



• अविनाशु नृपरा सथा •

avantika
UNIVERSITY



AVANTIKA PUBLIC POLICY & LAW REVIEW

SCHOOL OF LAW AND PUBLIC POLICY

VOLUME 01, ISSUE 01
(November/December 2025)

Patron

Dr Nitin Rane
Vice Chancellor, Avantika University

Managing Editors

Dr Prakhar Puranik
Ms Divya Ann Samuel



OUR EDITORIAL BOARD

Patrons



Dr. Nitin Rane

Vice Chancellor,
Avantika University

Managing Editors



Dr. Prakhar Puranik



Ms. Divya Ann Samuel

Student Coordinators

Ms. Disha Parmar, Ms. Rashika Sharma

ADVISORY BOARD

Our Advisory Board



**Ms. Sawita
Thongwitokomarn**

Judge
Sikhio Provincial Court, Thailand



**Prof. Dr. Bir
Pal Singh**

Professor, Panchayat
Administration & Nyaya Panchayat
NLIU Bhopal



**Prof. Dr. Mona
Purohit**

Dean, Department of Law
Barkatullah University, Indore

ADVISORY BOARD

Our Advisory Board



**Prof. Dr. J. S.
Bisht**

Dean, Faculty of Law
Soban Singh Jeena University,
Almora



**Prof. Dr. Namita
Singh Malik**

Founding Dean
GL Bajaj Institute of Law



Dr. Krati Rajoria

Associate Professor
NLIU Bhopal



Legal Recognition of Same-Sex Marriage in India: Constitutional Rights and Social Realities

- Mansi Kaundal

This Essay analyses India's legal denial of same-sex marriage, tracing historical roots, constitutional mandates, and judicial developments, and advocates for inclusive marriage equality grounded in dignity and constitutional morality.

In a country as diverse as India the debate of same sex marriage as sparked intense discussion, challenge against traditional norms and pushing boundaries of acceptance and love. As world witnesses growing trend of recognising diverse relationships, India stands at crossroads with the questions: Should same - sex marriage be legally recognised? Is India ready for embracing the same change as the rest of the world and celebrate diverse relationships? remains a concern .

"Marriage is not merely a union of two individuals but a recognition of equal dignity and love", stated by Justice D.Y. Chandrachud in Navtej Singh Johar vs. UOI marked a watershed moment, the path towards full marriage equality remains legally uncharted and socially contested. Still the concept of same-sex marriage remains outside the scope of legal recognition .

Historical View of Same -Sex Marriage in India

The concept of same-sex marriage is not a new concept in Indian culture. Rather it is evident in the ancient and medieval period in India. culture. Kama Sutra by Vatsyayana discusses homosexual relationships explicitly. Mythological narratives, such as Lord Ayyappa's birth from the union of two male deities (Shiva and Vishnu as Mohini). Babur who is the founder of the Mughal empire in his biography Baburnama, openly wrote about his passionate feelings for a boy named Baburi.

During the colonial period, British imposed section 377 IPC via the Buggery Act of 1533, criminalising "carnal intercourse against the order of nature". Victorian morality replaced the Indian pluralistic ethos with rigid sexual binaries. Criminalise homosexuality under section 377 of Indian Penal Code, 1860 "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment for a term which may extend to ten years".

Scenario of Same-Sex Marriage in Judiciary of India

In India a person has liberty to chose under which religious law he wants to get married. The religious laws explicitly mention heterosexual relationship by using connotations such as "husband", "wife", "man", "woman" which are generally interpreted in a way making it applicable only to such relationships. The Judiciary took a very long time to de-criminalise homosexuality. The landmark case of Navtej Johar Vs Union of India in 2018 which declared same-sex relations between adults as legal, declaring colonial era law unconstitutional as it violated right to privacy and dignity .

In the judgement of Supriyo Chakraborty Vs Union of India on October 17,2023 five judges of the Supreme Court of India passed a decision with 3:2 majority stating that no person has a fundamental right to marry the person of the same gender .

Relevant to this context is a more recent issue as in 2024 ,namely a scandal involving an alleged gender change surgery undertaken at the instigation of partner who later rescinded the promise of marriage.Persuaded by their partner to undergo the surgery ,the victim was betrayed when the accused refused to honour the commitment . Although relationships are based on love and partnership yet without legal recognition they are treated as mere cohabitation.

Scenario of Same-Sex Marriage around the world

As of February 2026 around 35 countries worldwide have legalized the concept of same-sex marriage with Thailand becoming the first in Southeast Asia to do so , following legislative approval in 2024 and implementation as in 2025.Europe continues to have highest concentration of marriage equality with over 20 countries recognising it, including Netherlands (First to legalize in 2001) ,Spain etc . Followed by legalization of same-sex Marriage in United States (2015),Canada ,Brazil and so on .

Right to marriage as a Constitutional right

The right to freedom of marriage has been held to be an intrinsic part of Article 21 of the Constitution by the Supreme Court in the case of Shafin Jahan v. Ashokan K.M., as the power of each individual to make judgments on matters essential to the pursuit of happiness, is fundamental to the liberty guaranteed by the Constitution as a basic right. Furthermore, in the case of Shakti Vahini v. Union of India, the Supreme Court maintained that two adults have the right to choose each other as life partners. Such choice is in the exercise of their rights under Articles 19 and 21 of the Constitution. Moreover, in the case of Justice K. S. Puttaswamy (Retd.) v. Union of India, it was held that privacy is a collection of rights and interests that constitute the foundation for organised liberty, including the protection of personal intimacies as well as individual autonomy.

The Supreme Court in K.S. Puttaswamy v. Union of India ('Puttaswamy')unanimously affirmed the Fundamental Right to privacy, including autonomy over personal and intimate choices. Personal autonomy includes both the negative right to not be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in the plurality in Puttaswamy explicitly stated that sexual orientation was a key component of the right to privacy, and indeed of Articles 14, 15, and 21 of the Constitution.

The Court had previously upheld the right to marry and choose an intimate partner in the context of opposite-sex couples. It has held:

“The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is

inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith [...] Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences. (Shafin Jahan v. Asokan K.M., ¶88 (per Chandrachud, J. See also Shakti Vahini v. Union of India, (2018) 7 SCC 192; Shayara Bano v. Union of India, (2017) 9 SCC 1.)

Social Realities of Same -Sex Marriage in India

One of the most prominent arguments against same -sex marriage in India is that traditional Hindu, Muslim and other religious communities in India hold conservative view with regard to marriage which is traditionally defined as union between man and women. Many sociologists argue that the concept of same sex marriage in India goes against the morals of Indian society and clashed with cultural and religious norms of the country.

Another important argument against same-sex marriage in India is the perceived threat to population growth with dip in the Total Fertility Rate to 1.9(2023) according to National Family Health Survey (NFHS-5) for 2019-2021. Marriage is often viewed as an institution designed to encourage procreation. Many critics argue that legalizing same-sex marriage would result in birth of fewer children being born, which is perceived as threat to country's population growth. However, this view fails to recognize marriage as form of companionship and mutual support rather than having the aim of procreation.

The pace of social change in India is slower than in many Western countries, and opponents argue that legalizing same-sex marriage could result in further polarization and social unrest. Politicians, especially those from conservative or religious backgrounds, have often expressed strong opposition to the legalization of same-sex marriage. There is concern that endorsing same-sex marriage would lead to backlash from voters who hold conservative views on marriage and family. Political parties may fear alienating their core constituents by supporting such a radical change in the law.

Conclusion

Dr B.R.Ambekar rightly said: Law is the greatest disinfectant of inequality. The time is ripe for India to uphold its constitutional promises- not in letter alone, but in spirit-by embracing marriage equality. As, the time change and society awakens, recognising same-sex marriage is not merely a legal necessity-it is a constitutional imperative in today's society.