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# BREAKING THE CHAINS OF DISCRIMINATION: THE BATTLE FOR LGBTQ++ IN INDIA

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## ABSTRACT

*The topic of legalizing same-sex marriage in India has sparked a heated debate between those in favour and those against it. Despite the opposing views, there are undeniable benefits that cannot be overlooked. One significant benefit of legalizing same-sex marriage is that it would ensure that same-sex couples receive the same legal rights as opposite-sex couples. Currently, same-sex couples in India are not recognized as married couples, which denies them access to legal benefits such as divorce, inheritance, and property rights. This gap can be bridged by granting them the same legal protections as opposite-sex couples. In addition, legalizing same-sex marriage would go a long way towards promoting gender equality and reducing discrimination against the LGBTQ+ community. By treating all individuals equally, regardless of their sexual orientation or gender identity, it would send a powerful message about the importance of treating everyone fairly under the law. Furthermore, legalizing same-sex marriage would bring numerous social and economic benefits. Marriage provides emotional and social support, which is critical for the mental and physical well-being of individuals. It also offers financial benefits such as joint tax filing, access to healthcare, and social security benefits. Allowing same-sex couples to enjoy these benefits would provide them with greater financial stability and reduce stress levels. In conclusion, legalizing same-sex marriage in India would not only provide legal recognition and human rights but also promote gender equality, reduce discrimination, and offer social and economic benefits. It would be a significant step towards creating an inclusive and tolerant society that embraces diversity.*

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## I. INTRODUCTION

Same-sex marriage is a union between two individuals of the same sex. It is also sometimes referred to as gay marriage or marriage equality. In most countries, marriage has been defined as a alliance between a man and a woman, but in recent years<sup>2</sup> there has been a movement to allow the union of same-sex couples within the term ‘Marriage’ and have the same legal rights and benefits as opposite-sex couples.<sup>3</sup> Same-sex marriage has been legalized in several countries around the world, but there are still many places where it is not recognized or is actively prohibited. Same sex marriage or union of the same sex falls under the terminology ‘Homosexuals’ Homosexuality refers to a romantic or sexual attraction between individuals of the same gender, and it is not considered a choice by scientists. The causes of homosexuality are believed to be a combination of genetic, hormonal, and environmental factors. It is one of the three primary sexual orientations, alongside heterosexuality and bisexuality. The term “homosexual”<sup>4</sup> is a combination of Greek and Latin words, with “homos” meaning “same” The term was coined in the late 1800s by Karl Maria Kertbeny,<sup>5</sup> a psychologist from Austria- Hungary. Same-sex marriage refers to the union between two individuals of the same gender, such as a male-male or female-female marriage. Legalizing same-sex marriage can enable individuals to embrace and express their true selves, promoting a more positive future for members of the LGBTQ+ community.<sup>6</sup> Starting from the late 1900s, a worldwide movement advocating for the freedom and equality of gay individuals has emerged.<sup>7</sup> This movement has prompted the implementation of various measures such as anti-bullying laws to safeguard gay students in educational settings, legislation to ensure non-discrimination, equal opportunities for serving in the military, equitable access to healthcare, equal opportunities for adopting and parenting, and the recognition of marriage equality.

The following Article presents viewpoints and a four-part argument in support of legalizing same-sex marriage in India. It also explores the potential benefits that such legalization could bring, allowing individuals to live a more complete and fulfilling life.

<sup>2</sup> Britannica, <https://www.britannica.com/topic/marriage> (last visited April 24, 2023)

<sup>3</sup> Recognition of same-sex unions in India, [https://en.wikipedia.org/wiki/Recognition\\_of\\_same-sex\\_unions\\_in\\_India](https://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_India) (last visited April 24, 2023)

<sup>4</sup> Homosexuality, <https://en.wikipedia.org/wiki/Homosexuality> (last visited April 24, 2023)

<sup>5</sup> Karl Maria Kertbeny, [https://en.wikipedia.org/wiki/Karl\\_Maria\\_Kertbeny](https://en.wikipedia.org/wiki/Karl_Maria_Kertbeny) (last visited April 24, 2023)

<sup>6</sup> LGBT community, [https://en.wikipedia.org/wiki/LGBT\\_community](https://en.wikipedia.org/wiki/LGBT_community) (last visited April 24, 2023)

<sup>7</sup> Gay rights movement, <https://www.britannica.com/topic/gay-rights-movement> (last visited April 24, 2023)

## II. The society's perspective on Homosexuality in India

Homosexuality is viewed as a taboo subject by many due to the country's socially conservative culture and population of 1.4 billion.<sup>8</sup> The act of homosexual activity was illegal by Section 377 of the Indian Penal Code in 1860.<sup>9</sup> However, after many years of activism, the Indian Supreme Court ruled in 2018 in the case of Navtej Singh Johar v. Union of India<sup>10</sup> that Section 377 was unconstitutional when it comes to private consensual sex between men. The Indian Supreme Court mentioned, *“The LGBT persons deserve to live a life unshackled from the shadow of being unapprehended felon”* effectively decriminalizing homosexuality and challenging traditional views of family in India. The same year, in another case of Shakti Vahini v. Union of India,<sup>11</sup> the Supreme Court of India affirmed the Fundamental right of adults to marry the person of their choosing. The Supreme Court declared that *“the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock. Their consent has to be piously given primacy. If there is offence committed by one because of some penal law, that has to be decided as per law which is called determination of criminality”* Despite these rulings, the LGBTQ community still lacks legal recognition for their unions, which means they cannot adopt children or receive inheritance, maintenance, and tax benefits, nor can they access pension benefits after the death of their partner, as enjoyed by heterosexual married couples. The legality of same-sex marriages and related issues such as adoption, divorce, and inheritance are not clearly defined by Indian law. There is no explicit mention of whether same-sex marriages are permitted or prohibited. Indian law on marriage is based on the personal laws and religious traditions of the individuals involved, which only apply to heterosexual marriages. Homosexual marriages are not mentioned in the statutes, and there are no legal provisions for adoption or matrimonial rights for same-sex couples in India. Several petitioners have approached the court to legally recognize same-sex marriages under a special law in India. They referred to the Special Marriage Act, 1954,<sup>12</sup> which allows couples to have a civil marriage if they cannot marry under their personal law, and requested that the right be extended to the LGBTQIA+ community by making the law gender-

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<sup>8</sup> India: Gay marriage recognition referred to high court, <https://www.dw.com/en/india-gay-marriage-recognition-referred-to-high-court/a-64971754> (last visited April 24, 2023)

<sup>9</sup> Indian Penal Code, 1860, § 377, Chapter 16 (India)

<sup>10</sup> Navtej Singh Johar v. Union of India AIR 2018 SC 4321

<sup>11</sup> Shakti Vahini v. Union of India (2018) 7 SCC 192

<sup>12</sup> Special Marriage Act, 1954

neutral.<sup>13</sup> However, the Centre has opposed the plea and argued that living together as partners, which is now decriminalized for same-sex individuals, is not comparable to the Indian family unit, and the two are distinct classes that cannot be treated identically. The government has maintained that any change to the legal framework should be left to the elected parliament and not the court.

### III. Should we legalize same-sex marriage?

The issue of same-sex marriage is not about morality, but about ensuring that the LGBTQ+ community is granted their basic human rights and the dignity they deserve. This includes the right to marry the person of their choice without facing any discrimination or hardship. Same-sex marriage is a fundamental human and civil right that deserves to be fully recognized. The majority of supporters for same-sex marriage are made up of organizations focused on human and civil rights, as well as scientific and medical communities. Surveys and polls have consistently shown an increase in support for same-sex marriage over the years, as people become more aware and have a stronger understanding of morality.<sup>14</sup> However, there are still those who oppose same-sex marriage, mainly those who are part of religious fundamentalist groups.

It is not a criminal offense for individuals of the same sex to enter into a marriage. The act of same-sex marriage is not deemed as unholy or prohibited by any law. The definition of marriage is simply the union of two individuals, referred to as spouses, without any specification regarding gender or sexual orientation. The denial of the right to marry to the LGBTQ+ community is a violation of Fundamental rights of the citizens as protected by the Indian Constitution, viz Article 14, 15, 19, and 21.<sup>15</sup> The LGBTQ+ community desires equal treatment as heterosexual couples, including access to all legal rights and benefits such as property ownership, adoption, succession, and more. Historically, the LGBTQ+ community has been denied these fundamental rights, despite the fact that being in a same-sex relationship is no longer considered a criminal offense. Even after the decriminalization of Section 377<sup>16</sup>, the existence of the LGBTQ+ community has yet to be fully recognized.

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<sup>13</sup> Gender neutral, <https://eige.europa.eu/thesaurus/terms/1190> (last visited April 24, 2023)

<sup>14</sup> Meghna Sharma, is same sex marriage right or wrong, Legal service India E-Journal, <https://www.legalserviceindia.com/legal/article-8025-analysis-same-sex-marriage-in-india.html> (last visited April 24, 2023)

<sup>15</sup> Constitution of India § 14,15,19,21, Part III (India)

<sup>16</sup> Indian Penal Code, 1860, § 377, Chapter 16 (India)

The Special Marriage Act of 1954 (SMA)<sup>17</sup> is a law that enables individuals/persons of different religions or castes to marry legally, under the jurisdiction of the state rather than their respective religions. The term “individuals/persons” within this act is not restricted to only males or females, but is inclusive of all individuals. Therefore, the SMA should be interpreted in a way that acknowledges and includes the LGBTQ+ community. However, the success of this solution depends on the willingness of the legislative body to take this legal step. Rather than modifying personal laws which could potentially conflict with certain religious beliefs, a better solution is to amend the SMA. It is a secular law that permits individuals from different religions to get married through registration with a marriage officer. As this law is applicable to people of different religions, it should also be extended to individuals of different gender orientations, including those who identify as part of the LGBTQ+ community. India's failure to recognize same-sex couples could also have economic repercussions,<sup>18</sup> particularly with regards to the Employment Provident Fund Scheme 1952,<sup>19</sup> and the Workmen's Compensation Act, 1923.<sup>20</sup> These laws only provide benefits to individuals related by blood or marriage, which means that same-sex couples cannot claim any compensation or benefits on behalf of their deceased partners. The Supreme Court of India is currently deliberating on the rights of the LGBTQ+ community, and they have stated that gender cannot be defined solely by a person's sex or genitalia. This statement supports the argument for adding the right to marry to the Special Marriage Act.

#### **IV. Studies on how Same-Sex marriage is beneficial**

##### **a. The welfare of individuals who identify as LGBTQ**

According to a study conducted in the United States, which involved more than 36,000 individuals aged between 18-70 years,<sup>21</sup> it was observed that lesbian, gay, and bisexual people experienced less psychological distress if they were legally married to a partner of the same sex. In comparison, unmarried individuals from the same group experienced more distress. However, the study revealed that married heterosexual individuals experienced less distress than both the aforementioned groups. The study suggests that being in a legally

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<sup>17</sup> Special Marriage Act 1954

<sup>18</sup> Evidence is clear on the benefits of legalising same sex marriage, <https://theconversation.com/evidence-is-clear-on-the-benefits-of-legalising-same-sex-marriage-82428> (last visited April 24, 2023)

<sup>19</sup> Employment Provident Fund Scheme 1952 (India)

<sup>20</sup> Workmen's Compensation Act, 1923. (India)

<sup>21</sup> Children raised by same-sex couples do better in school, new study finds, <https://www.washingtonpost.com/business/2019/02/06/children-raised-by-same-sex-couples-do-better-school-new-study-finds/> (last visited April 24, 2023)

recognized same-sex marriage can potentially reduce the health gap between heterosexual and lesbian, gay, and bisexual individuals. The authors of the study have recommended that future researchers should view same-sex marriage as a matter of public health. The analysis of benefits of Same-Sex marriage investigating the effects of marriage inequality based on the health and wellness of gay men and lesbians acknowledged that the issue of just marriage is multifaceted and intricate.<sup>22</sup> However, it argued that denying gay men and lesbians the concrete (and abstract) advantages of marriage is not only discriminatory but also:

- limits their status as citizens;
- affects their mental health, well-being, and ability to move up in society; and
- generally, excludes them from various societal, legal, financial, and political spheres of their lives.

Additional research has raised concerns as it found that individuals who identify as lesbian, gay or bisexual and live in areas where same-sex marriage is prohibited, have higher rates of mental health issues. In comparison to those who reside in regions where gay marriage is permitted, individuals in banned areas are at a 36% higher risk of developing mood disorders<sup>23</sup> and experiencing multiple mental health conditions. Furthermore, they have a 248% higher risk of developing anxiety disorders. Currently, 1.35 billion people, which represents 17% of the world's population, reside in 34 different countries that have legalized same-sex marriage. Although it may be too early to establish causality between marriage and well-being, studies have shown a positive association between the two. Overall, the research suggests that same-sex marriage provides a range of benefits, including advantages for mental health and well-being, which can have a positive impact on society as a whole, regardless of sexual orientation. As more studies support the benefits of same-sex marriage, the argument for it becomes increasingly robust.

#### **b. Decline in the Suicide statistics.**

In this study published in JAMA Pediatrics; researchers found that states with same-sex marriage policies had fewer adolescent suicide attempts by over 134,000 annually. The study conducted a comparison between states that had legalized same-sex marriage through state-level legislation by January 2015 and those that had not yet done so. Later, in June

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<sup>22</sup> Ibid

<sup>23</sup> Same-Sex Legal Marriage and Psychological Well-Being: Findings from the California Health Interview Survey, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3558785/> (last

2015, the Supreme Court issued a decision that made same-sex marriage a Federal Law.<sup>24</sup> Julia Raifman, a Post-Doctoral Fellow in the Department of Epidemiology at the Bloomberg School, who led the study explained that since the participants were mostly high school students, they were not going to get married anytime soon. However, she emphasized that permitting same-sex marriage could reduce the structural stigma associated with sexual orientation. Providing equal rights to individuals, even if they do not immediately utilize them, can assist in reducing stigmatization and increasing hopefulness for the future amongst students. In the United States, suicide is the second most common cause of death for individuals aged 15 to 24, following unintentional injuries. Suicide rates have increased in the country, statistics indicate that the rates of suicide attempts among adolescents in need of medical attention have gone up by 47% from 2009 to 2015. High school students identifying as gay, lesbian or bisexual are at a higher risk of attempting suicide, with 29 percent of them reporting having attempted suicide in the previous year compared to only 6% of heterosexual teenagers, as reported in the new study. The legalization of same-sex marriage policies in states was linked to 7% decline in suicide attempts among high schoolers in general. However, the positive effect was more pronounced among sexual minority students, with a 14% decrease in suicide attempts amongst them. The impact of same-sex marriage legalization policies persisted for at least two years. In contrast, states that did not enact same-sex marriage policies did not see a reduction in suicide attempts among high school students.<sup>25</sup>

### **c. Indian study on suicide rate for LGBTQ+ Community<sup>25</sup>**

A study was done to examine online news articles that reported on the suicide of LGBTQ+ individuals between January 2011 and January 2021.<sup>26</sup> The study looked at factors related to their mental and emotional well-being that may have contributed to their decision to take their own life. The quality of the reporting in these news articles was also assessed based on guidelines for reporting on suicide that are used both internationally and locally. The study analysed 135 suicide reports (54.5%) and found that social stigma was the most common factor associated with LGBTQ+ suicide. Reporting guidelines were often breached, including mentioning the identity and method of suicide in the title and including the

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<sup>24</sup> Same-sex marriage laws linked to fewer youth suicide attempts, new study says, <https://www.pbs.org/newshour/health/same-sex-marriage-fewer-youth-suicide> (last visited April 24, 2023)

<sup>25</sup> Ibid

<sup>26</sup> Suicide reporting of LGBTQI+ population in India: An analysis of online media reports of the past decade, <https://pubmed.ncbi.nlm.nih.gov/34747474/> ((last visited April 24, 2023)

deceased's photograph. Helpful reporting practices were rarely used. Local language news articles had more serious violations than English news reports.

The legalization of same-sex marriage by the court will have a **Domino Effect**,<sup>27</sup> where the recognition and legalization of divorce, adoption, and inheritance rights will follow. This cascade of rights will greatly benefit both the LGBTQ+ community and the country as a whole, leading to a more progressive and accepting society. The legalization of same-sex marriage will act as a catalyst, setting the stage for other rights to be recognized and granted, ultimately leading to a more liberal and inclusive society.

Recognizing marriage will inevitably lead to acknowledging divorce, and the issue of inheritance will also come up. Inheritance becomes relevant when a married couple is permitted to adopt a child or have one through IVF or surrogacy.

Even if the homosexual couples tie the knot, they are not given the following civil rights:

1. The right to have their marriage officially registered.
2. The right to initiate divorce proceedings.
3. The right to seek legal protection in cases of domestic violence.
4. The right to claim financial support.
5. The right to adopt children.

We will delve deeper into the aforementioned matters and approach them from a different perspective than how society generally perceives them.

## V. SAME-SEX COUPLE DIVORCE

Individuals who identify as LGBTQ+ have the right to both marry and divorce,<sup>28</sup> including same-sex divorce. However, the Indian legal system does not currently acknowledge this right. If the government recognizes the right to same-sex marriage, they will also need to address related issues such as same-sex divorce. If India were to legalize same-sex divorce, it would ensure that same-sex couples have the same legal rights and protections as heterosexual couples when it comes to ending their marriage. Divorce can be a challenging experience for couples, and in India, the process is governed by various personal laws based on religious affiliation. For example, Hindus, Jains, Sikhs, and Buddhists are governed by the

<sup>27</sup> Domino Effect, [https://en.wikipedia.org/wiki/Domino\\_effect](https://en.wikipedia.org/wiki/Domino_effect) (last visited April 24, 2023)

<sup>28</sup> Divorce, <https://en.wikipedia.org/wiki/Divorce> (last visited April 24, 2023)



Hindu Marriage Act of 1955,<sup>29</sup> while Muslims follow the Dissolution of Muslim Marriage Act of 1939,<sup>30</sup> Parsis adhere to the Parsi Marriage and Divorce Act of 1936,<sup>31</sup> and Christians follow the Indian Divorce Act of 1869.<sup>32</sup> Inter-community marriages are governed by the Special Marriages Act of 1954. With the decriminalization of same-sex relationships in India, the legalization of same-sex marriage raises questions about how same-sex divorce would be handled, and what provisions would need to be put in place to accommodate it. Same-sex couples in India are currently not legally recognized, and their relationships are not protected by law. Legalizing same-sex divorce would allow couples to end their relationships with the same legal recognition and protection as heterosexual couples.

Potential benefits of divorce for individuals in same-sex marriages who are seeking to end their marriage.:

1. **Legal recognition:** Legalizing same-sex divorce would acknowledge the relationships of same-sex couples as equal to those of opposite-sex couples, promoting equal treatment for all individuals regardless of their sexual orientation and potentially reducing discrimination.
2. **Improved mental health:** If same-sex couples are not allowed to get divorced, they may have to remain in unhappy or abusive relationships, which can have a detrimental impact on their mental health due to the emotional and mental toll of going through a divorce.
3. **Protection of assets and property:** If same-sex marriage and divorce are not legally recognized, it can be challenging for same-sex couples to divide their assets and property when they separate. Legalizing same-sex divorce would ensure that these couples have the same legal rights and protections as heterosexual couples, including the ability to divide assets and property fairly.
4. **Increased social acceptance:** If same-sex divorce is legalized in India, it could have a positive impact on the societal acceptance and understanding of same-sex relationships. Currently, the LGBTQ+ community in India faces significant stigma and discrimination, and legalizing same-sex divorce could be a step towards promoting inclusivity and reducing this discrimination. By providing same-sex couples with the same legal rights and protections as heterosexual couples, legalizing same-sex divorce could help to

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<sup>29</sup> Hindu Marriage Act 1955, § 13 Part 3 (India)

<sup>30</sup> Dissolution of Muslim Marriage Act of 1939

<sup>31</sup> Parsi Marriage and Divorce Act of 1936

<sup>32</sup> Indian Divorce Act 1869

normalize and validate same-sex relationships in the eyes of society. This, in turn, could lead to greater acceptance and understanding of the LGBTQ+ community and a reduction in the negative attitudes and behaviours towards them. Ultimately, legalizing same-sex divorce could contribute to creating a more inclusive society that values diversity and promotes equal rights and opportunities for all individuals, regardless of their sexual orientation.

In summary, legalizing same-sex divorce in India would provide same-sex couples with the same legal rights and protections as opposite-sex couples, promote equality, improve mental health, protect assets and property, and increase social acceptance.

Legalizing same-sex divorce can have potential benefits for the government in several ways:

1. **Increased revenue:** Legalizing same-sex divorce would mean that same-sex couples would have to pay the same fees for divorce proceedings as heterosexual couples. This could generate additional revenue for the government from court fees and other related charges.
2. **Reduced legal disputes:** By allowing same-sex couples to divorce, the government could help prevent legal disputes over custody, property division, and other issues that may arise in the absence of a legal divorce process. This could help reduce the burden on the legal system and reduce the costs associated with resolving disputes.
3. **Improved social harmony:** Legalizing same-sex divorce could help to promote social harmony by recognizing the rights of all individuals, regardless of their sexual orientation. This could lead to a more inclusive and accepting society, which could in turn reduce conflicts and promote greater social stability.
4. **Enhanced reputation:** Legalizing same-sex divorce could enhance India's reputation as a progressive and inclusive country, which could have positive effects on its international standing and reputation. This could, in turn, attract more tourists, investors, and business opportunities, leading to increased economic growth and development.

Previously, the criminalization of same-sex relationships under Section 377 of the Indian Penal Code was a significant barrier to recognizing same-sex marriages. However, this barrier was removed by the Navtej Singh Johar judgment, which decriminalized homosexuality. It is important for laws to adapt to the changing needs of society, and for the state to consider the interests of minority groups in order to maintain a harmonious balance

among all people. It is undeniable that allowing same-sex couples to divorce would greatly benefit both the LGBTQ+ community and the country as a whole. To make this possible, divorce could be added as a provision in the Special Marriage Act. Currently, the Act allows a party to obtain a divorce if their spouse has a communicable venereal disease. This provision could be updated to use gender-neutral language, such as "person" instead of "he or she," for a more inclusive interpretation.

## VI. Adoption and Inheritance

Adoption is a process that involves social, emotional, and legal aspects, whereby a person becomes a non-biological parent to a child. Through adoption, the child becomes the child of the adoptive parents in the eyes of the law and is granted all rights, privileges and responsibilities that a legitimate child would have. This process is particularly important for children who have been orphaned, abandoned, or given up by their biological parents due to a variety of reasons or hardships. Adoption provides these children with an opportunity to have a permanent home, receive love and care, and develop to their full potential.

UNICEF's research indicates that there are approximately 29.6 million children in India who have been abandoned or orphaned. Despite this high number, same-sex couples who wish to adopt are currently unable to do so due to a lack of adoption rights in the country. In India, adoption is regulated by: Hindu Adoption and Maintenance Act (HAMA) 1956<sup>33</sup> and Juvenile Justice Act 2015.<sup>34</sup> The HAMA applies to adoption by Hindus, Buddhists, Jains, Sikhs, and other religions that follow Hindu law. However, the use of terms such as "husband" and "wife" in sections 7 and 8 of the acts implies that adoption by same-sex couples is not recognized.<sup>35</sup>

Under Indian adoption laws, any person can adopt a child regardless of their religion, but same-sex couples are not allowed to adopt due to the requirement of a stable marital relationship of at least two years, which only applies to heterosexual couples. This restriction based on sexual orientation is a violation of their dignity, and there are ongoing debates about the suitability of homosexual couples as adoptive parents. However, the guidelines do not consider sexual orientation when assessing the suitability of prospective adoptive parents. Despite the fact that adoption laws in India only recognize heterosexual

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<sup>33</sup> Hindu Adoption and Maintenance Act, 1956

<sup>34</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>35</sup> Adoption by same-sex couples in India: A right long overdue, Indian Review of Advanced Legal Research, <https://www.iralr.in/post/adoption-by-same-sex-couples-in-india-a-right-long-overdue> (last visited on Apr. 24, 2023)

couples as eligible to adopt, there have been

Some instances where same-sex couples have successfully adopted children. For example, in the case of Sandro Gomez and Javier Serrano v. CARA and Anr.,<sup>36</sup> a gay couple from Spain fought for two years to be granted permission to adopt a child from India and ultimately succeeded.<sup>37</sup> Single individuals, including those who identify as LGBTQ+, are eligible to adopt children regardless of their sexual orientation. However, the adoption process for same-sex couples can be difficult due to societal attitudes towards homosexuality. Currently, only married couples, regardless of their sexual orientation, are allowed to adopt children in India. Homosexual adoption is a complex issue with legal, social, and cultural factors to consider. It is important for the Indian government to take a clear stance on this matter and recognize that homosexual couples can be just as qualified to adopt children as heterosexual couples. The Indian government has the power to modify the legal system for adoption by granting explicit permission for same-sex couples to adopt. This would eliminate the difficulties and negative societal attitudes towards gay couples who want to adopt. Same-sex couples should be given equal treatment in every right that heterosexual couples receive, and they should be treated with respect and dignity. It is important for society to become more accepting of the LGBTQ+ community to create more loving homes for the many orphaned and abandoned children in India.<sup>38</sup> Legalizing same-sex marriage raises issues related to adoption and inheritance, which are crucial aspects to consider. Presently, the LGBTQ+ community has the legal right to adopt as individuals, but if a same-sex couple wants to adopt a child, it is not recognized under Indian law. In India, only married couples, regardless of sexual orientation, can adopt children, and single individuals, including single homosexuals, are not allowed to adopt. However, some homosexual individuals have found a way to bypass this restriction by adopting as single parents, as single individuals are permitted to adopt legally in India. In 2016, a homosexual man in Mumbai became one of the first single homosexual men to legally adopt a child in India by adopting a child as a single parent.<sup>39</sup> The current adoption laws in India only permit married couples, regardless

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<sup>36</sup> Sandro Gomez and Javier Serrano v. CARA and Anr. (Civil Application no. 1013 of 2019, Bombay High Court)

<sup>37</sup> S.aatif23, Adoption and LGBTQ Community, Legal Service India E-Journal, <https://www.legalserviceindia.com/legal/article-3791-adoption-and-lgbtq-community.html> (last visited April 24, 2023)

<sup>38</sup> Arghya, can homosexual couples adopt in India? Legal service India E-Journal, <https://www.legalserviceindia.com/legal/article-10416-can-homosexual-couples-adopt-in-india-.html> (last visited April 24, 2023)

<sup>39</sup> Parliament panel recommendation on adoption raises bigger question of recognition same sex union: Experts, <https://economictimes.indiatimes.com/news/india/parliament-panel-recommendation-on-adoption-raises-bigger->

of sexual orientation, to adopt a child. This reinforces the need to legalize same-sex marriage so that same-sex couples can have the opportunity to adopt a child and provide them with care without being deprived of this right and that right will be extended to their children as well. In India, adoption laws do not acknowledge same-sex couples, resulting in them being unable to adopt a child as a couple. This can be an obstacle for same-sex couples who desire to create a family and offer a nurturing environment to a child. Additionally, the legalization of same-sex marriage can have a positive effect on the mental health and overall well-being of both same-sex couples and their children. Research has demonstrated that legalizing same-sex marriage can result in heightened social backing, better mental health results, and an increased feeling of social inclusion and acceptance.

To summarize, the legalization of same-sex marriage can have a beneficial effect on adoption laws, enabling same-sex couples to adopt children and have equal rights and opportunities. This change can result in a higher number of children finding caring homes. Additionally, legalizing same-sex marriage can positively affect the mental health and general well-being of both same-sex couples and their children by fostering a greater sense of social inclusion and support.

Research by Population Association of America indicates that children of same-sex couples have better outcomes in life compared to children of heterosexual couples. Kids who were brought up by same-sex couples had better results in their tests during their primary and high school years, and there was approximately a 7% higher chance that they would finish high school compared to kids raised by heterosexual couples. Children raised by same-sex couples tend to score better on standardized tests at the end of primary education, by a margin of 0.18 standard deviations, compared to children raised by different-sex couples. The results showed that children from same-sex couples are most likely to graduate, with a 6.7% higher likelihood than those from different-sex couples.<sup>40</sup> The recent research monitored the development of 1,200 children brought up by same-sex couples and over 1 million children raised by heterosexual couples. The findings reveal that same-sex parents tend to be more financially well-off, older and highly educated compared to heterosexual couples. Since same-sex couples mostly resort to IVF<sup>41</sup> to have a child, they have a strong

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[question-of-recognising-same-sex-union-experts/articleshow/93455670.cms?from=mdr](https://www.indianjournaloflegallaw.com/question-of-recognising-same-sex-union-experts/articleshow/93455670.cms?from=mdr) (last visited April 24, 2023)

<sup>40</sup> Deni Mazrekaj, Kristof De Witte and Sofie Cabus, School Outcomes of Children Raised by Same-Sex Couples: Evidence from Administrative Panel Data, Population Association of America, <http://paa2019.populationassociation.org/uploads/191716>, (last visited April 24, 2023)

<sup>41</sup> In vitro fertilization (IVF), <https://www.mayoclinic.org/tests-procedures/in-vitro-fertilization/about/pac->

inclination to become parents, leading to a higher level of wealth. The study's economists suggest that this is a major factor behind the superior academic performance of children raised by same-sex couples. In conclusion, allowing same-sex couples to adopt children has numerous advantages that can enhance the lives of both the child and the parents. However, the current limitation on who can adopt poses a challenge, as only legally married couples, irrespective of their sexual orientation, are permitted to adopt. Unfortunately, since same-sex marriage is not yet legal in India, adoption by same-sex couples is not possible. Nonetheless, if same-sex marriage were to be legalized, it would be a significant victory for the LGBTQ+ community, as adoption rights would be among the many benefits.

In inheritance discussing the issue of same-sex marriage is very important and is often overlooked. In the event that a same-sex couple adopts a child and both parents pass away, it is important to consider the inheritance rights of the child. In India, laws such as the Hindu Succession Act 1956,<sup>42</sup> Indian Succession Act 1956,<sup>43</sup> Muslim Law of Inheritance 1937,<sup>44</sup> (Shariat Law for Succession) are focused on the male-female dynamic of marriage, and they do not account for the inheritance rights of same-sex couples. In the case of same-sex couples, there is often no clear legal framework to determine the inheritance rights of the child. This lack of clarity can lead to violations of the child's rights, such as their right to property and their right to equal treatment under the law. The child of a same-sex couple should have the same inheritance rights as the child of a heterosexual couple, regardless of their parents' sexual orientation. Moreover, the lack of legal recognition for same-sex couples in inheritance laws can also be seen as a form of discrimination. Discrimination based on sex is prohibited under the Indian Constitution, and denying inheritance rights to children of same-sex couples based on their parents' sexual orientation is a clear violation of this constitutional guarantee.

In summary, the issue of inheritance in same-sex marriages is an important one that needs to be addressed. Legal frameworks need to be put in place to ensure that the inheritance rights of children of same-sex couples are protected and that they are treated equally under the law. Failure to address this issue not only violates the rights of the child, but it is also a form of discrimination against same-sex couples.

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<sup>42</sup> Hindu Succession Act, 1956

<sup>43</sup> Indian Succession Act 1956

<sup>44</sup> Muslim Law of Inheritance 1937

## VII. Legal Protection in Cases of Domestic Violence

Domestic violence refers to the use of abusive behaviour by one partner to exert power or control over the other partner and can take many forms, including physical, sexual, emotional, economic, or psychological actions or threats. In India, the Protection of Domestic Violence Act was introduced in 2005 to provide protection to women from such acts of violence. Over time, the act has been amended to include live-in relationships and make the definition of 'respondent' gender-neutral, thus covering cases of abuse between two females in live-in relationships. However, the act still does not provide protection for abuse in gay relationships, and the definition of 'aggrieved person' is limited to women who have been or are in a domestic relationship with the respondent, which excludes victims in gay relationships from seeking shelter under this act. Section 17 of the Protection of Domestic Violence Act<sup>45</sup> allows the aggrieved person, who has been kicked out of the shared household, to approach the court seeking the right to reside in the shared household or to get an alternate accommodation. However, the provision of this section is restricted to "woman" as the aggrieved person who is entitled to such relief. This means that if a victim of domestic violence is a gay man who has been forced out of his shared home by his male partner, he would not be able to seek legal remedy under this provision. It is a serious problem that victims of domestic violence in gay relationships are not protected by the law, leaving them vulnerable to abuse with no legal remedies. To address this gap in the law, it is necessary to recognize and take steps to ensure that all victims of domestic violence, regardless of their sexual orientation or gender identity, have access to legal protection and support. This may involve amending the relevant provisions of the Protection of Domestic Violence Act to include victims in gay relationships, as well as raising awareness of the issue among lawmakers, legal professionals, and the wider public.<sup>46</sup>

The solution to the problem of lack of legal protection for victims of domestic violence in gay relationships is to take concrete steps to make sure all individuals, despite of their sexual orientation, should have access to legal remedies and support. This can be achieved through several means:

1. Amending the relevant provisions of the Protection of Domestic Violence Act to include

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<sup>45</sup> Protection of Domestic Violence Act 2005, § 17, (India)

<sup>46</sup> Prachi Agrawal & Charu Sharma, 'Miniscule Fraction of The Total Population': Not Entitled to Legal Marriage and Protection from Abuse? The Criminal Law Blog, (Apr. 24,2023, 9:30 PM), <https://criminallawstudiesnluj.wordpress.com/2021/01/23/miniscule-fraction-of-the-total-population-not-entitled-to-legal-marriage-and-protection-from-abuse/>

victims in gay relationships and provide them with equal protection under the law.

2. Creating awareness and educating legal professionals, lawmakers, and the general public about the issue of domestic violence in gay relationships, and the need for legal protection and support for victims.
3. Providing training to law enforcement agencies, judges, and lawyers on how to handle cases of domestic violence in gay relationships sensitively and effectively.
4. Establishing specialized support services and shelters for victims of domestic violence in gay relationships, where they can seek help and support in a safe and non-judgmental environment.
5. Encouraging victims of domestic violence in gay relationships to come forward and seek legal help and support, by creating a supportive and inclusive environment that promotes acceptance and understanding of diverse sexual orientations and gender identities.

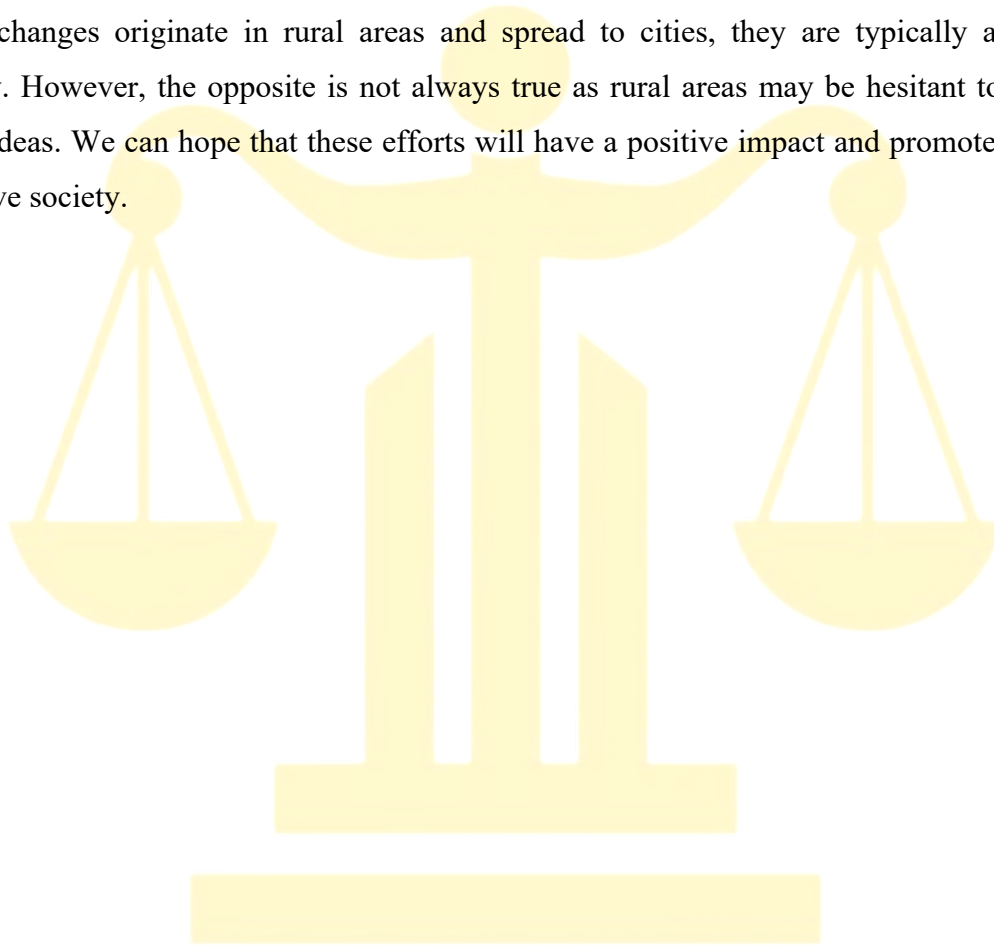
By taking these steps, it is possible to ensure that victims of domestic violence in gay relationships are not left without legal protection and support, and that their rights and dignity are upheld under the law.

### **VIII. Conclusion**

The social stigma attached to homosexuality has resulted in discrimination and marginalization of the LGBTQ+ community. It has prevented many people from openly accepting their sexual orientation and living a life free of discrimination and prejudice. The decriminalization of Section 377 was a significant step towards acknowledging the rights of the LGBTQ+ community and eliminating the societal taboo associated with homosexuality. However, legalizing same-sex marriage is still a contentious issue in India. While some argue that it goes against traditional family values, others believe that denial of marriage to the same-sex couple is a violation of their human rights. Legalizing same-sex marriage would provide legal recognition and protection to same-sex couples and their families, ensuring that they have access to the same rights and privileges as opposite-sex couples. This includes rights related to adoption, property, inheritance, and child custody, among others. In addition to legal recognition, social acceptance and awareness are essential to ending discrimination against homosexuality. This can be achieved through various means, including education and awareness campaigns, media representation, and affirmative action policies that promote inclusion and diversity. It is important to create an environment



where people can openly express their sexual orientation without fear of discrimination or harassment. Overall, eliminating the social taboo associated with homosexuality is an ongoing process that requires legal, social, and cultural changes. The decriminalization of Section 377 was a significant step towards achieving this goal, but there is still a long way to go in terms of ensuring that the LGBTQ+ community is treated with dignity, respect, and equality under the law.<sup>47</sup> It is important that changes occur not only in big cities, but also in rural areas where local councils have significant influence over legal decisions. For societal changes to take root, they must be initiated internally. One positive change that has spread from urban areas to rural communities is the idea of inclusivity. When changes originate in rural areas and spread to cities, they are typically accepted quickly. However, the opposite is not always true as rural areas may be hesitant to accept urban ideas. We can hope that these efforts will have a positive impact and promote a more inclusive society.



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<sup>47</sup> International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol 1, No.5, 317-331, Problems Faced by LGBT People in the Mainstream Society: Some Recommendations, [https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd\\_597.pdf](https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf) (last visited 24 April, 2023)