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FROM MARGINS TO MAINSTREAM: THE STRUGGLE FOR LGBTQ+ RIGHTS

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Abstract

The right to human dignity has been recognized under all conventions related to human rights across the world. In India as well, the Constitution of India, has guaranteed the right to meaningful existence with dignity to all human beings without any discrimination. The right to individual autonomy and the right to a meaningful existence are two sides of the same coin without which human dignity becomes devoid of any substance. But are these attributes of human dignity attainable without the right to enter into a marriage? Would it possible to truly achieve the lofty ideals of freedom and equality without permitting certain sections of the human population from forging bonds of family?

The apex court of India has also grappled with these questions and finally decided that it would refrain from interfering in the legislative domain and that the right to marry cannot be considered to be fundamental in nature. However, when we consider the principles derived from other judgments of the apex court along with the international consensus which is being developed in contemporary times, we would arrive at a different conclusion. This paper aims to go beyond the analysis of the apex court of India upon this issue and explore the evolving notions about human dignity with reference to the right to marry. Do we conform to the societal constructs formed by our biological roots or are we free to choose our own routes? Such controversies will be addressed within the framework of this research.

***Key Words and Phrases:* Human Dignity, Individual Autonomy, Right to Marriage, Fundamental Rights, Discrimination.**

1. INTRODUCTION

Diversity in the fabric of human life is a dynamic thread that weaves together the rich fabric of our world. At the heart of this diversity is the LGBTQ+ community, a powerful and diverse group of people who contribute to the unity of humanity. As the world evolves, the fight for LGBTQ+ rights, the quest for equality and international recognition transcends national and cultural borders.⁷¹

The struggle for LGBTQ+ rights is not just a regional or divisive struggle, it is the quest for equality and universal recognition that

transcends national and cultural boundaries. It is a global movement that emphasizes the fundamental principles of human rights and dignity. In all countries, people are challenging culture, fighting injustice, and advocating for the recognition of the rights and freedoms of LGBTQ+ people. However, this journey has seen both progress and setbacks, as the region is associated with complex cultural, social and economic challenges as well as political glitches.

This paper makes an effort to research on state LGBTQ+ laws on Global scale and specially in the context of Indian Laws. From the milestones achieved in some successful communities to

⁷¹ Kenneth Roth, “LGBT: Moving Towards Equality”, World Economic Forum, January 23, 2015.



the ongoing challenges LGBTQ+ people face in an unaccepting environment, we embark on a journey to understand the different narratives that shape the experiences of the LGBTQ+ community around the world.⁷² Through this research, we aim to shed light on common challenges, victories and the quest for a more harmonious and equal world where everyone, regardless of sex or gender, can truly belong to the land and live without discrimination.

1.1 Patriarchy and Transgenderism

The concept of patriarchy is often associated with issues related to gender and power in society. Patriarchy refers to a social system in which men have power and authority such as leadership, morality, law, and property management. Historically, this system has placed men in positions of authority and women in subordinate roles.⁷³

Patriarchal societies often follow strict gender norms and expectations that dictate certain behaviours, roles, and the attributes assigned to individuals based on their gender. These standards can lead to stigmatization, specially of those who do not conform to gender norms, including individuals in the LGBTQ+ community who do not identify as binary, queer, or transgender. Patriarchal societies can perpetuate homophobia and transphobia because they prefer traditional binary understandings of gender and sexuality. Individuals who challenge or criticize these norms, such as homosexual, gay, bisexual or transgender individuals, may be subject to discrimination, discrimination and violence due to expectations of freedom in society.⁷⁴

Patriarchy is a powerful source of power that can influence the experiences of LGBTQ+ individuals. For example, discrimination against

LGBTQ+ people can lead to power imbalances that favour heterosexuals and homosexuals, reinforcing social hierarchies that lead to health and rights in the LGBTQ+ community. In patriarchal societies, legal and institutional structures may discriminate against LGBTQ+ individuals. Laws and policies that reinforce gender roles and standards can create barriers to equal rights and opportunities for LGBTQ+ individuals.⁷⁵

The experiences of people in the LGBTQ+ community are diverse, and the effects of freedom are related to other forms of oppression, such as segregation, hate discrimination, and discrimination. Because of these intersections, LGBTQ+ individuals who also belong to marginalized groups may experience social isolation.

It is important to remember that the relationship between patriarchy and the LGBTQ+ community is complex and diverse, and changes may vary from culture to culture. and communities. Addressing freedom-related issues and promoting gender equality can help create a more inclusive and accepting environment for people of all genders (life and gender).

1.2 LGBTQ and The Wave of Rights

The LGBTQ+ rights movement has a deep history, and it is difficult to pinpoint a definitive beginning. But there are some key events and themes that have shaped the LGBTQ+ rights movement over the years. Throughout history there were people who challenged gender norms and symbols. However, the organized LGBTQ+ rights movement began to come to the fore in the 20th century.⁷⁶

Initially, it was in the early 1950s-1960s that the LGBTQ+ rights movement gained strength in the United States and other parts of the world in the

⁷² Baams, L., Bos, H. M. W., & Jonas, K. J., "How a romantic relationship can protect same-sex attracted youth and young adults from the impact of expected rejection", 37 *Journal of Adolescence* 1293 (2014).

⁷³ Dr. Srivastava Manushi, Rani Megha, "Socially excluded Transgender People in Patriarchal Society", 5 *International Journal of Research in Social Sciences*, 742 (2015).

⁷⁴ Thekla Morgenroth, Michelle K. Ryan, "The Effects of Gender Trouble: An Integrative Theoretical Framework of the Perpetuation and Disruption of the Gender/Sex Binary", 16 *Sage Journal* 1322 (2020).

⁷⁵ Carolina Pía García Johnson, Kathleen Otto, "Better Together: A Model for Women and LGBTQ Equality in the Workplace", 12 *Frontier in Psychology*, 122 (2019).

⁷⁶ Tim Fitzsimons, "A very LGBTQ decade: Gay marriage, trans rights and a 'rainbow wave'", available at, <https://www.nbcnews.com/feature/nbc-out/very-lgbtq-decade-gay-marriage-trans-rights-rainbow-wave-n1107901> (last visited on May 30, 2024).



mid-20th century. The 1950s and 1960s saw the formation of the first LGBTQ+ organizations and the rise of activism. During this time, events such as the 1969 Stonewall Riots in New York City served as catalysts for current LGBTQ+ rights.⁷⁷ The 1970s saw the first pride and founding of more LGBTQ+ organizations. The American Psychiatric Association declassified homosexuality as a mental disorder in 1973. But the 1980s also brought the problem of HIV/AIDS, which led to protests and outcries.⁷⁸

The 1990s saw the visibility of LGBTQ+ issues in mainstream media and politics. Efforts to gain legal recognition of same-sex relationships have been successful; Some countries and states have begun to decriminalize homosexuality and provide legal recognition for same-sex couples.⁷⁹ The early 2000s brought a huge fight over homosexual relationships. LGBTQ+ rights, including the gay marriage debate. The 2010s saw significant changes in the acceptance of LGBTQ+ people in many communities. In 2015, the Supreme Court ruled in *Obergefell v. Hodges*⁸⁰ legalizes gay marriage nationwide in the United States.

1.3 First Legal Battle

The Karl Heinrich Ulrichs⁸¹ case in the 19th century was one of the first legal cases to gain significance for LGBTQ+ rights. Although Ulrichs was not the first legal case, he played an important role in the fight for gay rights. In the mid-1860s, German lawyer and writer Karl Heinrich Ulrichs became a leading advocate of gay rights. He openly defends the rights of homosexuals. Being gay himself, he tries to fight against legal oppression based on gender. Ulrichs believes that current laws against same-sex relationships violate basic human rights.

⁷⁷ Bonnie J. Morris, “A brief history of lesbian, gay, bisexual, and transgender social movements”, *American Psychological Association*, July 21, 2017, available at <https://www.apa.org/topics/lgbtq/history> (last visited on Nov 14, 2023).

⁷⁸ Cherrie Moraga, Gloria Anzaldua, “This Bridge Called My Back: Writings by Radical Women of Color”, Persephone Press, 1981.

⁷⁹ David Johnson, “The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government”, University of Chicago Press Books, 2004.

⁸⁰ 576 U.S. 644 (2015)”

⁸¹ Liam Stack, “Overlooked No More: Karl Heinrich Ulrichs, Pioneering Gay Activist”, available at <https://www.nytimes.com/2020/07/01/obituaries/karl-heinrich-ulrichs-overlooked.html> (last visited on May 30, 2024).

In 1867, Ulrichs called for the repeal of laws criminalizing homosexuality at the Congress of German Jurists. Although their efforts did not lead to immediate legal changes, their work laid the foundation for later protests against LGBTQ+ rights. Although Ulrichs' document and struggle emerge in the context of his time, it is worth noting that LGBTQ+ rights are now associated with the challenges and constants and various legal and social issues that affected the 20th century and the legal changes of the 21st century. Laws regarding LGBTQ+ rights have changed a lot, Countries and regions faced their own priorities and challenges in the fight for equality and against discrimination.

While the LGBTQ+ rights movement is important in Western countries, protests and demonstrations are also spreading around the world. Although challenges remain across the region, many countries around the world have made progress in recognizing and protecting the rights of LGBTQ+ people.

The first ever case famously known for highlighting same sex marriage is *Baehr v. Lewin*⁸² wherein in the year 1993, three gay couples in Hawaii filed a lawsuit challenging the state's denial of a same-sex marriage license. The document states that denying marriage licenses based on same-sex marriage violates the equal protection provisions of the state constitution. The Hawaii Supreme Court ruled in 1993 that denying same-sex marriage licenses violated the equal protection provisions of the state constitution.⁸³

However, the decision did not legalize same-sex marriage in Hawaii. Instead, it caused a huge public and political debate. In response to the court's decision, the Hawaii Legislature changed state law to allow the Legislature to ban same-sex marriage. The reform led to a protracted war.⁸⁴

⁸² 74 Haw. 530.

⁸³ *Ibid*.

⁸⁴ German Lopez, “Same-sex marriage in the US, explained”, available at <https://www.vox.com/2015/6/26/18093652/same-sex-marriage> (last visited on May 30, 2024).



Other countries and states around the world then began to address the issue of same-sex marriage through legislative changes, judicial decisions, or votes. The Netherlands became the first country to legalize same-sex marriage in 2001. Other countries followed suit; Canada, Belgium and Spain legalized same-sex marriage in the early 2000s.⁸⁵

*Baehr v. Lewin*⁸⁶ has said many times when discussing the legality of same-sex marriage that it is important to remember that recognition and acceptance of same-sex relationships will result from different decisions through a combination of laws and amendments. The specific legal issues that determine the beginning of the movement will vary by region. The LGBTQ+ rights movement is constantly and consistently working to address the discrimination, violence, and inequality faced by LGBTQ+ people. It is important to recognize that time and moment may be different across countries and cultures, and that the fight for LGBTQ+ rights is multifaceted and interconnected.

1.4 LGBTQ in Indian Context

Against the backdrop of India's rich culture, tradition and diversity, the LGBTQ+ rights movement has become an important part of the country's ongoing relationship narrative. India has seen a huge shift in attitudes towards the LGBTQ+ community in recent years, this was driven by the development of legislation and increased debate around sexuality and gender issues.⁸⁷

A history of a community influenced by the LGBTQ+ community. India is in transition regarding recognition and recognition of LGBTQ+ civil rights. The turning point came in 2018, India's Supreme Court has come out with a

landmark judgment decriminalizing homosexuality by repealing Section 377⁸⁸ of the Indian Penal Code⁸⁹, which criminalized consensual same-sex relations of the colonial era homosexual relationship is illegal.

While this landmark action represents a significant step towards inclusion, the journey towards LGBTQ+ rights in India is far from over. The community still faces issues such as social stigma and lack of legal protection. The fight for equal rights goes beyond the law and includes many areas such as education, employment, healthcare and family acceptance.⁹⁰

This research explores the current state of LGBTQ+ rights in India, tracing the path of progress, negative impacts, and the powerful possibilities that continue to create narratives. As India considers the interplay of culture and modernity, this study aims to shed light on the many changes that have shaped the lives of LGBTQ+ individuals and their quest for justice, equality and recognition in various parts of India today.

2. RIGHT TO HOMOSEXUALITY: A CONSTITUTIONAL FRAMEWORK

Before 2018, Section 377 of the Indian Penal Code criminalized "unnatural offenses," which included consensual same-sex relationships. This law had its roots in the British colonial era and was a significant impediment to LGBTQ+ rights in India.⁹¹

On September 6, 2018, the Supreme Court of India, in a historic decision⁹², declared that consensual adult same-sex relations were no longer criminal. The judgment declared that Section 377, to the extent that it criminalized consensual acts between adults, was unconstitutional. The court held that criminalizing homosexuality violated the right to

⁸⁵ Josephine Rozzelle, Brianna Navarre, Megan Trimble, "Same-Sex Marriage Legalization by Country", US News, June 27, 2023 available at <https://www.usnews.com/news/best-countries/articles/countries-where-same-sex-marriage-is-legal> (last visited on May 30, 2024).

⁸⁶ Supra note 11.

⁸⁷ Siddhesh Patil, "LGBTQIA+ and their situation in India", *Times of India*, Sep 01, 2022, available at <https://timesofindia.indiatimes.com/readersblog/xpresblogs/lgbtqia-and-their-situation-in-india-44668/> (last visited on May 30, 2024).

⁸⁸ Unnatural offences.

⁸⁹ The Indian Penal Code, 1860.

⁹⁰ *Ibid*.

⁹¹ Siddharth Narrain, "The Queer Case of Section 377", available at http://www.sarai.net/publications/readers/05-bare-acts/06_siddharth.pdf (last visited on May 30, 2008).

⁹² *Navej Singh Johar & Ors. v. Union of India*, AIR 2018 SC 4321.



equality, dignity, and privacy guaranteed by the Indian Constitution.⁹³

This decision marked a monumental victory for LGBTQ+ rights in India and was celebrated as a significant step towards inclusivity and acceptance. The decriminalization of homosexuality had wide-ranging implications. It not only removed the threat of criminal prosecution but also paved the way for increased societal acceptance and recognition of the rights of LGBTQ+ individuals.⁹⁴

While the legal landscape has evolved, challenges persist. Discrimination, social stigma, and lack of comprehensive legal protections in areas such as marriage and adoption continue to be issues that the LGBTQ+ community in India faces. Advocacy and awareness efforts are ongoing to address these challenges and promote inclusivity.

After 2018, there have been discussions about the need for comprehensive anti-discrimination laws and legal recognition of same-sex relationships. LGBTQ+ activists and organizations continue to work towards fostering a more inclusive society and advocating for legal reforms that protect the rights and dignity of all individuals, regardless of their sexual orientation or gender identity.

NAZ Foundation v. Union of India⁹⁵ is a significant legal case in the context of LGBTQ+ rights in India. The case played a crucial role in challenging the constitutionality of Section 377 of the Indian Penal Code, which criminalized consensual same-sex relationships.

The case was filed by the NGO working on HIV/AIDS prevention and sexual health, in 2001. The foundation, along with other petitioners, argued that Section 377 violated the fundamental rights guaranteed by the Indian Constitution, including the right to equality and the right to life and personal liberty. The

petitioners contended that criminalizing consensual sexual activities between adults of the same sex was a violation of the right to privacy and dignity. They argued that such criminalization contributed to the discrimination and stigmatization of the LGBTQ+ community, hindering public health initiatives, particularly in the context of HIV/AIDS prevention.⁹⁶

In a landmark decision in 2009, the Delhi High Court ruled in favour of the petitioners. The court declared that Section 377, to the extent that it criminalized consensual adult same-sex acts, was unconstitutional. The judgment emphasized the principles of equality and non-discrimination, recognizing the rights of LGBTQ+ individuals.

The joy following the Delhi High Court decision was short-lived, as the Supreme Court of India overturned the judgment in December 2013. The Supreme Court stated that the issue should be addressed by the legislature rather than the judiciary, effectively reinstating Section 377.

Suresh Kumar Kaushal, a former Additional Solicitor General of India, filed a petition in the Supreme Court of India in 2009 seeking the reinstatement of Section 377, which criminalized "unnatural offenses," including consensual same-sex relations. The Naz Foundation, which had previously been involved in challenging the constitutionality of Section 377 in the *Naz Foundation v. Union of India*⁹⁷ case, was one of the respondents in this case.

Kaushal's petition argued in favor of retaining Section 377, contending that the Delhi High Court's decision in the Naz Foundation case, which had declared parts of Section 377 unconstitutional, was erroneous. The petitioner argued that the legislature, not the judiciary, should be responsible for changing or repealing laws.

In December 2013, the Supreme Court of India delivered its verdict in ***Suresh Kumar Kaushal v. Naz Foundation***⁹⁸. The court set aside the 2009

⁹³ *Ibid.*

⁹⁴ Rachit Sharma, "Rights of LGBTQ in India and the Struggle for Societal Acceptance", 4 *International Journal of Law Management and Humanities*, 20 (2018).

⁹⁵ 160 Delhi Law Times 277.

⁹⁶ *Ibid.*

⁹⁷ *Supra* note 25.

⁹⁸ Civil Appeal No. 10972 of 2013



judgment of the Delhi High Court that had decriminalized consensual same-sex acts. The Supreme Court reinstated the criminalization of homosexuality under Section 377, stating that the issue was a matter for the legislature to decide and not within the purview of the judiciary.

This decision was met with widespread criticism and sparked public debate on the rights of LGBTQ+ individuals in India. It led to increased activism and legal challenges, ultimately culminating in the 2018 judgment in *Navtej Singh Johar v. Union of India*⁹⁹, where the Supreme Court revisited the issue and decriminalized consensual same-sex relations.

The *Suresh Kumar Kaushal*¹⁰⁰ case, therefore, represents a phase in the legal battle over the constitutional validity of Section 377, with the Supreme Court initially reversing the progressive decision of the Delhi High Court before the subsequent landmark decision in 2018 that decriminalized homosexuality.

The legal battle did not end with the 2013 setback. In 2018, in the case of *Navtej Singh Johar v. Union of India*, a larger bench of the Supreme Court revisited the issue. In this judgment, the court, acknowledging changing societal norms and international legal developments, struck down the criminalization of consensual same-sex relations by decriminalizing parts of Section 377.

The Naz Foundation case, along with subsequent legal challenges, played a pivotal role in the journey toward the decriminalization of homosexuality in India. It highlighted the struggle for LGBTQ+ rights within the legal framework and spurred discussions about broader societal acceptance and inclusion.

Supriyo @ Supriya Chakraborty v. Union of India¹⁰¹

The Chief Justice said, "It is not enough for people to be free and enter into social relations

that are not controlled by the state. Therefore, in order to establish social relations, the state must recognize these relations. Therefore, a right is a right." Membership in a union includes the right of a person to join his or her partners in making the choice to guarantee cooperation to achieve personal protection and growth goals and to ensure that access to goods and services is not hindered."

The rights of the queer community are protected within the fold of Article 21 of the Constitution and encompasses right to dignity and individual autonomy of a person. This right also requires to be safeguarded by the executive taking into account the prevailing challenges in the society. The discrimination and exploitation faced by the queer community is growing throughout various parts of India. The empathy and recognition of the problems faced by them is lacking in the present society. Their identity has become a curse due to the constant stigmatization faced by them. Although, recognition has been received by them from various quarters of the judiciary and the legislature but this has not changed much at the ground level.

The fight for equal rights and recognition has been a long and arduous journey for the queer community. For far too long, individuals who identified as lesbian, gay, bisexual, transgender, or any other non-heterosexual or non-cisgender identity have faced discrimination, prejudice, and marginalization in numerous aspects of their lives. However, in recent years, significant progress has been made to advance the rights of the queer community, bringing us closer to a society that is inclusive, accepting, and equality-driven.

One of the most significant strides toward equality for the queer community has been the legal recognition of same-sex marriage. For many years, marriage was regarded as solely between a man and a woman, denying same-sex couples the same benefits and legal protections that their heterosexual counterparts enjoyed. However, through tireless activism and

⁹⁹ 2018 INSC 790.

¹⁰⁰ *Supra* note 28.

¹⁰¹ Writ Petition (Civil) No. 93 of 2023.



advocacy efforts, the right to marry has been extended to all couples, regardless of their sexual orientation or gender identity. This landmark ruling not only symbolizes a win for the queer community but also allows same-sex couples the legal protection and societal recognition they deserve.

Beyond marriage equality, there has been a growing understanding and acceptance of gender diversity. Gender identity, which refers to an individual's deeply held sense of their gender, is increasingly being recognized and protected. Many countries and regions have implemented legislations that prohibit discrimination on the basis of gender identity, ensuring that transgender individuals are not denied equal opportunities in employment, education, and public services. Moreover, access to healthcare services specific to transgender needs, such as gender-affirming surgeries and hormone therapy, has improved, allowing individuals to freely express their gender identity and live authentically.

Furthermore, the queer community has been fighting for their rights in educational environments, demanding a safe and inclusive space for queer students. LGBTQ+ student groups, such as gay-straight alliances and queer student associations, have been established in many schools, providing a supportive network for queer students and raising awareness about the issues they face. Schools are also increasingly implementing anti-bullying policies that specifically address harassment based on sexual orientation or gender identity, creating a safer learning environment for all students. Additionally, the inclusion of queer history and LGBTQ+ perspectives within educational curricula helps promote understanding, empathy, and acceptance among students.

Although significant progress has been achieved, it is essential to acknowledge that the journey towards full equality for the queer community is far from over. Discrimination and violence against queer individuals continue to

persist, reminding us of the importance of continued activism and advocacy. Many queer people, particularly those in countries or regions with conservative ideologies or oppressive legal frameworks, still face severe legal consequences or even persecution for their sexual orientation or gender identity. It is essential that international pressure is maintained to foster positive change and protect the rights of the queer community globally.

3. RIGHT TO MARRY: A GLOBAL PERSPECTIVE

3.1 International Jurisprudence on the Right to Marriage

International human rights conventions have not always explicitly recognized the right to marry for same-sex couples. However, over time, courts and international bodies have interpreted broader human rights principles—like the right to dignity, equality, and non-discrimination—as encompassing the right to marry. Some of the key legal instruments that have shaped global discourse on marriage rights include:

Universal Declaration of Human Rights (UDHR), 1948: Article 16 guarantees the right to marry and found a family. However, it did not specifically address marriage between same-sex individuals.¹⁰²

European Convention on Human Rights (ECHR), 1950: Article 12 of the ECHR guarantees the right to marry. In several landmark cases, the European Court of Human Rights (ECHR) has interpreted this provision to expand protections to same-sex couples under broader equality and privacy rights.¹⁰³

Inter-American Court of Human Rights (IACHR), 2018 Advisory Opinion: In 2018, the IACHR advised that all member states should

¹⁰² Ar. 16 “1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

¹⁰³ Ar. 12 ECHR available at https://www.echr.coe.int/documents/d/echr/Convention_ENG.



legalize same-sex marriage, interpreting the American Convention on Human Rights to protect the right to marriage equality.

3.2 Key Court Rulings and Legal Developments

Obergefell v. Hodges (United States, 2015)¹⁰⁴

In a landmark decision, the U.S. Supreme Court ruled that the Fourteenth Amendment guarantees same-sex couples the right to marry, recognizing marriage as a fundamental right. The court concluded that denying this right violated the principles of liberty and equal protection under the law. This ruling emphasized that marriage is inherent in the concepts of individual autonomy and dignity, setting a significant precedent for LGBTQ+ rights worldwide.

Schalk and Kopf v. Austria (ECHR, 2010)¹⁰⁵

The European Court of Human Rights ruled that while Article 12 of the ECHR (right to marry) did not impose an obligation on member states to legalize same-sex marriage, Article 8 (right to respect for private and family life) could be interpreted to provide legal recognition to same-sex partnerships. This decision opened the door for many European countries to legislate marriage equality or civil unions.

Halpern v. Canada (Ontario Court of Appeal, 2003)¹⁰⁶

The Ontario Court of Appeal ruled that prohibiting same-sex marriage was a violation of the Canadian Charter of Rights and Freedoms, particularly Section 15, which guarantees equality before the law. Canada became the first country outside Europe to legalize same-sex marriage.

Minister of Home Affairs v. Fourie (Constitutional Court, 2005)¹⁰⁷

South Africa's Constitutional Court ruled that the Marriage Act's exclusion of same-sex couples violated the constitutional right to equality and

dignity. South Africa became the first African country to legalize same-sex marriage, based on its progressive constitution, which explicitly protects against discrimination based on sexual orientation.

Over 30 countries have now legalized same-sex marriage, and several more recognize civil partnerships or unions. These legal advances reflect a growing international consensus that the right to marry is a fundamental aspect of human dignity, autonomy, and equality. Countries such as Argentina, New Zealand, Spain, and Germany have passed legislative reforms affirming same-sex marriage, often citing constitutional principles of equality and non-discrimination. In these nations, marriage equality has become a cornerstone for advancing broader LGBTQ+ rights, contributing to societal acceptance and further legal protections.

Legal recognition of same-sex marriage has had far-reaching implications not just for LGBTQ+ individuals but also for human rights more broadly. These rulings have affirmed the principle that human dignity cannot be fully realized without the ability to form a legally recognized family. Moreover, such decisions have often paved the way for broader discussions on gender equality, reproductive rights, and anti-discrimination laws. By analyzing these case studies, your paper can draw parallels between these global precedents and the ongoing legal debates in India, arguing for the recognition of same-sex marriage as a fundamental right tied to dignity and equality.

4. LEGISLATIVE REFORMS TO BRIDGE THE GAP

4.1 A Path Forward: Legislative and Social Change Hand in Hand

While judicial decisions, such as the ***Navtej Singh Johar v. Union of India***¹⁰⁸ case that decriminalized homosexuality in India, have been monumental, they are only the beginning

¹⁰⁴ 576 US 644 (2015)

¹⁰⁵ Application no. 30141/04

¹⁰⁶ [2003] O.J. No. 2268

¹⁰⁷ 006 (3) BCLR 355 (CC)

¹⁰⁸ *Supra* note 31.



of a broader movement toward equality. The Supreme Court's recent refusal to recognize same-sex marriage as a fundamental right signals that significant legislative reforms are still required to bridge the gap between rights and recognition. Here are some key proposals for reform:

1. Enacting a Marriage Equality Law

The most crucial reform would be enacting legislation that explicitly legalizes same-sex marriage in India. A new law would amend the existing personal laws, such as the Hindu Marriage Act, Special Marriage Act, and others, to allow for same-sex marriages. Legislative reforms should ensure that LGBTQ+ couples enjoy all the legal rights of marriage, including inheritance, adoption, tax benefits, spousal privileges, and medical decision-making.

2. Introducing a Comprehensive Anti-Discrimination Law

India needs a comprehensive anti-discrimination law that explicitly prohibits discrimination based on sexual orientation, gender identity, and gender expression in all areas of public life, including employment, healthcare, housing, education, and public services. This law would complement existing judgments like the **NLSA v. Union of India**¹⁰⁹ which recognized the rights of transgender individuals but lacks comprehensive enforcement mechanisms.

3. Amending Adoption and Surrogacy Laws

The Juvenile Justice (Care and Protection of Children) Act and other adoption laws should be amended to allow LGBTQ+ individuals and couples to adopt children without facing discrimination. Surrogacy laws must also be made inclusive of same-sex couples, allowing them to have equal access to family-building opportunities.

4. Establishing Civil Union or Partnership Laws

While marriage equality is the ultimate goal, the introduction of civil unions or domestic partnerships could serve as an intermediate step. This would provide LGBTQ+ couples with legal recognition and some rights without the full societal and religious implications of marriage. Civil union laws can offer rights related to inheritance, property, healthcare, and pensions, which are crucial for LGBTQ+ couples.

5. Public Awareness and Educational Initiatives

Alongside legal reforms, it is essential to promote public awareness campaigns and educational initiatives aimed at fostering greater societal acceptance of LGBTQ+ individuals and relationships. Legislators should collaborate with educational institutions and media to challenge deeply ingrained prejudices and create a more inclusive society.

4.2 Role of Civil Society in Advancing LGBTQ+ Marriage Rights

Civil society has historically been a driving force behind LGBTQ+ movements globally, and its role in India has been no different. Here are key ways civil society can continue to push for marriage equality:

1. Advocacy and Lobbying for Legislative Change

NGOs, advocacy groups, and LGBTQ+ organizations play a crucial role in pressuring lawmakers to introduce and support marriage equality legislation. By engaging with politicians, civil society can help shape policy discussions and ensure that LGBTQ+ voices are heard in legislative debates. Examples include organizations like **Naz Foundation**, which spearheaded the fight to decriminalize homosexuality, and **Humsafar Trust**, which continues to advocate for broader LGBTQ+ rights.

¹⁰⁹ AIR 2014 SC 1863



2. Strategic Litigation to Build Momentum

Civil society groups often engage in strategic litigation to challenge discriminatory laws and practices. While the Supreme Court may have deferred the issue of marriage equality to the legislature, future litigation could focus on specific rights denied to LGBTQ+ couples, such as adoption or inheritance, to build momentum for comprehensive legislative reform. Continued litigation efforts could push the courts to eventually recognize that denying same-sex couples the right to marry violates their constitutional rights to dignity and equality.

3. Grassroots Mobilization and Public Campaigns

Grassroots movements and public campaigns are essential for raising awareness and garnering public support for marriage equality. Civil society can organize protests, marches (such as Pride parades), and social media campaigns to highlight the need for equal marriage rights. Involvement of celebrities, influencers, and public figures who advocate for LGBTQ+ rights can also shift public opinion and make the issue more mainstream.

4. Collaboration with Religious and Cultural Leaders

India's diverse religious and cultural landscape poses challenges to marriage equality, but civil society can work to build alliances with progressive religious leaders and scholars who advocate for inclusivity and human rights. These collaborations can help counter opposition rooted in religious conservatism. Engaging with community elders and influencers who have strong standing in conservative groups could soften resistance to change and create space for dialogue on LGBTQ+ issues.

5. Providing Legal and Mental Health Support to LGBTQ+ Communities

Beyond advocacy, civil society organizations also play a critical role in providing legal aid, counseling, and mental health services to LGBTQ+ individuals, many of whom continue to

face stigma, discrimination, and violence. Support systems can empower LGBTQ+ individuals to assert their rights, whether through challenging discriminatory practices or participating in marriage equality movements.

Achieving marriage equality in India will require more than just legal reforms; it will also need a sustained social movement that builds acceptance and challenges long-standing prejudices. Civil society is uniquely positioned to play a dual role: pushing for legislative change while working to transform societal attitudes toward LGBTQ+ individuals.

CONCLUSION

In conclusion, the rights of the queer community have come a long way, thanks to the unwavering dedication and resilience of activists, advocates, and allies. The legalization of same-sex marriage, recognition of gender diversity, and the establishment of safe educational environments are just a few examples of the progress made. However, the fight for full equality and acceptance is far from over, and continued efforts are necessary to ensure the rights and well-being of the queer community are protected and upheld both nationally and globally.

Acknowledging the importance of equality and respect for individual rights, this research paper aims to shed light on the rights of the queer community. By understanding and addressing the challenges faced by individuals within this community, it is possible to foster a more inclusive and equitable society. This paper concludes that continued efforts are necessary to ensure the full realization of the rights of queer individuals worldwide. Thus, a social upheaval is needed to transform the mind-sets of individuals having a conservative outlook towards the rights associated with the queer community. The role of the government is extremely significant in providing a direction to the members of the society so that it may lead to a transformation of the perspectives in favour of modernization and in consonance with Constitutional principles.