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LGBTQ-Marriage rights

By: Shivani Singh

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Abstract

The basic fundamental human right is to be regarded as equals and with respect irrespective of who or what one is. In 2018, Section 377 was partially struck down by a unanimous decision of the five-judge bench of the Supreme Court, it decriminalized homosexuality and was a noteworthy success for the LGBTQ community. But since gay marriage despite everything hasn't been legally recognized, this implies even in situations where there is social approval for it, these people keep on enduring discrimination on different fronts for example – adoption, bequest of property, tax planning, life insurance policies. There should be uniformity. Let others have indistinguishable rights from hetero couples. In heterosexual relationships, such rights and duties arrive in a bundle. While an LGBTQIA+ couple can freely address such issues, to date no laws are present in our nation that can guarantee their entrance to these rights. Moreover, even the Special Marriage Act does not have any provisions for heterosexual couples. It doesn't even mention transgender people. Same-sex marriage has been sanctioned in twenty-eight nations, yet it stays prohibited in numerous nations and the growth of extensive LGBTQ+ privileges has been imbalanced worldwide.

An individual's sexual orientation is inherent to their existence. It is associated with their personality and identity. A category which differentiates between people based on their inborn nature, would not only be discriminatory but is also an infringement of their fundamental rights. This paper deals with marriage rights of the LGBT community, its acceptance by the society and our nation, legalization of marriage for same-sex couples around the world, case laws, and movements that brought a change in LGBTQ rights. The paper also traverses the problems faced by these people in their fight for equality and the injustice served to the LGBT community by not granting them marriage rights.

Keywords: homosexuality, gay, LGBT, same-sex marriage, discrimination.

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CHAPTER 1

Introduction

The LGBT community are the people who belong to sexual minorities, lesbian/ gay/ bisexuals whose sexual yearning differs from others, and these individuals battle for their opportunity, freedom, and for equivalent citizenship which frequently end up in contravention. Dishonor and prejudice repeatedly leave LGBT people in a condition of poverty and leave them exposed to violence and HIV/Aids. Living openly, or even just being recognized as, or linked with, an LGBT person, various times mean danger of losing one's employment, housing, education, and access to health care. Homosexuality in India was deemed as an Unnatural sexual offense according to section 377 of the Indian Penal Code, 1860.

Same-sex orientation and behavior have been abandoned in India since the 1970s by modern medicine and psychiatry but the truth is that Homosexuals do not have any objective psychological dysfunction or Injuries and the reason is too multifaceted therefore we can clearly state that homosexuality was not a disorder. Numerous petitions were filed before the honorable Supreme Court to affirm Section 377 of the Indian penal code as Unconstitutional. After the decriminalization of homosexuality, LGBT people lastly became free from criminalization before the law and free from the risk of arrest and the ruling gave confidence and dignity to LGBT individuals in the eyes of law.¹⁹

Still, marital equality is an elementary right for a citizen and the LGBTQ+ community is still devoid of it. Even though reading down of section 377 was historic, we have just scratched the surface yet, marriage is still a far-fetched vision, and until there are no marital rights for the LGBT community there cannot be any adoption rights or inheritance of property and any other benefits or advantages that every other married couple in the country enjoy.

¹⁹ Revathy, V. (2018). THE VIOLATION OF HUMAN RIGHTS AGAINST LGBT COMMUNITY IN INDIA CRITICAL STUDY legislation for marriage of LGBT people and the government has to take remedial actions for them otherwise those people will suffer a lot of exploitation from the people. *International Journal of Pure and Applied Mathematics*, 120(5), 4875–4884. <https://acadpubl.eu/hub/2018-120-5/4/396.pdf>

CHAPTER 2

Recognition of LGBT Community

The interdependent relationship between well-being and human rights is well recognized. Human rights are indivisible and absolute rights due to every person. LGBT individuals in many states are afraid and in danger of unfairness, exploitation, poor health, and death that is the ultimate human rights violation.

In 2011, the United Nations Human Rights Council issued its first resolution acknowledging LGBT rights, following which the United Nations High Commissioner's office for Human Rights issued a report detailing violations of the constitutional, civil, and human rights of LGBT people, including hate crimes, legalization of homosexual activity, and discrimination. Resulting in the issuance of the report, the United Nations advised all countries which had up till now not done so to enact laws protecting necessary LGBT rights.²⁰

Legal matrimony delivers several additional benefits and protections to couples. Only a small number of administrations to date, recognize LGBT rights to marry and form a family. In 1996, South Africa, turned into the first country to embrace sexual orientation in its Constitution as a status protected from discrimination. In Brazil, public and national laws forbid prejudice based on sexual orientation, inheritance rights are given to same-sex couples. Several European countries (Denmark, Sweden, Norway, Finland, the UK, France, Germany, Switzerland, Portugal, Slovenia, Croatia, and Iceland) as well as Israel and New Zealand have some welfares for same-sex couples, but those are not equal in comparison to that of heterosexual couples. Within the US, only one state i.e. Massachusetts as of May 2004 allows civil marital rights to homosexual couples, but these are only the rights provided by the state.²¹ Many other countries including India have taken a step in the right direction by decriminalizing homosexuality, although there is still a long way to go to provide the LGBTQ+ community equal rights in every sense, it is still better than nothing, recognition is the first step to equality.

²⁰ UN issues first report on human rights of gay and lesbian people. (2011, December 15). UN News. <https://news.un.org/en/story/2011/12/398432-un-issues-first-report-human-rights-gay-and-lesbian-people>

²¹ Marks, S. M. (2006). Global recognition of human rights for lesbian, gay, bisexual, and transgender people. *Health and Human Rights*, 9(1), 33–42. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5451102/>

CHAPTER 3

Acceptance by the Society

The effect of decriminalizing homosexuality can be seen as by the changing attitude of the society and the families that are altering their viewpoint and accepting their children as who they are. Society's anti-LGBTQ outlook has changed and the world is now acknowledging the changes and more awareness is being forwarded through education, counseling, and many other ways. There is more growth in self-acceptance and confidence is being built up in the people.²²

Even though the government has decriminalized homosexuality and many people have changed their perceptions regarding the LGBT community, nevertheless, a lot of people out there who don't even understand the concept of being homosexual, and until they do there is next to no hope to change their view about it.

Also, the lack of marital rights to these people shows that the country is still far from completely accepting these people as one of our own, and providing them equal rights and opportunities. Now, there are two sides of marriage, one is the social facet in which two adults decide to go through a ceremony and act toward his or her partner as a spouse.

In India, after the Supreme Court ruling to decriminalize Section 377 of the Indian Penal Code, a lot of LBGT people can openly do that. But, there is a legal facet of marriage that grants privileges and duties on two people. These contain, for example, property inheritance, upkeep of the spouse, and so on. In heterosexual marriages, these privileges and duties come in a set. Although an LGBT+ couple can freely address such complications, there are no laws in our country that can guarantee their right of entry to these rights, which is again a big setback for these people.²³

²² Gambhir, P. (n.d.). *LGBT acceptance around the country India*. Wwww.Legalserviceindia.Com. Retrieved August 15, 2020, from <http://www.legalserviceindia.com/legal/article-2264-lgbt-acceptance-around-the-country-india.html>

²³ Chakraborty, S. (2019, June 25). *Despite social marriage, gay couples still yearn for legal rights - Times of India*. The Times of India. <https://timesofindia.indiatimes.com/life-style/spotlight/is-gay-marriage-a-reality-in-india/articleshow/69928813.cms>

CHAPTER 4

LGBT rights in India

The Apex Court of India has, over a long period of jurisprudence, passed judgments directed at protecting couples and relationships that went against societal norms. While the legal proceedings against the sodomy law began almost 15 years before 2016, no LGBT people themselves went to court challenging the law. Finally, in 2016 the Supreme Court request observed LGBTQ+ people file petitions in their names.²⁴

LGBT community in our country has limited rights and might encounter social problems which the non-LGBT people never have to face. India has repealed its laws that openly victimized against gay sex and transgender credentials, but a lot of legal protections have not been established for including anti-discrimination laws and same-sex marriage.²⁵

In October 2017, a set of people put forward a composed plan of a new Uniform Civil Code that would make legal same-sex marriage to the Law Commission of India.²⁶ It explains marriage as “the lawful unison as given under this Act of a male with a female, a male with another male, a female with another female a transgender with another transgender or a transgender with either male or female. All married couples shall be allowed to adopt if they wish to. The carnal nature of a married couple shall not be a block to their entitlement to adoption. LGBT people will be just as authorized to adopt a baby ”.²⁷

In attendance at present are several petitions pending with the courts about same-sex marriages. The Uttarakhand High Court on 12th June 2010 acknowledged that even though LBGT

²⁴ Sahgal, K. N. (2020, May 18). *Same-Sex Marriage In India: Unveiling The Marriage Project*. Feminism In India. <https://feminisminindia.com/2020/05/19/same-sex-marriage-india-unveiling-marriage-project/>

²⁵ Dash, D. K., Jul 29, amp; S. Y. | T. | U., 2011, & Ist, 00:33. (2011, July 29). *In a first, Gurgaon court recognizes lesbian marriage | Gurgaon News - Times of India*. The Times of India. <https://timesofindia.indiatimes.com/city/gurgaon/In-a-first-Gurgaon-court-recognizes-lesbian-marriage/articleshow/9401421.cms>

²⁶ Chishti, seema. (2017, October 18). *Drafting change: What the new 'progressive' intervention in Uniform Civil Code debate entails*. The Indian Express. <https://indianexpress.com/article/explained/drafting-change-what-the-new-progressive-intervention-in-uniform-civil-code-debate-entails/>

²⁷ Dey, A. (2017, October 13). *A new UCC for a new India? Progressive draft UCC allows for same sex marriages*. CatchNews.Com. <http://www.catchnews.com/india-news/a-new-ucc-for-a-new-india-progressive-draft-ucc-allows-for-same-sex-marriages-85386.html>

marriage may not be permitted in our country, "live-in relationships" and cohabitation are sheltered by the law.²⁸

Article 15 of the Constitution of India says that discrimination on grounds of religion, race, caste, sex, or place of birth is strictly prohibited, and no person on the grounds of the same should be treated unequally or stopped from using anything or going to any place that is partly or fully supported by the state provided funds and is reserved to the use of the public.

In the justification of *Navtej Singh Johar v. Union of India*, the Supreme Court pronounced that the Constitution of India prohibits unfairness and discrimination based on sexual inclination by the category of "sex". In the same way in the case of *National Legal Services Authority v. Union of India*, the Apex Court said that discrimination based on gender identity is constitutionally illegal.²⁹

The Transgender Persons (Protection of Rights) Act, 2019 prohibits unjust discrimination against transgender individuals in scholastic establishment and facilities, employment, healthcare facilities, access to the use of any goods, housing, service, resource, benefits, privilege, or opportunity devoted to the use of the common public or normally available to the public, the right to movement, reside, acquisition, rent or occupy any property and the chance to stand for or occupy public or private office, and in government or private institutions.³⁰

The Supreme Court of India in a landmark case perceived that both gender and genetic attributes form individual elements of a human. Genetic individualities include genitals, DNAs, and subordinate sexual features, but sexual characteristics include one's self-image, the innate mental or emotional sense of sexual individuality and personality. The prejudice in the view of sex under Articles 15 and 16 of the Indian Constitution comprises discrimination based on gender identity. The utterance "sex" is not just confined to the genetic sex of a man or a woman, but is envisioned to embrace people who consider themselves neither a man nor a woman. Both these articles have also been inferred to provide social equality to these people such as equivalence in public employment, it provides that the states shall have the power to make any

²⁸ M, A., & hani. (2020, June 19). *Can't marry, but same sex couples have right to live together: Uttarakhand High Court*. ThePrint. <https://theprint.in/judiciary/cant-marry-but-same-sex-couples-have-right-to-live-together-uttarakhand-high-court/444706/>

²⁹ *Wayback Machine*. (2014, May 27). Web.Archive.Org. <https://web.archive.org/web/20140527105348/http://supremecourtfindia.nic.in/outtoday/wc40012.pdf>

³⁰ *Transgender Persons (Protection of Rights) Act 2019*. (n.d.). [Http://socialjustice.nic.in/Writereaddata/UploadFile/TG%20bill%20gazette.Pdf](http://socialjustice.nic.in/Writereaddata/UploadFile/TG%20bill%20gazette.Pdf). Retrieved August 16, 2020, from <http://socialjustice.nic.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

specific proviso for the improvement of these susceptible minority who are now included within the category of publically and educationally backward classes.³¹

Further, a lot of rights are not granted to these people who are freely and unequivocally present to every other Non-LGBT person in India. First and foremost Same-sex couples are not allowed to adopt a child in India. Then No known anti-discrimination laws exist for sexual orientation or gender identity for the LGBT community, which also means until this happens they cannot get any housing permissions.

CHAPTER 5

Legislation of Same-Sex Marriage around the World

The beginning of conjugal equality has varied by state and surfaced through legislative change to marriage law and court rulings based on constitutional guarantees of equality, an acknowledgment that it is allowed by existing marriage law³², or by direct popular vote and initiatives. The acknowledgment of same-sex marriage is deemed to be a human right plus a civil right as well as a political, social, and religious issue.³³

The major support factions of same-sex marriage are human rights and civil rights organizations along with the health and technical communities, while the most prominent adversaries are spiritual fundamentalist groups. A rising number of governments around the globe are because of whether to give authorization of legal acknowledgment to same-sex marriages. Up until now, thirty nations and territories have passed national laws allowing same-

³¹ Revathy, V. (2018b). THE VIOLATION OF HUMAN RIGHTS AGAINST LGBT COMMUNITY IN INDIA- A CRITICAL STUDY legislation for marriage of LGBT people and the government has to take remedial actions for them otherwise those people will suffer a lot of exploitation from the people. *International Journal of Pure and Applied Mathematics*, 120(5), 4875–4884. <https://acadpubl.eu/hub/2018-120-5/4/396.pdf>

³² *Same-sex Oklahoma couple marries legally under tribal law*. (2013, October 22). KOCO. <https://www.koco.com/article/same-sex-oklahoma-couple-marries-legally-under-tribal-law-1/4295748>

³³ *Wayback Machine*. (2013, March 16). Web.Archive.Org. <https://web.archive.org/web/20130316191210/https://ecf.cand.uscourts.gov/cand/09cv2292/files/09cv2292-ORDER.pdf>

sex people to marry, commonly in Europe and the Americas. Also, in Mexico, certain authorities permit same-sex couples to marry, while the rest do not.³⁴

The approval of same-sex relationships was particularly apparent in northern Europe and in countries with cultural ties to that area. In 1989 Denmark became the first country to form registered partnerships—a thinned version of marriage—for same-sex couples. Shortly after that similar laws, typically by means of precise terminology such as domestic partnership, civil union, registered partnership, civil partnership to distinguish same-sex ties from hetero marriages, as an outcome went into effect in Norway in 1993, Sweden in 1995, Iceland in 1996, the Netherlands in 1998, and other places in Europe, consisting of UK in 2005 and Ireland in 2011.³⁵

To assemble the countries where same-sex marriage is officially legal, 24/7 Wall St. reviewed lots of news articles and information from the Pew Research Centre. Countries where same-sex marriage is permissible in some parts but not countrywide were omitted. Even now, only 29 out of the 195 countries in the world have legalized same-sex marriage, which in comparison is a very small no. but if with time this much acceptance is given to the LGBT community, the ratio is something to look forward to. Disagreement to legalizing same-sex marriage every so often comes from religious groups who assert that it obliterates the sacredness of marriage. However, a U.S. analysis has revealed that heterosexual couples split-up in higher proportions as compared to homosexual couples.³⁶

LGBT marriages are lawfully performed and acknowledged either nationwide or in a few dominions in Argentina, Norway, Australia, Portugal, Austria, Belgium, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Mexico, New Zealand, the Netherlands, Spain, Sweden, Germany, Canada, Iceland, Ireland, Luxembourg, Malta, The United Kingdom, Taiwan, The United States, Brazil, South Africa and Uruguay.³⁷

³⁴ Masci, D., Elizabeth Podrebarac Sciuipac, & Lipka, M. (2019, May 17). *Same-Sex Marriage Around the World*. Pew Research Center's Religion & Public Life Project; Pew Research Center's Religion & Public Life Project. <https://www.pewforum.org/fact-sheet/gay-marriage-around-the-world/>

³⁵ *Same-sex marriage - Same-sex marriage and the law*. (n.d.). Encyclopedia Britannica. <https://www.britannica.com/topic/same-sex-marriage/Same-sex-marriage-and-the-law>

³⁶ Green, J. (2019, June 13). *29 countries where same sex marriage is officially legal*. USA TODAY; WLST. <https://www.usatoday.com/story/money/2019/06/13/countries-where-same-sex-marriage-is-officially-legal/39514623/>

³⁷ *Same-sex marriage*. (2020, August 15). Wikipedia. https://en.wikipedia.org/wiki/Same-sex_marriage#:~:text=Same%2Dsex%20marriage%20is%20legally

CHAPTER 6

Problems faced by the LGBT community-

Lesbian, gay, bisexual, transgender (LGBT) persons suffer huge complications growing up in a civilization where being heterosexual is the only acceptable orientation and homosexuality is regarded as unusual and abnormal. At present, homosexuality and queer individualities might be okay to youth of our country more than ever before but still inside the boundaries of our families, homes, and schools, acknowledgment is a continuous struggle for LGBT people.

Every year, a vast number of LGBT people face enormous issues related to violence, unemployment, discrimination, poverty, and lack of healthcare. Prejudiced people have issues with the way people from the LGBT community manage their lives.³⁸

The elimination and discrimination have long-lasting and damaging impacts on the lives of the LGBT community people. This has stemmed in the following:

- Dropping out of school
- legal injustice
- victims of animosity, crimes, and viciousness from people
- inadequate health care, affordable accommodation, or other social services
- Leaving Home and Family
- Unable to find regular jobs, have fewer options than others do.
- Ignored in the community and isolated.
- Lack of family and social support
- Transfer to other nations in search of secure and safer livelihood and recognition
- Rejected from Religion (Esp. Muslim and some Christian Fundamentalist sects)

³⁸ Choudhury, S. (2018, January 24). *Problems Faced By LGBT People In India*. Youth Ki Awaaz. <https://www.youthkiawaaz.com/2018/01/dont-ever-be-afraid-to-show-off-your-true-colours/>

- Attempt suicide³⁹

Not only this but LGBT people experience narrow-mindedness, inequality, judgment, harassment, and the threat of brutality due to their sexual orientation, then those people who identify themselves as straight or homosexual. This is because of homophobia. The factors that support homophobia on a wider scale are principled, religious, and political opinions of the domineering faction. Living in homophobic surroundings compels many LGBT people to conceal their sexuality, for fear of the bad reactions and consequences they might have to face.⁴⁰

CHAPTER 7

Case Laws and incidents that brought a change in LGBT Rights

September 6th, 2018 was not an average day. A historic decision was made that brought a new ray of hope amongst the people of the LGBT+ community, who have been exposed to hundreds of years of tiresome injustice. The judgment that made the day except for the LGBT+ community was that the Supreme Court of India passed a historic judgment legalizing/decriminalizing homosexuality by partially striking down Section 377 of the IPC 1860.

The LGBT community all around the country erupted in the triumphant celebration relishing their victory against the 200-year-old British-era law that criminalized same-sex affiliation. The implication of this whole judgment can be inferred considering the statement made by Justice Indu Malhotra while reading her 50-page verdict that “History owes an apology to the members of LGBT community and their families, for the prolong delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries”.⁴¹

³⁹ Chatterjee, S., & Researcher. (2014). Problems Faced by LGBT People in the Mainstream Society: Some Recommendations. *International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS)*, 1(5), 317–331. https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf

⁴⁰ *Supra* at 22

⁴¹ Rai, D. (2020, June 21). *Evolution of LGBT Rights in India and taking the narrative forward*. IPleaders. <https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>

Though, it took more than seventy years and nearly two decades of the long and tiring struggle to scrape down this old age law. But before continuing to see how the current laws in India, significantly after the striking down of Section 377, are lacking in tying down essential human rights to the LGBT+ people group in India. Let us first follow back the historical backdrop of the LGBT rights development in India, talking about the milestone Judgements and their effect on the LGBT Rights development to have a thorough understanding.

7.1. NAZ Foundation Government vs. NCT of Delhi

The NAZ Foundation Organization is an NGO established in New Delhi that has been functioning on HIV, AIDS, and sexual wellbeing since 1994. The organization filed a writ petition in the Delhi High Court challenging the statutory validity of Section 377 of the Indian Penal Code. They put forward that Section 377 violates the fundamental rights ensured under Articles 14, 15, 19, and article 21 of the Constitution of India. It produced the act in the public interest on the foundations that its work on preventing the spread of HIV AIDS was being hindered. Together the Ministry of Home Affairs and the Ministry of Health and Family Welfare submitted legal views with respect to the writ petition. Ministry of Home Affairs was not in favor of this change whereas the health ministry backed the Naz Foundation.⁴²

However, In 2009 High Court of Delhi held that Section 377 of IPC forced an irrational restraint over two consenting adults involving in sexual intercourse in private. Hence, it stood in direct infringement of their primary fundamental rights protected under Articles 14, 15, 19, and 21 of the Indian Constitution.⁴³

7.2. Suresh Kumar Koushal vs Naz Foundation

The decision of Naz Foundation Government. v. NCT of Delhi was appealed against in the Supreme Court of India in the Suresh Kumar Koushal and another v NAZ Foundation and

⁴² Jha, J. (2019, December 31). *Recent Case Laws on LGBT Rights*. Indianlegalsolution.Com. https://indianlegalsolution.com/recent-case-laws-on-lgbt-rights/#_ftn

⁴³ *Supra* at 24

Others case and it was held that the Delhi High Court was wrong in its conclusions and was also incorrect in reading down the section to permit consensual activities between two consenting homosexual persons. The apex Court held that Section 377 does not violate Articles 14 15 and 21 and that carnal intercourse, as intended and defined by the petitioners to mean unnatural lust should be punished. Justice Singhvi also mentioned that Section 377 is pre-constitutional regulation and if it were violative of any of the rights assured under Part III, then the Parliament would have observed the same and revoked this section long back. Established on this reasoning, he declared the section to be constitutionally effective. He moreover stated that the doctrine of severability and the procedure of reading down a particular law/section streams from the belief of constitutionality and that in the said case the decision of Delhi High Court to read down the section was incorrect for the reason that there is no part of the section that can be severed without affecting the section as a whole. So, the Supreme Court held that Section 377 of the Indian Penal Code does not suffer from any constitutional infirmity and left the topic to the competent legislature to consider the advantages and rightfulness of erasing the Section from the statute book or altering it to allow consensual sexual activity between two homosexual persons in private.⁴⁴

7.3. National Legal Services Authority vs. Union of India⁴⁵

In the National Legal Services Authority v Union of India, the Apex Court had to resolve the question of whether there was a need to identify the hijra and transgender population as a third gender for the reasons of public health, education, employment, reservation, and other welfare schemes. The Supreme Court in its momentous judgment molded the ‘third gender’ status for hijras or transgender. Earlier, the transgender people were required to label themselves as either male or female, but after the judgment, these people can proudly recognize themselves as transgender. Further, the points that made this judgment so specific was that it put down the

⁴⁴ Jha, J. (2019, December 31). *Recent Case Laws on LGBT Rights*. Indianlegalsolution.Com. https://indianlegalsolution.com/recent-case-laws-on-lgbt-rights/#_ftn1

⁴⁵ *National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014*. (2014). Indiankanoon.Org. <https://indiankanoon.org/doc/193543132/>

framework to ensure the transgender people a whole scale of basic human rights which can be surmised as follows:

1. The court apprehended that non-recognition of their identities violated Article 14, 15, 16, and 21 of the Constitution of India.
2. The Supreme Court additionally commended the Government to take into consideration the fellows of “Third Gender” as an economic and social backward group.
3. It was also specified that administration must make appropriate plans for the transgender population in the light of Articles 15(2) and 16(4) to ensure fairness of prospect in education and employment according to the judgment, the third gender would be regarded as other backward classes [OBC] to confer them the benefit of reservation in relation to government jobs and educational institutions.
4. The court also took cognizance that a conflict between one’s birth gender and identity is not essentially a pathological condition. Therefore, instead of adopting a “treatment of the abnormality”, the emphasis should be on “resolving distress over a mismatch”.⁴⁶

7.4. K.S. Puttaswamy v Union of India (2017)

A nine-judge bench of the Supreme Court of India held in unison that the right to privacy was a constitutionally safeguarded right in India, as well as being related to other freedoms guaranteed by the Indian Constitution. The case, brought by retired High Court Judge Puttaswamy, questioned the Government’s proposed scheme for a uniform biometrics-based identity card which would be mandatory for access to government services and benefits. The Administration contended that the Constitution did not confer specific protection for the right to privacy. The Court deduced that privacy is a vital component of fundamental liberty or free will guaranteed under Article 21 which provides that: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This case will prove to be a milestone that will most probably lead to constitutional judgments to an extensive range

⁴⁶ Rai, D. (2020, June 21). *Evolution of LGBT Rights in India and taking the narrative forward*. IPleaders. <https://blog.ipleaders.in/evolution-of-lgbt-rights-in-india-and-taking-the-narrative-forward-living-free-and-equal/>

of Indian statutes, for example, legislation criminalizing same-sex relationships as well as bans on beef and alcohol consumption in many Indian States.⁴⁷

7.5. Sreeja vs. Commissioner of Police Thiruvananthapuram and Others

The petitioner raised an accusation that her 'lesbian companion, Ms. Aruna, aged 24 years (hereinafter referred to as the alleged detente) is under unlawful confinement by her parents, against her free will. The petitioner seeks a writ of Habeas Corpus for commanding the production of the corpus of the alleged detente and to set her at liberty. The alleged detente had informed the petitioner that her parents had admitted her in the Government Mental Hospital at Peroorkada Prima facie there is a case of wrongful confinement however the question is whether she is allowed to lead a life with being in a relationship with the same gender and solemnize a valid marriage. The appellant placed much confidence in the judgment of the Apex Court in *Navtej Singh Johar V. Union of India*.

The court said that it realized that the live-in relationship between the petitioner and the alleged detente within any manner does not insult any provisos of law nor it will turn into a misconduct in any manner. Whereas, if the jurisdiction bestowed on this court is not implemented, it will amount to allowing a violation of the Constitutional right to perpetrate."⁴⁸

7.6. Navtej Singh Johar V. Union of India

The Supreme Court of India in unison held that Section 377 of the Indian Penal Code, 1860, which forbade 'sexual intercourse against the order of nature', was unconstitutional in so far as it criminalized consensual sexual conduct amongst homosexual adults. The petition, put on record by Navtej Singh Johar, opposed Section 377 of the Penal Code on the argument that it infringed the constitutional rights to privacy, freedom of expression, fairness, human self-

⁴⁷ *Puttaswamy v. India*. (n.d.). Global Freedom of Expression. Retrieved August 20, 2020, from <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/#:~:text=A%20nine%2Djudge%20bench%20of>

⁴⁸ *Supra* at 27.

esteem, and shelter from discrimination. The Court rationalized that discrimination on the grounds of sexual orientation was violative of the right to equality, that forbidding consensual sex amongst adults in private was violative of the right to privacy, and that sexual orientation creates an intrinsic part of self-identity and denying the same would be an infringement of their right to life, and that fundamental rights cannot be denied based on the ground that they only concern a very small portion of the population.⁴⁹

CHAPTER 8

Resolution for LGBT Equality

There is no alternate way that can address the issues confronting numerous LGBT people in over the world. However, the following suggestions can be followed to make sure that these people feel equal and respected among others.

- Support the most disregarded of the LGBT community—individuals of color, low-income, young, elderly, and transgender people
- Establish partnerships on cross-issue work that comprises LGBT issues involving low-income and gender discrimination.
- Engage groundwork staff in public education around issues affecting LGBT low-income people and LGBT people of color, especially as they correlate to transgender issues.
- In schools, teacher training programs are crucial positions where LGBT issues and concerns need to be addressed.

⁴⁹ *Navtej Singh Johar v. Union of India*. (n.d.). Global Freedom of Expression. Retrieved August 20, 2020, from <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-unionindia/#:~:text=Case%20Summary%20and%20Outcome&text=The%20petition%2C%20filed%20by%20dancer>

- To alter public outlook media has to take part and play a responsible role by broadcasting on LGBT problems and encouraging a culture of freedom for minorities.
- Authorized funds need to be generated that can take on Public Interest Litigation on LGBT issues.
- Training needs to be organized for health professionals to increase their understanding of LGBT identity as a possible risk factor for self-harm suicidal behavior and depression.
- Relevant authorities should guarantee that physical, mental health and social care services are provided in such a manner that is within reach and appropriate to LGBT people.⁵⁰

Same-sex marriage and adoption, are issues that need to be legalized to initiate any sort of human equality to take place. Marriage is a relationship between two individuals, not just a man and a woman. The resistance to same-sex marriage is one of the main obstacles the LGBT community faces. If marriage was permissible to every person, the progress in the direction of human equality would be much easier. Not only this but the undermentioned are also the reasons why the LGBT community should not be denied marriage rights:

- Forbidding them is a violation of religious freedom (civil and religious marriages are two separate institutions).
- Conjugal benefits (such as joint ownership, medical decision-making capacity) should be available to all.
- Homosexuality is a recognized lifestyle today with evidence strongly supporting biological interconnection.
- Rejecting these marriages is a form of minority discrimination.
- The amount of adoptions will surge since gay couples cannot pro-create.

⁵⁰ Chatterjee, S., & Researcher. (2014). Problems Faced by LGBT People in the Mainstream Society: Some Recommendations. *International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS)*, 1(5), 317–331. https://www.ijims.com/uploads/cae8049d138e24ed7f5azppd_597.pdf

- It inspires the public to have deep-seated family ideals and give up high-risk sexual lifestyles.
- The same financial welfares that apply to man-woman marriages will apply to same-sex marriages.
- LGBT marriages should not even affect straight marriages. If one is not gay, then there is no insinuation with them and the LGBT community.⁵¹

CHAPTER 9

Conclusion

In the end, it is important to note that merely working towards decriminalization of same-sex acts is not sufficient but it is also essential to seek legal acknowledgment for same-sex marriage and inspect several options that could be followed to achieve such legal recognition so that the LGBT community also has equal rights and opportunities just as every other person.

Open conversation issues identified with sex and sexual conduct or nature in India are still off-limits and offensive. In the given societal restrictions, same-sex marriage in India is amongst one of the utmost troublesome issues. Despite the reality of the situation that section 377 has been decriminalized, even today no law in our country legitimately perceives a marriage between people of the same sex. Laws in India are yet to perceive a similar arrangement of rights and duties regarding wedded gay couples that they accomplish for heterosexual wedded couples.

Rejection of the preference of marriage to same-sex couples supports unfairness and bias by giving them different treatment and laws. In a nation that treats marriage with such spiritual importance, the most appropriate development would be the legalization of same-sex marriages under the law.

⁵¹ *Solutions - LGBT Rights.* (n.d.). Sites.Google.Com. Retrieved August 20, 2020, from <https://sites.google.com/site/lgbtrightsx/solutions>