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Same-sex marriage in India: Socio-legal aspects

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Abstract

The institution of marriage prevails in every society of the world. It has always been considered to be a union between a man and a woman for the procreation of children. Society is dynamic so are the various institutions prevailing in the society and marriage is not aloof of such paradigm shifts. Before the institution of marriage, there was a system of promiscuity, then with the agrarian reforms there started the concept of group marriages and gradually the monogamy became the practice. With the advancement of the society, various paradigm shifts took place like live-in relationship, sologamy and same-sex marriages. In the present research paper, the researchers have made an attempt to discuss the various dimensions of Same-Sex marriages like its meaning, historical evolution, legal status and its pros and cons and its impact on the society. The researchers have also done empirical study using questionnaire method to know the perspective of the society over same-sex marriages. In the end the researchers have concluded the paper and also given suggestions.

Keywords: Marriage, concept, society, law, same-sex marriage

1. Introduction

Marriage has been perceived by the sociologists as a social sanction for the union of a man and a woman as husband and wife. The history of marriage reveals that as opposed to remain static, the institution of marriage kept on changing as per the dynamic cultural and societal norms. As early as in 1988, the marriage between two policewomen, Leela Namdeo and Urmila Srivastava had been the most famous same-sex marriage in modern India. Their marriage was performed in a Hindu in a small town in central India. Although they were suspended from their jobs but they got support of their family and friends. Since then, the Indian media is flooded with a series of reports on same-sex marriages. In 1977, Shakuntala Devi, in her book, *The World of Homosexuals*, recorded her interview with Srinivasa Raghavachariar, a Sanskrit scholar and priest of major Vaishnava Temple at Sri Rangam in South India. Raghavachariar, stated that the people who are same-sex lovers in the present life must have been cross-sex lovers in their former lives. So, the sex may change in the subsequent births but the soul remains the same. Hence, the power of love forces these souls to seek each other.

In the ancient times men and women lived a nomadic lifestyle. There was no system of marriage or companionship. There was no defined system of sexual activity and the parentage of the child was also undefined. Ancient texts reveal that at the initial stages there was no concept of marriage as the humans originally lived in a state of promiscuity. All men in the tribe were allowed to have indiscriminate access to all the women in the group and the children born out of such unions belonged to the entire community at large. It was during the Rig Vedic period, that the institution of marriage was strongly implanted and it specifically stated that it was only the institution of marriage which enabled a man to give sacrifice to Gods and procreate sons. With the transition of the society from the Stone Age to the agrarian reforms, there was a cultural shift in the way of life. Men and women started living together and having children with a sense of responsibility and unity. Gradually the concept of having and continuation of the bloodline became important and so does the sense of stability and companionship.

During the last few decades, the globalization has affected almost all the aspects of social life of human beings like the family structure, marriage, conjugal relationship, etc. The greatest impact of this industrial revolution and modernization is that new notions of marriage have been introduced in the society mainly the same-sex marriages. And the rights and laws with respect to these have been a debatable issue. This change in the has hit the basic structure of marriage which has always been a union of a man and a woman for the procreation of children and beyond.

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2. Meaning of same-sex marriage

Apart from the traditional forms of marriages, marriage can also be classified into heterosexual and homosexual marriages on the basis of sexual orientation. The marriage between people who belong to opposite genders is known as heterosexual marriage. One who is attracted towards the people belonging to the opposite sex, i.e., the boys who like girls and women who like men and vice-versa is known as a heterosexual person. Being heterosexual is always considered as "normal" in the society as whenever one thinks of a married couple what comes to one's mind is the union of a man and woman. However, this is not the only way of sexual orientation as there are other set of people as well known as the homosexual. The people who are sexually or romantically attracted towards the people of the same sex as theirs are known as homosexuals. Thus, homosexuality means having sexual interest and attraction towards the members of one's own sex. The term used for the male homosexuals is "gay" and for the female homosexuals is "lesbians". The Cambridge dictionary defines a homosexual person a person who is sexually attracted towards the same sex as his or her. And the practice of marriage between two men and two women is known as the same-sex marriage. Recently, the term "same-sex marriage" has been displacing "gay marriage", the term being perceived as less value-laden for the union of two partners of same-sex and also being more inclusive of bisexuals.

3. Historical Aspect of Same-Sex Marriage

The practice of gay marriages is rare in the history, but it is not unknown. Nero, the Roman, who ruled from 54 to 68 AD, got married to men twice in formal wedding ceremonies, and he also forced the Imperial Court to treat them as his wives. Marilyn Yalom in *A History of the Wife* stated that homosexual marriages became so common in Rome during the second and the third century that it became a cause of concern for Juvenal. Juvenal always mocked such unions as he said that it won't be possible for the male brides to hold their husbands by having a baby. In spite of the fact that the formal homosexual unions were outlawed by the Romans in the year 342, John Boswell said that he has found scattered evidences of homosexual unions even after that time, including a few that were recognized by Catholic and Greek Orthodox churches.

As evident from various writings dating back to the ancient period, the homosexual behaviour has a longstanding history in India. The historical writings such as Rig Veda, monuments and remnants depicts deep insights of sexual behaviour of pleasure and productivity among women around 1500 BC.

Irrefutable evidences of homosexuals are found during the Muslim Middle Ages through the photographs of gay practices in the Hindu scriptures and that of adolescent boys possessed by Muslim nizams and Hindu nobles. These have also confirmed about the homosexual acts amongst the Tantric ritualist couples. However, with the emergence of the Vedic Mahayana Buddhism and then with the British imperialism, these interactions became less relevant. According to Giti, an attempt to subjugate homosexuality was made at the time of the Aryan colonization in 1500 B.C. The Manusmriti mentions certain repercussions like caste forfeiture, substantial financial penalties, and whipping for the same-sex conduct.

4. Legal dimension on same-sex marriage

When we talk about India, the question whether same-sex people be allowed to marry and establish their families or not is a highly sensitive issue as it is generally considered that it hits the traditional notions of family and marriage. Conferring the right to marry on the LGBTQ+ community has always been widely debated topic that has evoked a lot of religious antagonisms. Indian society has prejudiced and orthodox notion, which claims that the homosexual relationships are immoral and against the Indian culture and religion. The 'Christian Belief System' which was brought by the Britishers during the colonial rule clearly emanated such ideology which has passed through different generations. The presence of homosexual relationships during the medieval as well as the colonial times has been revealed by the historical evidences and explicit tales. The concept of homosexuality is not new in India. The instances of homosexuality are available also in Hindu Mythology and ancient texts such as the Manu Smriti, Arthashastra, Kamasutra, Upanishads and Puranas. Though Indian history is full of evidences of the existence of the same-sex relationships in the past, but the legal initiatives were taken in the last 10 years. Starting from the right to be individual civic subjects and right to be protected from discrimination at the work place, the homosexuals have been provided with the right to have same-sex relationships, under the law. The homosexual relationships exist almost in every town and city of the country; however, people in large cities are more open about it.

Since the past 150 years, there have been same-sex marriages in a small village of Gujarat, namely Angaar, where both the bride and bridegroom are males. In early 1988 in modern India, the most famous same-sex marriage was that of two policemen who married each other in some small town of central India by the performance of Hindu ceremonies. They were however suspended from their jobs but they were supported by their family and friends. Since then, there have been many reports in the media regarding marriage between two young females belonging to Hindu religion. In India, the homosexual relationships are covered under Section 377 of the Indian Penal Code, 1860 which deals with the unnatural offences and was adopted during the 19th century from the British Penal Code. The British rulers imported a virulent homophobia into its colonies, which is enshrined under Section 377 of the Indian Penal Code, 1860. This Section has been used mainly to harass males and sometimes to threaten women and it also covers all the homosexual relationships under the cloud of illegality. The first ever petition challenging the constitutional validity of Section 377, the Indian Penal Code, 1860 was filed in the Delhi High Court by the AIDS Bhedbhav Virodhi Andolan (ABVA) in 2004. This petition was dismissed due to the absence of the advocate. Then few years later a fresh petition was filed in the same Court on the same ground i.e., the landmark judgement of *Naz Foundation v. Government of NCT of Delhi*, [WP(C) No. 7455/2001], wherein the Delhi High Court decriminalized homosexual intercourse between two consenting adults on the ground that Section 377 of the Indian Penal Code, 1860 is unconstitutional being violative of Articles 21 and 14 of the Constitution of India. This verdict of the Delhi High Court was overruled by a two judges' bench of the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (AIR 2014 SC 563) and the constitutional validity of Section 377,

the Indian Penal Code, 1860 was upheld. In the year 2018, a five-judges Bench of the Supreme Court in *Navtej Singh Johar and others v. Union of India* (AIR 2018 SC 4321) declared that Section 377 of the Indian Penal Code, 1860, as unconstitutional to the extent it prohibits the voluntary sexual intercourse between two consenting adults. The Court stated that such a prohibition violates the right to live a dignified life and right to privacy, freedom of expression and equality of a person. However, Justice Chandrachud in para 156 specifically mentioned that LGBT community is entitled to all the constitutional rights which are available to other. Therefore, they are also entitled to the fundamental right to marry as is available to a person of one's own choice, including to right to enter into a same-sex marriage. There were jubilant celebrations across the country by LGBT community after this judgment as it marked their victory over the 200-year-old British-era law that criminalised the same-sex relationship. The statement of Justice Indu Malhotra surmised the significance of this whole judgement by saying that the history owes an apology to the members of the LGBTQ+ community and their families, for the delay in providing redressal to the ignominy and ostracism being suffered by them through the centuries. Despite the decriminalization of homosexuality, the Indian laws are still hostile and prejudicial towards the LGBTQ+ community in many ways. The reason being the enormous gap between the legislative and the judicial development of the LGBTQ+ laws in India. So, although the Supreme Court of India has done the groundwork through the landmark judgements of *National Legal Services Authority v. Union of India*, (AIR 2014 SC 1863); *Navtej Singh Johar v. UOI*, (AIR 2018 SC 4321) and Justice K.S. Puttaswamy v. Union of India (Puttaswamy) ((2017) 10 SCC 1) and conferred bundle of human rights upon the queer and non-binary community, but the legislature has still failed to keep up with the recent developments.

On 1st April, 2022, NCP leader Supriya Sule, on introduced a private Bill in the Lok Sabha seeking the legalization of same-sex marriage and to confer an equal right of marriage to the LGBT community as is available to heterosexual couples. The Special Marriage (Amendment) Bill, 2022 proposed to insert Section 4A in the Special Marriage Act, 1954 stating that a marriage between two persons belonging to same-sex may be solemnized under this Act, irrespective of the fact as to what is stated in the Special Marriage Act, 1954 or any other law for the time being in force. The only condition put forward by the Bill is that if both the partners are male, then their age should be atleast 20 years and if both are females, then their age should be atleast 18 years. The Bill also seeks the replacement of the words "husband and wife" in Section 15, clause (a) of the Special Marriage Act, 1954 with the word "spouse", substitution of the words "the husband or the wife" under Section 22 of the Act with the words "of the spouse" and in Clause (l) of Section 23 and 27 of the Act, the words "either by the husband or the wife", be substituted with the words "by either of the spouse." Giving reference to the Supreme Court decision of 2018, Supriya Sule stated that this was a much-needed and progressive step towards the LGBTQIA+ individuals, but still, they face discrimination and social stigma within society. She added that the amendment of the Special Marriage Act, 1954 as the legalization of same-sex marriage and legal recognition of the married LGBTQIA couple is of utmost importance. This will ensure that Article 14 and

Article 21 of the Constitution of India are upheld, and that LGBTQIA+ couples are provided with equal rights to which they are entitled.

5. Judicial Approach towards Same-Sex Marriage

There are four pillars of the Indian democratic system i.e., Legislature, Executive, Judiciary and Media. Out of these Judiciary plays a prominent role in the interpretation of laws and providing justice to the people. Although there no legislation on the same-sex marriages in India, still the Indian judiciary has been piled up with plethora of cases regarding the recognition and legalization of same-sex marriages. On July 29, 2011 Justice Vimal Kumar, the Additional Sessions Judge Gurgaon granted police protection to a runaway lesbian couple, Beena and Savita. They claimed that they married each other in Gurgaon on July 22, 2011 by signing an affidavit before a public notary. The case was adjourned for hearing on August 16, 2011. Their counsel said that another lesbian couple belonging to the same region may get married after August 16, 2011. On August 16, 2011, the parents of this lesbian couple formally accepted their relationship. Earlier, the couple was under police protection in Manesar after their marriage. But after getting support from the families, the Court withdrew the police protection and the couple could safely return to their native village. Since, the legalization of their marriage by the Gurgaon Court, there has been no objection on their marriage. Hence, despite of the fact that it has no legal status, their marriage has survived all odds and their marriage has been accepted by their families as well as majority of the people of their village. The couple said that their love and acceptance by the family is above the Supreme Court verdict criminalizing homosexuality.

Validity was conferred by the Madras High Court on the marriage solemnized between a Hindu male and a Hindu transwoman in *Arun Kumar v. the Inspector General of Registration*, [W.P. (MD) NO. 4125 OF 2019] under Section 5 of the Hindu Marriage Act, 1955. On January 24, 2020 Nikesh and Sonu, became the first Indian gay couple who moved to the Court demanding legal recognition of their marriage in India along with the right to adopt and inheritance. Their petition was admitted by the Kerala High Court and notices were sent to the State government and the Centre for their responses. A same-sex couple was granted protection by the Punjab and Haryana High Court and it was stated that they are entitled to the right life and liberty under Article 21 of the Indian Constitution, irrespective of the nature of their relationship.

On January 28, 2021 even the Allahabad High Court granted protection to a same-sex couple in *Poonam Rani and Another v. State of UP*, [Writ- C. No. 1213 of 2021] and remarked that inspite of the fact that sexual orientation is innate to human beings, it is evident in the society that the citizens face discrimination on account of their sexual orientation.

In *Madhu Bala v. State of Uttarakhand and others*, [Habeas Corpus Petition No. 8 of 2020] the Uttarakhand High Court held that although the same-sex couples are not entitled to enter into a valid marital tie, but they can live in a live-in relationship. In *Chinmayee Jena @ Sonu Krishna Jena v. State of Odisha & Others*, [Writ Petition (Criminal) No. 57 of 2020] the Orissa High Court held that a person is entitled to determine his or her sex or gender as well as the gender of his or live-in partner. The Court specifically stated that

the famous quote, 'Love knows no bounds' is wide enough to include same-sex relationships.

The Solicitor General, Tushar Mehta during the hearing of a Public Interest Litigation, concerning the legal recognition of the same-sex marriage under the Hindu Marriage Act, 1955, told the Delhi High Court that the same-sex marriages cannot be recognized as marriage under Indian values and legal system as marriage in India is considered as a sacramental union. On 14th October, 2020, two petitions for the inclusion of same sex marriage in the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 in *Dr. Kavita Arora and Another v. Union of India & Another*, [WP (C) 7692 of 2020] and *Vaibhav Jain & Another v. Union of India and Another*, [W.P. (C) 7657 of 2020] respectively were heard by the Delhi High Court. The Court issued notice to the Central Government for their opinion on these petitions and the matter was adjourned to be heard on January 8, 2021. On 19th November, 2020 the Delhi High Court clubbed all the three petitions for the legal recognition of the same-sex marriages under the Hindu Marriage Act, 1955; the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 respectively.

On January 8, 2021, all the three petitions were heard and contentions were laid down that the non-recognition of same-sex marriages under these Acts is discriminatory and denial of the right to live a dignified life and the right to marry to the LGBTQ couples. The Centre sought time of three weeks to file its reply and the Delhi Government was also granted time for filing its counter-affidavit in the said matter. The Court gave last opportunity to the Central Government for filing its reply on these petitions and the matter was scheduled to be heard further on February 25, 2021.

On February 25, 2021, one more petition was filed by four more people, i.e. three men and one woman, belonging to the gay and lesbian community in the Delhi High Court for the declaration that marriage solemnised between any two persons under the Special Marriage Act, 1954 is valid, irrespective of their sex. The petition sought that the provision of the Special Marriage Act, 1954 requiring a "male" and a "female" for the solemnisation of marriage, be declared unconstitutional unless they are read as gender identity and sexual orientation neutral.

An affidavit was submitted by Tushar Mehta, appearing for the Centre, in response to the earlier pleas and he sought time to respond to the fresh petitions. In the affidavit the Delhi High Court was told by the Central government that there is no fundamental right to seek recognition of the same-sex marriages. It was stated in the affidavit that in India, the institution of marriage is a union between a biological man and a biological woman. The Centre also stated that there is no comparison between a same-sex couples living together as partners and having sexual relationship and an "Indian family unit". It was further stated that the fundamental right to life and personal liberty is subject to the procedure established by the law, and the same-sex marriages are neither recognised nor accepted by any codified or uncodified personal laws. It was also submitted by the Centre that it is not possible to term one of the partners as the "husband" and the other one as the "wife" in a same-sex marriage.

The matter was further heard on May 24, 2021 and adjournment was sought by the Central Government in the matter related to the legal recognition of the same-sex

marriages on the ground of the circular of High Court for hearing only "extremely urgent matters" due to the COVID-19 pandemic. So, it was further adjourned by division Bench of the Delhi High Court comprising of Justice Rajiv Sahai Endlaw and Justice C Hari Shankar and scheduled to be heard on July 6, 2021.

On 5th July, 2021, one more petition was filed by a Canadian citizen named Joydeep Sengupta and an Overseas Citizen of India (OCI) cardholder along with his partner whose name is Russell Blaine Stephen. They approached the Court for getting a declaration that irrespective of the gender, sex or sexual orientation, the spouse of an OCI cardholder is also entitled to apply for the registration as an OCI under the Citizenship Act, 1955. On July 6, 2021 notice was issued to by a division bench of Delhi High Court on the pleas seeking the legalization of the same-sex marriages under the Hindu Marriage Act, 1955, Foreign Marriage Act, 1969, the Special Marriage Act, 1954 and Citizenship Act, 1955. The Bench comprising Chief Justice DN Patel and Justice Jyoti Singh also sought replies of the Ministry of Home Affairs, the Ministry of External Affairs and the Consulate General of India, New York. And the matter has been listed for further hearing on August 27, 2021.

On 25th October, 2021, the Union Government told the Delhi High Court that the decriminalization of homosexuality has nothing to do with same-sex marriages. Tushar Mehta argued that spouse means a husband or a wife, and the term marriage is associated with heterosexual couples. Hence, a valid marriage can take place only between a biological man and a biological woman, capable of producing children. Any interpretation otherwise, would defeat the statutory provisions. It was also added that marriage is a socially recognized union of two people and governed by the personal laws either codified or uncodified. The Bench consisting of Chief Justice D.N. Patel and Justice Jyoti Singh, granted time to the parties to file their reply and the matter was listed for hearing on November 30, 2021. On 30th November, 2021, the Centre was directed by the Delhi High Court to file its response on the plea seeking live-streaming of the batch of petitions concerning the legal recognition of the same-sex marriages. The application was filed by in the case of *Abhijit Iyer Mitra v. Union of India* (Civil Writ Petition no. 6371 of 2020) saying that the matter is so constitutional importance and a larger population can be hosted in case of live-streaming. Notices were also issued on the three more fresh petitions for the legal recognition of the same-sex marriages.

In November, in a petition filed by Anju Singh and her live-in partner a major same-sex couple the Allahabad High Court ordered the police to grant them protection after verifying their documents stating that the Court is not against the live-in relationships.

On 3rd December, 2021, the Delhi High listed the hearing of the application opposing the recognition of the same-sex marriages under the Hindu Marriage Act, 1955 to February 03, 2022. The application was filed by the Sewa Nyaya Utthan Foundation seeking to be heard in the main petition. The plea opposed the same-sex marriages on the ground that since times immemorial, marriage amongst Hindus under the Hindu Marriage Act, 1955 is allowed only between a man and a woman. It was also stated that petition seeking the legalization of the same-sex marriages under the Hindu Marriage Act, 1955 was contrary to the religious values of Hindu marriage but will also bring abrupt changes in the

ancillary matters without any reason. The Vedas also state that marriage can happen only between a man and a woman so as to fulfill certain religious duties.

In *Kumari Neha Chandra v. State of Uttar Pradesh and 3 Others* (2022 LiveLaw (All) 174) a plea was filed by a mother on 6th April, 2022 regarding the illegal detention of her daughter by a woman. The Uttar Pradesh government submitted before the Allahabad High Court that the recognition of the same sex marriage is opposed on the ground that such marriages are against the Indian culture and religions. Such a marriage is invalid as per the Indian laws, which have been designed keeping in view the existence of the concept of a man and a woman. The Additional Government Advocates opposed the same-sex marriages on the ground that India runs according to the Indian culture and religions where marriage is considered to be a sacred samskara, in contrast to other countries that consider marriage as a contract. The Additional Government Advocates stressed that the Hindu Marriage Act 1955, Special Marriage Act 1954, and the Foreign Marriage Act 1969 do not allow homosexual marriages and the State of Uttar Pradesh also argued that even Muslim, Buddhist, Jain, Sikh etc. have not recognized the homosexual marriage. It was further submitted by the State of Uttar Pradesh that according to the Indian Sanatan Vidhi, there are total sixteen rituals and in all of them, a man and a woman play a definite role and such rituals cannot be completed in their absence. It was also stated that under the Hindu Law both men and women live together and carry forward the human race by producing children. But both of these main functions of marriage are absent in case of a homosexual marriage. In this case, the Court rejected the request of recognizing their same-sex marriage and the habeas corpus plea was disposed of accordingly. In *Adhila v. Commissioner of Police & Ors.* [WP(CRL.) NO. 476 OF 2022] a lesbian couple was rescued by the Kerala High Court and reunited them after they were forcibly separated by their parents and families.

On 17th May, 2022 in *Abhijit Iyer Mitra v. Union of India* (Civil Writ Petition no. 6371 of 2020) displeasure was expressed by the Delhi High Court on the objectionable comments made by the Central Government in the affidavit filed opposing the live-streaming of the case proceedings on the legal recognition and registration of the same-sex marriages. On the assurance of the Government Counsel that they will file a better affidavit, the matter was adjourned for hearing on 20th August, 2022.

On 3rd July, 2022 a gay couple from Kolkata tied their knot in a traditional wedding ceremony. The wedding of Cheitan Sharrma and Abhishek Ray was attended by their close

friends and family members.

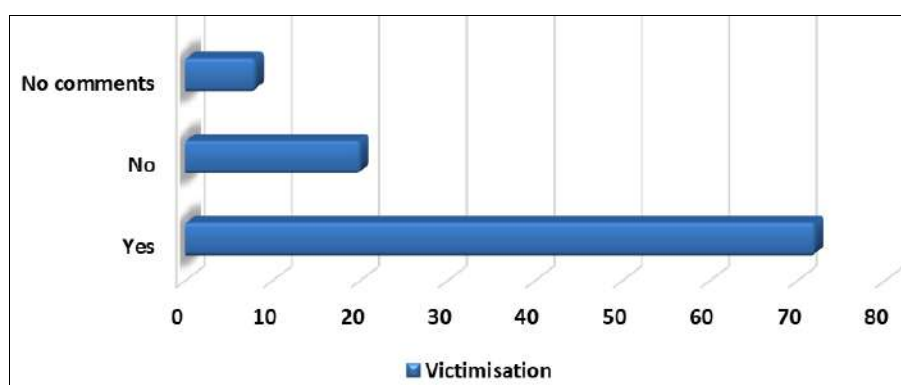
On 23rd August, 2022, the Delhi High Court adjourned the batch of petitions seeking recognition of same-sex marriages under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969 and also regarding the live streaming of the proceedings. A bench headed by Chief Justice Satish Chandra Sharma said that the hearing could not take place due to paucity of time. The Court has slated the matters to be heard on 4th December, 2022.

In November 2022, two gay couples filed PIL in the Supreme Court for the recognition of their marriage under the Special Marriage Act, 1954. In December, 2022, the Supreme Court transferred two petitions to itself i.e., *Dr. Kavita Arora and Another v. Union of India & Another*, and *Nibedita Dutta v. UOI and Ors.* [W.P.(C) 13528/2021] and adjourned the matter to be heard on 6th January, 2023. In December 2022, one more petition was filed for recognition of same-sex marriage under the Hindu Marriage Act, 1955 and the Foreign Marriage Act, 1969. On 6th January, 2023 the Supreme Court transferred all the petitions to itself and listed the matter for hearing on 13th March, 2023.

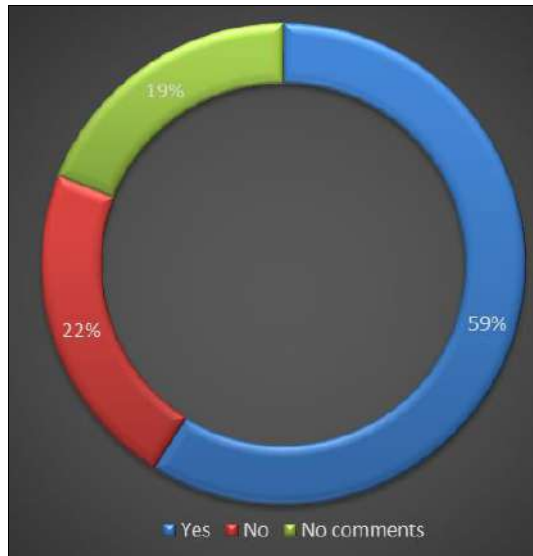
6. Same Sex Marriages in India: Societal Aspect

Although right to choose a partner of one's own choice is a Fundamental Right under Article 21 of the Constitution of India. But when people were asked about its acceptance and recognition in the India society, majority of the people answered in negative. The views of 152 respondents belonging to legal fraternity were elicited through questionnaire and personal interaction. The following are the interpretations from the data collected:

1. Out of the total number of respondents, 40 were married and none of them had a same-sex marriage. The unmarried respondents were asked the nature of marriage that they will prefer and none of them opted for a same-sex marriage.
2. The respondents were asked whether there are possibilities of oppression or harassment or victimisation of partners in the contemporary concepts of marriage in the same-sex relationships and 72% of the respondents said yes.
3. The respondents were asked as to which form of marriage is disapproved by their respective families and 65% said same sex marriage.
4. The respondents were asked whether the contemporary change of Same-sex Marriage endanger the age-old tradition of marriage and majority of them answered yes.



Bar Graph 1: Victimization of Partners in Same-Sex Relationship



Pie Chart 1: Same-Sex Marriages Endanger Age Old Tradition of Marriage

6.1 Cons of Same-Sex Marriages

- The main and the core argument in all debates regarding the legalization of same-sex marriage is the definition of the word "marriage".
- Those who oppose the same-sex marriage argue that the purpose of marriage is procreation of children which is not fulfilled by same-sex relationships.
- The opponents of same-sex marriages object it on religious grounds, as it undercuts the conventional meaning of marriage and does not fulfill any procreation role.
- Some opponents in countries with monogamous marriage claim that allowing same-sex marriage will re-open doors for the legalization of polygamous marriages, or any other objectionable scenario.
- Opponents are also of the view that the same-sex couples should not be allowed to have or adopt children as their household environment is not good and appropriate or adequate for them.
- Same-sex civil marriages are opposed by some of the libertarians as they are opposite of any form of marriage which is sanctioned by the State, including the opposite-sex unions.

6.2 Pros of Same-Sex Marriages

- Like the heterosexual couples, the homosexual couples also thrive for a stable and long-lasting relationship. It has been found by the researchers that the majority same-sex couples have a committed relationship of over ten years. Scientists have also found that there is a great resemblance between the psychological and social aspects of the committed relationships between same-sex partners and the heterosexual partnerships. Both the categories of couples face similar issues concerning intimacy, love, loyalty, emotional attachment and stability.
- Denial of right to marry leads to the reinforcement of stigma towards the minority sexual identity. Researchers have found that the non-recognition of the same-sex marriages can lead to social stress and chronic mental health problems not for the same-sex couples but also their family and friends.
- Majority of the scientific studies have shown that the

same-sex couples are equally fit to be parents as the heterosexual couples and their children are emotionally and psychologically healthy and well adjusted.

7. Conclusion

India is country of religions and thus every religion has its own ceremonies for the solemnization of marriage. Being one of the essential Samskars, the concept of marriage carries high sanctity amongst the Hindus. The main functions of marriage amongst Hindus are the companionship, regulation of sexual activities, procreation of children specially to have a son, and other religious ceremonies and the performance of last rites of a person. Many young men and women no longer believe in the traditional sanctity of marriage. The movement for the extension of marriage rights towards the gay and lesbian couples grew in the late 20th and early 21st Centuries. The legal recognition of a marital union makes a couple entitled to social security, taxation benefits, inheritance and other benefits, which are unavailable to the couples who are unmarried in the eyes of law. Thus, restricting legal recognition to only to the heterosexual unions excludes the same-sex couples from getting legal access to these benefits. Although, the opposite-sex unmarried couples have the option of marrying to get these benefits, but there is no such option available to the same-sex couples. This lack of legal recognition also makes it difficult for a same-sex couple to adopt a child.

Marriage has always been one of the strongest and the most important institution of the human society. It has evolved and changed its form with time but one thing that didn't change is the fact that marriage is universal in nature. This is much more relevant in a country like India where the concept of marriage is so deeply entwined that everyone is expected to be part of it. Apart from regulating the sexual life, marriage is also a relationship based on economical and emotional interdependence. This perhaps explains the reason behind the eagerness of the LGBTQ+ community in India to get the legal right to marry by the performance of the religious rights and ceremonies. The denial of the marital rights to same-sex couples not only deprives them of social and legal recognition but also the State benefits enjoyed by the married persons. However, it becomes essential to point out that since the very inception of the institution of marriage, it has been exclusionary towards certain communities. Whenever any group of people is included or excluded from being able to marry, it is always accompanied by a battle between the public policy, religious and social norms.

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