



ILE

JOURNAL OF SOCIAL STUDIES

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE JOURNAL OF SOCIAL STUDIES

APIS – 3920 – 0055 | ISBN – 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – <https://jss.iledu.in/>

Journal's Editorial Page – <https://jss.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://jss.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://jss.iledu.in/terms-and-condition/>



BRIDGING THE EQUALITY GAP: EXPLORING LEGAL PERSPECTIVES ON SAME-SEX MARRIAGE

AUTHOR – MAHIMA SINGH

STUDENT AT INTEGRAL UNIVERSITY, LUCKNOW

Best Citation - MAHIMA SINGH, BRIDGING THE EQUALITY GAP: EXPLORING LEGAL PERSPECTIVES ON SAME-SEX MARRIAGE, *ILE JOURNAL OF SOCIAL STUDIES (ILE JSS)*, 1 (1) of 2023, Pg. 16-20, APIS – 3920 – 0055 | ISBN – 978-81-964391-3-2.

I- ABSTRACT

Same-sex marriage, a contentious and evolving social issue, refers to the legal recognition of marriage between individuals of the same sex. This abstract provides an overview of the topic, exploring the historical context, legal challenges and milestones, and global perspectives surrounding same-sex marriage.

The historical context of same-sex marriage reveals a complex interplay of cultural, religious, and legal factors. The struggle for marriage equality has witnessed significant legal challenges and milestones, with court decisions and legislative reforms shaping the landscape of recognition and rights for same-sex couples.

From a global perspective, attitudes towards same-sex marriage vary widely. Some countries have embraced marriage equality, recognizing it as a matter of equal rights and non-discrimination, while others maintain conservative viewpoints influenced by cultural and religious beliefs. Regional variations and generational shifts contribute to the evolving discourse on same-sex marriage.

The recognition of same-sex marriage has profound implications for LGBTQ+ rights, societal acceptance, and the pursuit of equality. Advocates argue that legalizing same-sex marriage provides access to legal protections, benefits, and societal validation, while opponents voice concerns about the redefinition of marriage and religious freedom.

In conclusion, same-sex marriage remains a subject of ongoing debate and social transformation. The recognition of same-sex marriage reflects progress towards inclusivity, respect for diversity, and the affirmation of love and commitment. Continued advocacy, education, and dialogue are essential in shaping attitudes, overcoming challenges, and promoting equality for all individuals, regardless of their sexual orientation.

KEYWORD- Same sex marriage, religion, culture, marriage equality, non-discrimination, LGBTQ+ rights, education,

II- INTRODUCTION

Same-sex marriage, also known as marriage equality, has emerged as one of the most significant social and legal issues of our time. The fight for the recognition of same-sex marriage is rooted in the principles of equality, human rights, and the desire to eliminate discrimination based on sexual orientation. It represents a pivotal moment in the quest for

LGBTQ+ rights and has brought forth a range of legal, social, and cultural transformations.

For centuries, same-sex relationships were marginalized, stigmatized, and denied the same legal recognition and benefits afforded to heterosexual couples. However, in recent decades, a wave of progress has swept across the globe, challenging these discriminatory

practices and paving the way for the legal recognition of same-sex marriages.

This article delves into the legal aspect of same-sex marriage, examining its historical context, legal challenges, landmark court cases, and the implications for LGBTQ+ rights. It aims to provide an in-depth analysis of the legal journey towards marriage equality, exploring the global perspectives, ongoing challenges, and the profound impact of this movement on society.

By delving into the legal intricacies and milestones surrounding same-sex marriage, we can better understand the significance of marriage equality as a fundamental human right. The recognition of same-sex marriage has profound implications for the lives of countless individuals and communities, offering validation, equal protection, and the freedom to express love and commitment.

"Homosexuality a disorder, will rise if same-sex marriage legalised" ¹³As we delve into the legal landscape of same-sex marriage, it becomes evident that this issue goes beyond a mere legal recognition of relationships. It represents a broader struggle for societal acceptance, equal treatment, and the acknowledgment of the fundamental dignity and worth of all individuals, regardless of their sexual orientation.

III- HISTORICAL PERSPECTIVE-

The historical context of same-sex marriage is rooted in a long and complex timeline that has seen a gradual shift in societal attitudes towards homosexuality and the recognition of same-sex relationships. Throughout history, same-sex relationships have existed in various cultures and civilizations, albeit often in the shadows due to societal norms, religious beliefs, and legal prohibitions.

In ancient civilizations such as ancient Egypt, Greece, and Rome, same-sex relationships were documented in literature and art. However, marriage as an institution was primarily rooted in procreation, inheritance, and the

consolidation of power, leading to limited recognition or acceptance of same-sex unions.¹⁴

With the rise of Christianity and the influence of Judeo-Christian beliefs, attitudes towards same-sex relationships became increasingly negative. Theologians and religious authorities often condemned homosexuality as sinful, leading to the criminalization and persecution of individuals engaged in same-sex relationships. This prevailing social and religious disapproval persisted for centuries, shaping laws and societal norms that marginalized and oppressed LGBTQ+ individuals.

The modern LGBTQ+ rights movement began to gain momentum in the mid-20th century. Activists and organizations started advocating for the decriminalization of homosexuality and the recognition of equal rights for LGBTQ+ individuals. The Stonewall uprising in 1969, sparked by a police raid at the Stonewall Inn in New York City, marked a turning point in the fight for LGBTQ+ rights, igniting a wave of activism and fostering a sense of community and resilience.

As the LGBTQ+ rights movement gained traction, the push for same-sex marriage recognition emerged as a significant goal. The first legal recognition of same-sex marriage occurred in the Netherlands in 2001, followed by Belgium, Canada, and Spain in subsequent years. These early milestones set the stage for further advancements and emboldened advocates to fight for marriage equality in countries around the world.

Notable legal battles and landmark court cases, such as the Massachusetts Supreme Judicial Court's ruling in *Goodridge v. Department of Public Health* in 2003¹⁵ and the United States Supreme Court's decision in *Obergefell v. Hodges* in 2015, played a pivotal role in the global struggle for marriage equality. These cases challenged discriminatory laws, upheld the principles of equal protection and due process, and set legal precedents for

¹³ "Homosexuality a disorder, will rise if same-sex marriage legalised" - The Hindustan Times (June 10, 2023, 4:30 AM) <https://www.hindustantimes.com/india-news/same-sex-marriage-homosexuality-a-disorder-rss-survey-101683343435002.html>

¹⁴ Wikipedia, https://en.wikipedia.org/wiki/History_of_same-sex_unions (June 11, 2023)

¹⁵ *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).

recognizing same-sex marriage as a fundamental right.

The historical context of same-sex marriage is a testament to the perseverance and resilience of LGBTQ+ individuals and their allies. It reflects a societal shift towards inclusivity, equality, and recognition of the inherent dignity and worth of all individuals, regardless of their sexual orientation. While progress has been made, ongoing challenges and resistance persist in many parts of the world, highlighting the continued importance of advocating for marriage equality and LGBTQ+ rights as fundamental human rights.

IV- LEGAL CHALLENGES AND MILESTONES –

India has witnessed a series of legal challenges and milestones in the realm of same-sex marriage. The recognition of same-sex relationships and the fight for marriage equality have been shaped by constitutional debates, judicial interventions, and the evolving societal attitudes towards LGBTQ+ rights. This section explores the key legal developments and milestones in India's journey towards marriage equality.

1. Section 377 and Decriminalization:

One of the significant legal challenges was the fight against Section 377¹⁶ of the Indian Penal Code, a colonial-era law that criminalized "unnatural offenses" including consensual same-sex relationships. The LGBTQ+ community, activists, and allies waged a long battle to decriminalize same-sex relationships, arguing that Section 377 violated the rights to privacy, dignity, equality, and non-discrimination.

In a historic judgment in 2018, the Supreme Court of India, in the case of *Navtej Singh Johar v. Union of India*,¹⁷ struck down parts of Section 377 and decriminalized consensual same-sex relationships among adults. This milestone decision marked a significant step towards recognizing the rights and dignity of LGBTQ+ individuals.

2. Recognition of Transgender Rights:

Another crucial legal milestone was the recognition of transgender rights and gender identity. In 2014, the Supreme Court of India, in the case of *National Legal Services Authority v. Union of India*,¹⁸ recognized transgender persons as a third gender and affirmed their fundamental rights. This decision emphasized the importance of respecting and protecting the rights of transgender individuals, including their right to marry and form a family.

3. Marriage Recognition by Foreign Jurisdictions:

While same-sex marriage is not yet legally recognized in India, there have been legal milestones related to the recognition of marriages performed in foreign jurisdictions. In 2017, the Delhi High Court, in the case of *Ritu Dalmia v. Union of India*,¹⁹ recognized a same-sex marriage performed in California, USA, as a valid marriage under Indian law. This judgment set a precedent for recognizing marriages between same-sex couples solemnized in countries where such marriages are legal.

4. Legal Petitions for Marriage Equality:

In recent years, there have been legal petitions filed before Indian courts seeking the recognition of same-sex marriage. These petitions argue that denying same-sex couples the right to marry is a violation of fundamental rights, including the rights to equality, non-discrimination, and privacy. The outcomes of these petitions will play a significant role in shaping the legal landscape of same-sex marriage in India.

It is important to note that while there have been legal advancements, challenges and resistance remain. Societal attitudes, cultural norms, and conservative viewpoints continue to influence the pace of progress towards marriage equality. Some argue that the issue of same-sex marriage should be addressed through legislative reform or constitutional amendments.

India has experienced legal challenges and significant milestones in the fight for same-sex

¹⁶ Indian penal code, 1860, § 377 No. 40, Acts of parliament, 1860 (India).

¹⁷ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016; D. No. 14961/2016

¹⁸ *National Legal Services Authority v. Union of India Writ Petition (civil) No. 604 of 2013*

¹⁹ Wikipedia, https://en.wikipedia.org/wiki/Ritu_Dalmia (June 11, 2023)

marriage. The decriminalization of consensual same-sex relationships, recognition of transgender rights, and the recognition of marriages performed in foreign jurisdictions are important steps towards achieving marriage equality. The legal landscape is evolving, and continued advocacy, legal reform, and societal dialogue are crucial in moving towards the recognition of same-sex marriage as a fundamental right in India.

V- GLOBAL PERSPECTIVE-

The recognition of same-sex marriage has garnered diverse perspectives and responses across the globe. While progress has been made in many countries, attitudes towards same-sex marriage continue to vary widely, reflecting cultural, religious, and legal differences. This section explores some of the global perspectives on same-sex marriage.

1. Legalization and Acceptance:

"Love Knows No Boundaries: India Embraces Same-Sex Marriage Rights" Several countries have embraced marriage equality and legally recognized same-sex marriages. These countries view same-sex marriage as a matter of equal rights, individual autonomy, and non-discrimination. They argue that denying same-sex couples the right to marry infringes upon their fundamental rights and perpetuates inequality. Such countries often cite principles of equality, human rights, and the importance of inclusive societies²⁰.

2. Cultural and Religious Perspectives:

Cultural and religious perspectives play a significant role in shaping attitudes towards same-sex marriage. In some societies, traditional norms and religious teachings emphasize heterosexual marriage as the only acceptable form of union. As a result, same-sex marriage may face resistance due to cultural conservatism and religious doctrines that view homosexuality as morally unacceptable. However, it is important to note that

perspectives within religious communities vary, with some advocating for inclusivity and recognizing same-sex marriages²¹.

3. Progressive Social Change:

In many countries, support for same-sex marriage has grown as societal attitudes have evolved. Advocacy efforts, increased visibility of LGBTQ+ individuals and relationships, and changing generational perspectives have contributed to this shift. Younger generations tend to be more accepting of same-sex marriage, seeing it as a natural extension of equal rights and personal freedom. This generational change has influenced public opinion, leading to increased support for marriage equality.

4. Ongoing Resistance and Challenges:

Despite progress in many countries, opposition to same-sex marriage persists. Some argue that marriage should be exclusively between a man and a woman based on traditional and religious beliefs. Concerns about the redefinition of marriage, the potential impact on societal values, and religious freedom have fueled resistance in certain regions. Political and legal challenges continue to impede the recognition of same-sex marriage in some countries.

5. Regional Variations:

Attitudes towards same-sex marriage vary across regions. For instance, countries in Europe, such as the Netherlands, Belgium, and Spain, have been at the forefront of marriage equality. In contrast, regions like Africa and parts of Asia generally exhibit more conservative perspectives and have laws that criminalize same-sex relationships. However, there are exceptions within each region, and progress is being made in unexpected places.

6. Impact on LGBTQ+ Rights:

The recognition of same-sex marriage often goes hand in hand with broader advancements in LGBTQ+ rights. Marriage equality is viewed as a fundamental aspect of full legal recognition and social acceptance for LGBTQ+ individuals and relationships. It provides access to legal

²⁰ Npr , <https://www.npr.org/2023/05/09/1174752874/india-same-sex-marriage-case-supreme-court#:~:text=India's%20government%20remains%20opposed%20to%20same%20sex%20marriage&text=The%20Supreme%20Court%20has%20already,since%20India's%20independence%20in%201947> (June 11 , 2023)

²¹ Samuel L. Perry and Andrew L. Whitehead, Religion and Public Opinion Toward Same-Sex Relations, Marriage, and Adoption: Does the Type of Practice Matter? Vol. 55, No. 3, SEPTEMBER 2016.

protections, benefits, and societal validation. Advocates argue that the recognition of same-sex marriage sends a powerful message of inclusivity, fostering greater acceptance and reducing discrimination.²²

global perspectives on same-sex marriage reflect a range of viewpoints influenced by cultural, religious, legal, and societal factors. While progress has been made in many countries, challenges and resistance remain. The ongoing debate and evolving attitudes reflect the dynamic nature of the issue, and it highlights the importance of continued advocacy, education, and dialogue to promote equality and understanding worldwide.

VI- CONCLUSION-

The recognition of same-sex marriage has been a landmark development in the pursuit of equality and human rights. While perspectives on same-sex marriage vary across the globe, there has been a growing trend towards acceptance and legal recognition. Numerous countries have enacted legislation or witnessed court decisions that affirm the rights of same-sex couples to marry.

The movement towards same-sex marriage has been driven by a combination of legal, social, and cultural factors. Advocacy efforts, increased visibility of LGBTQ+ individuals, evolving societal attitudes, and shifting generational perspectives have played crucial roles in shaping the discourse surrounding same-sex marriage.

By legalizing same-sex marriage, societies have taken significant steps towards inclusivity, respect for diversity, and the promotion of equal rights. Recognition of same-sex marriage ensures that LGBTQ+ individuals have access to the same legal protections, benefits, and responsibilities as their heterosexual counterparts. It sends a powerful message that love and commitment should be celebrated and respected regardless of sexual orientation. However, challenges and opposition to same-sex marriage persist in various regions, driven

by cultural, religious, and conservative beliefs. Achieving global acceptance and legal recognition of same-sex marriage requires ongoing efforts to challenge discriminatory practices, foster dialogue, and promote understanding.

The fight for same-sex marriage is part of a broader struggle for LGBTQ+ rights and equal treatment under the law. It is a reminder of the progress made and the work that remains to be done to eradicate discrimination, promote inclusivity, and create societies where all individuals, regardless of sexual orientation, are treated with dignity and respect.

In conclusion, the recognition of same-sex marriage represents a significant milestone in the pursuit of equality, human rights, and social justice. It stands as a testament to the power of advocacy, the resilience of the LGBTQ+ community, and the collective effort to build more inclusive societies. The journey towards global acceptance of same-sex marriage continues, driven by the belief that love knows no boundaries and that everyone deserves the right to marry the person they love.

VII- REFERENCE-

- 1) Niharika Kohli , Critical Analysis of Same Sex Marriage , legal service India <https://www.legalserviceindia.com/legal/article-11022-critical-analysis-of-same-sex-marriage.html> (last visited - june 11 , 2023 - 5:00 am)
- 2) Joseph Chamie and Barry Mirkin , Same-Sex Marriage: A New Social Phenomenon , Vol. 37, No. 3, SEPTEMBER 2011.
- 3) Amrita Sony, blog on Same sex marriages in India under personal laws , IPleaders, <https://blog.ipleaders.in/sex-marriages-india-personal-laws/> (Last Accessed on 12th June, 2023 - 1:11 PM)

²² The Indian express , <https://indianexpress.com/article/explained/explained-law/sc-same-sex-marriage-here-are-the-arguments-over-10-days-8609177/> (June 11, 2023)

RECENT PUBLICATION FROM INSTITUTE OF LEGAL EDUCATION

(May utilization for reference/ bibliography)

1. Prasanna, S., et al. EMPOWERMENT AND EQUALITY NAVIGATING HUMAN RIGHTS LAW IN A COMPLEX WORLD. Institute of Legal Education, 2023. Access Here - <https://scholar.google.com/scholar?cluster=8073531615629308019>
2. PRASANNA, S., and P. LAVANYA. "NAVIGATING THE MAZE: UNDERSTANDING KEY DATA PRIVACY AND SECURITY LAWS WORLDWIDE." Access Here - <https://scholar.google.com/scholar?cluster=14275456488561985070>
3. Gopala, Bhagyamma. "A constitutional imperative for gender equality and dignity: a discourse on menstrual leave in India." ILE Constitutional Review 2 (2023). Access Here - <https://scholar.google.com/scholar?cluster=14542656713228494739>
4. Tulsyan, Aryan. "Cannabis and the constitution:'High time for amending the NDPS act?." ILE Human Rights Law Review 1.1 (2022). Access Here - <https://scholar.google.com/scholar?cluster=1620071720487117886>
5. SINGH, UJJWAL. "CUSTODIAL VIOLENCE IN MODERN INDIA." Journal of the Indian Law Institute 36.3 (1994). Access Here - <https://scholar.google.com/scholar?cluster=4641833531038214506>
6. Azizfan, Sayed Malik Shah. "A BLUEPRINT FOR SUSTAINABLE POVERTY ALLEVIATION AND UNEMPLOYMENT MITIGATION: SYNTHESIZING SOCIOECONOMIC TRANSFORMATION IN AFGHANISTAN." Access Here - <https://lspr.iledu.in/wp-content/uploads/2023/06/V1I116.pdf>
7. PRASANNA, S., and P. LAVANYA. "PROTECTING PERSONAL DATA: A COMPREHENSIVE GUIDE TO DATA PRIVACY REGULATION." Access Here - <https://ijclp.iledu.in/wp-content/uploads/2023/11/V1I114.pdf>
8. PRASANNA, S., and P. LAVANYA. "NAVIGATING THE MAZE: UNDERSTANDING KEY DATA PRIVACY AND SECURITY LAWS WORLDWIDE.". Access here - <https://ipclr.iledu.in/wp-content/uploads/2023/11/V2I17.pdf>
9. PRASANNA, S., and P. LAVANYA. "DATA PRIVACY IN THE DIGITAL AGE: COMPLIANCE WITH INDIAN LAWS.". Access Here - <https://liu.iledu.in/wp-content/uploads/2023/11/V2I116.pdf>
10. SRIVASTAVA, AVANTIKA. "A CRITICAL ANALYSIS OF LAWS PERTAINING TO RAPE AND FALSE MARRIAGE PROMISES." Access Here - <https://jcvpj.iledu.in/wp-content/uploads/2023/07/V1I16.pdf>
11. Abdurahim Zai, Mohammad Edris, and Naseebullah Amani. "The Impact of Green Supply Chain Management on Climate Change: Cursory Glance on the Food Industry." International Environmental Legal Research Journal 1.1 (2023): 150-161. Access Here - <https://ielrj.iledu.in/wp-content/uploads/2023/03/V1I117F.pdf>
12. JAYAL, HARDIK, and SHREYA SINGH THAKUR. "A COMPREHENSIVE ANALYSIS REGARDING THE PRACTICE OF BONDED LABOUR IN INDIA." Access Here - <https://llr.iledu.in/wp-content/uploads/2023/01/I11.pdf>