



STATUS OF HOMOSEXUAL MARRIAGE IN INDIA

Pradeep Kashyap*

*Teerthanker Mahaveer Institute of Management and Technology,
Teerthanker Mahaveer University,
Moradabad, Uttar Pradesh, INDIA
Email id: pradipprgnul@gmail.com

ABSTRACT

Marriage is seen as a holy connection between a man and a woman for the sake of reproduction in India. Each religion has its own set of beliefs, practices, and traditions that members of that group adhere to religiously; these laws are recognized as personal laws in India. These personal laws address marriage, successions, adoption, divorce, and other issues, setting down the necessary procedural procedures to make all religious activities lawful. The idea of marriage is interpreted narrowly through the binary lens of the union of two diverse people, which implies that they represent the society's standard standards, and any conduct that deviates from these norms would be met with opposition. The same may be said of India's homogenous relations. Though the court has decriminalized Section 377, many possibilities remain unexplored, including as the effect of homogenous relationships on succession rules and the validity of their offspring and their rights. The author's goal in this article is to examine the legal status of same-sex marriage in India. Examine the effect of homogeneous relations on succession rules, and finally, comprehend the function of the court in resolving homogeneous relations disputes.

KEYWORDS: *Homosexual, LGBTQ, Marriage, Rights, And Same-Sex.*

INTRODUCTION

As a social mammal, recognition by society is one of the most essential aspects of any individual's existence. Only when a person adheres to the societies established standards does he or she get this acknowledgment. Socially acceptable, politically correct, legally justiciable, and economically feasible recognition in society are the four criteria that define one's peaceful life in society. However, if an individual deviates from these established standards, he or she may encounter opposition from society since their actions are contrary to the established social order.

Individuals are identified by their gender, race, caste, community, nationality, sexual orientation, marital status, and other factors in society. Because India is a varied nation with people of different faiths, each group has its own faith, beliefs, and traditions that apply to all members of that community. Personal laws are what these laws are known as, and they are codified for each community in India under the heading of Family Law Jurisprudence. These personal laws address marriage, successions, adoption, divorce, and other issues, setting down the necessary procedural procedures to make all religious activities lawful.

People in India in the twenty-first century are still fighting to recognize and treat specific groups fairly. The LGBTQ+ community is one such group working to achieve acceptance in society so that their rights are recognized and respected by everyone. Until recently, society could not even acknowledge the existence of an LGBTQ population, much alone recognize their legal rights under personal laws. Marriage is only recognized in Indian culture as a binary of male and female, i.e. it only recognizes diverse unions between two people[1].

The concept of homogenous marriage goes against the established social order and was formerly criminalized under Section 377 of the Indian Penal Code, which made any kind of cohabitation or voluntary physical contact between two people of the same sex illegal. The British had put this clause into our laws, and it had become a terrible law. The fact that this clause has remained in our laws for so long puts into question our judgment in embracing as sacred everything that the colonial rulers placed on us.

The fact that the fundamental tenor of the constitution, which was established on January 26, 1950, is now being applied to a Victorian provision after such a long period of time, namely in 2018 (Navtej Singh Johar), is a source of concern for society, as the Supreme Court is the guardian of our constitution, and if any fundamental right of any citizen is infringed, the judiciary must take a stand that upholds the constitution.

In issues involving human liberty and dignity, as well as criminal prosecution, the role of the judiciary becomes critical. It is arguably necessary for the highest court to be the primary mover in molding public opinion on the touchstone of the Constitution. The decision of the Delhi High Court in 2009 decriminalized consensual sex between two consenting adults in private, but it was overturned by the Supreme Court in 2013. Only after then did there seem to be a political agreement across all political parties that gay marriage should be decriminalized. As a result of the Supreme Court's support for this political intent, Section 377 was decriminalized in the case of Navtej Singh Johar. The doctrine of progressive realisation of rights, which deals with issues involving religious activities, was addressed in this case[2].

Following the Supreme Court's decision in 2018, the legislature approved the Transgender Protection Bill (2019), although it was not comprehensive since it did not include measures suggested for their wellbeing. The problems that the homogenous group faces go well beyond being recognized and accepted by society. There is a need for legislation that includes provisions comparable to those found in any personal law, such as marriage, divorce, adoption, succession, and so on. The succession rules are of particular importance to this group since they are not included among the heirs. The purpose of this article is to provide light on the legality of same-sex weddings in India and their implications for succession rules.

LITERATURE REVIEW

On the subject, a large amount of material, including articles, research papers, and media reports, has been reviewed and analyzed. The majority of the material is included in the bibliography. Bina Fernandez (2003), for example — While communicating with others, the author collected the following details on the subtleties of intra-relational vulnerabilities that queer people face in close relationships. It also addressed queer vulnerability not just in intimate partner connections, but also in a triad of intimate relationships with one's parents, intimate partner, and self.

DISCUSSION

Marriage as a Social Structure

The Indian society, which is made up of different faiths and civilizations, may be described as a perfect example of unity in diversity. Each religion has its own set of beliefs, practices, and traditions that members of that group hold dear and adhere to religiously. Personal laws

are what these laws are referred to as in India, and they are codified for each community under the Family Law Jurisprudence.

These personal laws address marriage, successions, adoption, divorce, and other issues, setting down the necessary procedural procedures to make all religious activities lawful. Because marriage in Indian culture is seen as a fearful union between a "man" and a "woman" because it is regarded as a binary of heterosexual exclusively, any other kind of cohabitation was not recognized by the legal system.

The courts, on the other hand, have been delving into Articles 14 and 21 of the Constitution, which cover the rights to equality and life and liberty, respectively. However, numerous court decisions have expanded the scope of Article 21 throughout time to encompass additional rights in order to preserve the right to life and liberty, with the freedom to choose being one among them. Within the domain of heterogeneous cohabitation, the right of one individual to select his or her spouse regardless of religion has long been a contentious issue.

However, as time has passed, society has grown more dynamic and open to new possibilities. In the recent past, same-sex relationships have become an example of a paradigm change in social beliefs within the scope of family as an institution with the capacity to influence and challenge current legal ideas in our own laws. This concept had such a broad effect that it prompted a political fight over the societal shift[3].

Marriage is primarily intended for the sake of reproduction, so that one's lineage may be passed down through the generations, and it is regulated by traditional gender standards. However, having a homogenous marriage calls into question the fundamental reason for why the sacramental union is entered into in the first place, which is reproduction.

As a result, the LGBTQ community has encountered challenges in gaining recognition as an equal citizen in Indian culture, and they continue to fight for fairness and equal rights in the country. Because it does not fit within the scope of our pre-defined understanding of the 'sexed-body' of a man and woman, this cultural shift in society has been met with opposition. Our legal system is likewise based on this binary, and anybody who does not fit within it is referred to as the third gender. Due to the fact that Indian criminal law only recognizes vaginal intercourse as a natural order, any other type of intercourse is deemed unlawful and against the natural order, and is punishable.

Homosexual relationships are seen as a danger to the institution of marriage because they compromise the integrity of the partnership. However, when seen through the eyes of the LGBTQ community, marriage is viewed as a means of expressing love and sincerity to one's spouse rather than a source of physical intimacy. This implies that homogenous couples choose to 'join' rather than 'change' the institution of marriage. As a result, they want an understandable distinction under Article 14 in order to preserve their right to equality and gain public support.

Marriage is regarded the foundation of family law jurisprudence in India, since it is the source of all other rights connected to the 'family.' These rights are divided into categories such as succession, adoption, custody, and divorce. As a result, it's critical that gay couples get legal recognition and equal rights[4].

In India, the idea of family is built on hetro-patriarchal nature, thus this paradigm change in cultural variety would take time to comprehend. As a result, it's critical to comprehend the relationship between social recognition and religion in India in terms of established social standards.

Fundamental Rights and Personal Laws

India has a varied culture, which poses challenges since there is so much variety in our nation that disputes are unavoidable. The Indian Constitution serves as the foundation for a variety

of procedural and substantive legislation, including personal laws. Personal rules are nothing more than each religion's usual practice for regulating family matters.

Marriage is defined as a union of a man and female in our personal laws since it is the only form recognized as a natural order. Other types of union, such as homogenous relationships, are regarded to be outside nature's order and therefore deemed aberrant behavior.

In India, there has always been a clash between the Constitution and the Personal Laws. There has been a continuous struggle between religious practice and traditions that have been carried out under personal laws and the Right to Religion as a Fundamental Right under the Constitution. The question is whether religious beliefs protected by personal laws may trump our Constitution's core framework, namely, fundamental rights. To put it another way, can a law attack the fundamental source of its authority?

It is critical in this case to recognize homogeneous couples and grant them their rights under Article 14 – Right to Equality, Article 15 – Right to Non-discrimination, and Article 21, which implicitly entails the Right to Live with Dignity and the Right to Choose in opposition to established personal law norms. One issue that emerges at this time is whether or not personal laws are subject to judicial scrutiny. The answer is a resounding No, since everything that comes within the ambit of Article 13's definition of law is always subject to judicial scrutiny.

The Court must decide if the community will be accepted by society and whether or not homogenous connections will be recognized. If we come to the judgment that what is being infringed upon is a Fundamental Right, then the individual does not have the right to waive their own Fundamental Right, namely the Right to Choice (of one's partner), and is solely subjected to the Constitution's restrictions. In such situations, the Courts are required to carry out their responsibilities within the legal framework, regardless of public opinion. The court should only be concerned with whether the change in society is within the scope of the Constitution, if the Constitution empowers the court to investigate such matters, and, if the answer to this question is yes, how is involvement allowed[5].

Given the current homogeneous relationship conflict, the question to be asked is whether deviant behavior is meant to be criminalized, particularly when it is conducted between two consenting adults within the confines of four walls without disrupting public order in society. Is it necessary for the State to intervene in such a matter to the point of criminalizing it? What must be recognized is that Section 377 was enacted with a specific purpose and has been applied in a certain manner, necessitating a judicial judgment to establish the constitutional legality of the provision.

The Navtej Singh Johar decision was undoubtedly a watershed moment in family law jurisprudence; nevertheless, it is just the first step toward acknowledging the rights of the LGBTQ community; in the future, we may anticipate further advancements on issues like as marriage, inheritance, and adoption.

In India, same-gender marriages are common?

Marriage has religious connotations in India, and its sanctity is based on the joining of two heterosexual people for the goal of reproduction. Same-sex weddings, often known as homosexual marriages, are marital relationships between two people of the same sex. Gay marriages are for two men, while lesbian marriages are for two females. This concept of family has no place in Indian society, which is primarily influenced by hetero-patriarchal nature and is culturally conservative, thus any behavior that goes against the society's established standards is met with opposition.

However, although marriage is an essential element of family law, it is not the sole aspect of family relations, since it also includes issues such as divorce, adoption, custody, inheritance laws, and so on[6].

When it comes to homogeneous relationships, the Supreme Court has partially struck down Section 377 of the Indian Penal Code, which dealt with the penal provision, recognizing homogeneous couples and decriminalizing any physical activity between two consenting adults within the privacy of four walls of the house. This, however, solely addresses the criminal element. As far as we can tell, such couples' civil rights have yet to be recognized by our personal laws.

The Court's Role in Recognizing Homosexuality

Only 30 cases have been filed in the High Court and Supreme Court since the criminal law was established almost a century ago. 18 of the 30 instances were non-consenting, 4 were consensual (three of which occurred before 1940), and 8 were unspecified, with 15 of the 30 cases involving children.

Tarulata/Tarun Kumar had a sex transition from female to man in 1987 and married Lila in 1989. Lila's father filed a case in the Gujarat High Court, claiming that the connection is homosexual and that the marriage should be dissolved. "Tarun Kumar has neither the male organ nor any natural process of cohabitation, sexual intercourse, or child reproduction," it was said. Adoption of any artificial processes does not equate to masculinity, and Tarun Kumar is thus not a man. The appeal demanded criminal charges under Section 377, and the matter is now before the Gujarat High Court.[7]"

In 2004, the Customs authorities confiscated a package from the United States containing a few copies of homosexual and lesbian periodicals for South Asians that had been delivered to an LGBT organization in Calcutta for distribution to subscribers under Section 292 of the Indian Penal Code. It was argued that, under the law, this publishing is obscene and insulting to the country's morals. When the addressee realized there was no way out, the case was concluded.

The "ADIS BhedbhavVirodhiAndolan" made a crucial development against Section 377 of the IPC when they published a report titled "Less than Gay: A Citizen's Report." This paper expressed concern about why homosexual consensual sex is a problem and why the rule should be abolished.

In 2001, the Naz Foundation, a non-profit organization, filed a petition in the Delhi High Court to legalize consensual homosexual sex between two consenting individuals. However, in 2004, a two-judge panel rejected this PIL. In 2009, the Supreme Court of India ordered the Delhi High Court to examine the case afresh, decriminalizing any physical contact between two consenting adults inside the privacy of their own home. This decision sparked a torrent of lawsuits, with many people claiming that Section 377 violated the Constitution's Articles 14, 15, and 21[8].

Suresh Kumar Koushal appealed the 2009 judgment to the Supreme Court, and his appeal was granted. In this case, the Supreme Court overturned the Naz Foundation's decision and recriminalized gay relations. Following that, it was up to the legislature to decide whether to keep or abolish the clause.

It was argued in the case of Navtej Singh Johar in 2018 that it is unfair to the LGBTQ community to live in continuous dread while our constitution gives rights to privacy, dignity, and choice under Article 21. It was also argued that the provision of S. 377 was against our Constitution's fundamental values of equality, dignity, fraternity, life, and liberty. The court maintained a 2009 judgment by the Delhi High Court, decriminalizing any physical contact between two consenting adults inside the privacy of their own four walls. The doctrine of progressive realisation of rights, which deals with issues involving religious activities, was addressed in this case[9].

CONCLUSION

It can be concluded from the above study that Indians are well-versed in the concept of homosexuality, as the ancient literature of India itself contains examples of homosexuality; however, they choose to be ignorant because they have been influenced by the colonial rulers' thought process and notions, which consider homosexuality to be sacred. It is as a result of this that they are wary of such relationships. The hetero-patriarchal structure of society also influences the idea of family; therefore it will take time to assimilate this paradigm change in cultural variety. As a result, it's critical to comprehend the relationship between social recognition and religion in India in terms of established social standards.

The Uniform Civil Code (UCC) is a set of rules that govern The Uniform Civil Code can only be properly presented after we achieve higher levels of education, greater social and religious mobility, and enhanced knowledge of a variety of socio-political problems. The ultimate goal of establishing a unified civil code should be to ensure equality, national unity, and integrity, as well as justice for both men and women.

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