absence of explicit prohibitions in codified marriage laws, same - sex unions are not recognized. The article discusses the legislative and judicial gaps in LGBT rights, highlighting ongoing legal battles, including petitions for the recognition of same - sex marriages.*

**Keywords:** homosexuality, same-sex marriage, LGBTQIA rights, India, legal recognition

## 1. Introduction

Love is eternal it doesn't have any boundaries. Love is something natural. It is an uncontrolled emotion. It is the savior of humanity. We are born as humans, and the feeling of love constitutes one of our fundamental traits. It seems to be now well established that the institution of marriage did not exist among primitive men.

At that time man lived like any other animal. He was so engaged in the satisfaction of his primary needs, hunger, and shelter, that there was no time or occasion to think of refinement. Sex life was free. Sex promiscuity was the rule.

Nowadays as generations are changing and the world is evolving people are getting more aware of various things one of them is about their sexuality people are getting more aware of their sexuality about what they feel and what they like it's not just man loving women and women loving man they are learning that the man can love man and women can love women they are not just restricted to being heterosexual. People want to marry the person they love irrespective of gender. Homosexuality is something about which people don't know much. Homosexual marriages are illegal in various part of the people don't know much. Homosexual marriages are illegal in various parts of the world but it's not something that should be illegal.

### What is Homosexuality?

The term "homosexuality" refers to the experience of exclusive or almost exclusive erotic preference for others of the same sex in fantasy and characteristically through the realization of sexual intimacy with others of the same sex. It can be conceptualized as desire, behaviour, and identity (although it is not always congruent within one person at the same time, and therefore can be a source of personal conflict).

Gay desire is the affective experience of same - sex attraction. Homosexual behaviour occurs when members of the same sex engage in sexual activities. Homosexual identity represents the acceptance of a self - designation in which one recognizes

the primacy of homosexual desire and behaviour in the makeup of oneself. In contrast to homosexual identity, homosexual orientation reflects the affective experience of an erotic desire mainly for the same sex that escapes the conscious control and scope of historical and social construction.

### Recognition of homosexuality under the law:

The word homosexual was considered taboo in Indian society before the landmark judgment passed on 6 September 2018 by the Supreme Court of India. Deciding the case of NavtejJohar v Union of India, the Honorable Supreme Court has put an end to the criminalization of same - sex acts between consenting adults, allowing the country's LGBT+ community to celebrate a long overdue win after a nearly two decades lasting fight for recognition legal.

After the judgment, the LGBT community across the country erupted in jubilant celebration enjoying their victory against the 200 - year - old British - era law that criminalized same - sex relationships. The significance of this whole judgment can be surmised in the light of the statement made by Justice Indu Malhotra while reading her 50 - page verdict that "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and in ostracism that they have suffered through the centuries".

### Fight for homosexual Marriage: -

Same - sex marriage is the practice of marriage between two men or between two women. Although same - sex marriage is governed by law, religion, and custom in most countries in the world, legal and social responses range from celebration, on the one hand, to criminalization, on the other.

It would not be wrong to say that the repealing of the colonial law was merely the tip of the iceberg and the LGBT community in India has a much larger and bigger struggle ahead of them. Despite homosexuality being decriminalized, the laws in India remain hostile and prejudicial towards the LGBT community in several ways. The reason behind this is

that there exists an enormous gap between the legislative and judicial development of LGBT laws in India. So essentially speaking, same - sex couples now have the legal right to cohabit and conduct their personal affairs without any fear of persecution but are still denied equality of treatment in various aspects.

Like marriage, India does not allow same - sex marriages; in fact, it does not possess a unified marriage law. None of the codified marriage laws explicitly defines marriage between man and woman; neither do they prohibit same - sex marriage. Still, our legal system does not allow homosexual unions and is not ready to give them their fundamental right.

Three petitions were filed last year, one of them was by the couple Dr. Kavita Arora, a psychiatrist, and Ankita Khanna, a therapist second was by Parag Vijay Mehta, an overseas citizen of India card holder, and Vaibhav Jain, an Indian citizen. The third PIL was filed by defense analyst Abhijit Iyer Mitra and three others for the recognition of same - sex marriage under the Hindu Marriage Act.

Seeking Dismissal of these petitions, the center told Delhi high court "that a marriage in India necessarily depend upon age - old customs, rituals, practices, cultural ethos and societal values" and reading down the sec 377 of IPC covering homosexuality, the Supreme Court had only decriminalized "a particular human behavior" but "neither intended to nor did legitimize the human conduct in question".

The government said that it will dedicate the balance of personal laws where petitioners merely asked for the recognition of same - sex marriage and in fact will strengthen the social structure of marriage. Where they just want their love to be recognized and not because they want an institution desperately, they want basic civil rights and privileges attached to the marriage act.

They have no right to their partner because they are not "blood relative" or their spouse, they can't travel the world as a couple, and they can't set up a joint bank account because queer couples are not legally recognized and there are so many hurdles that same - sex couples go through.

Petitioners were simply asking for the choice of marriage with civil rights attached to it. In a developing country like India, homosexuals are still facing hurdles for the reorganization of their love decriminalizing sec 377 is historic but not sufficient there should be personal laws for homosexuals.

#### **Recent Personal Bill proposed in Parliament:**

Recently NCP MP Supriya Sule's bill also sought the same legal rights for married LGBTQIA couples that heterosexual couples are entitled to. Another private member bill was introduced by a DMK MP that talked about providing rights to members of the LGBTQIA community for a life with dignity.

The bill introduced by Sule, a parliamentarian from Maharashtra, proposed to amend the Special Marriage Act, 1954, to solemnize such marriages and fix the age of marriage at 21 years in case both parties were men and 18 years in case both were women. It also proposed to replace the words

husband and wife with spouse by amending the various sections of the Act.

In the statement of 'Object and Reasons' of the bill, Sule said lesbian, gay, bisexual, transgender, queer (questioning), intersex, and agender (LGBTQIA) individuals still faced "persecution, discrimination and social stigma within society".

In 2018, the Supreme Court of India struck down Section 377 of the Indian Penal Code that decriminalized homosexuality. Citing another Supreme Court judgment, Sule said even after the determination of their sexual orientation, "LGBTQIA individuals are still unable to marry and raise their own families".

Stating that LGBTQIA couples had no access to rights that heterosexual couples were entitled to upon marriage, such as succession, maintenance, pensions, etc., she said, "Therefore, it is of the utmost importance to amend the Special Marriage Act, 1954, to legalize same - sex marriage, and provide legal recognition to married LGBTQIA couples.

It will ensure that Article 14 and Article 21 of the Constitution were upheld and that LGBTQIA couples were provided the rights they are entitled to, she said.

## **2. Conclusion**

The recognition of same - sex marriage is considered to be a human right and a civil right as well as a legal, social, and religious issue. The most prominent supporters of same - sex marriage are human rights and civil rights organizations as well as the medical and scientific communities, while the most prominent opponents are religious fundamentalist groups. Polls consistently show continually rising support for the recognition of same - sex marriage in all developed democracies and some developing democracies.

India does not allow same - sex marriages; in fact, it does not possess a unified marriage law. None of the codified marriage laws explicitly defines marriage between man and woman; neither do they prohibit same - sex marriage. Still, our legal system does not allow homosexual unions and is not ready to give them their fundamental right. Somewhere still in the eyes of the government homosexuality is not okay and cannot be "legitimized" and brought into the larger consciousness of society.

Therefore, homosexuality is just limited to bedrooms and sexual acts. Because you can live with your partner but can't get married. In the past few decades, there have been same - sex marriages reported, all over the country. In the book "Same - Sex Love in India: Readings from literature and History" the author Ruth Vanita, she analyzes a dozen no. of marriages and suicides in the past few decades. She said that many marriages can be considered legal as acc to 'The Hindu Marriage Act, 1955' any marriage between two Hindus performed according to the customs in the community of one of the two partners is valid. No license is required to marry. And even most couples have sought the validation of family and community in same - sex marriage. Many countries have legalized same - sex relationship but the country like the

Republic of India does not talk about the homosexual union.  
India is still following the pre - colonial period were getting  
married in the same sex is not legal