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THE RAINBOW HORIZON- THE CURRENT STATE & FUTURE OF SAME SEX MARRIAGE RIGHTS ACROSS INDIA & ASIA

-MAHIMA SINGH

ABSTRACT

This paper provides a comprehensive socio-legal analysis of same-sex marriage rights across Asia, with a primary analytical focus on India's evolving constitutional jurisprudence. The text evaluates the shifting paradigm of marriage equality from absolute exclusion toward incremental human rights recognition. In doing so, it examines the stark tension between progressive judicial integration and conservative legislative preservation. Drawing upon precedents like Navtej Singh Johar (2018), the paper advocates for constitutional interpretation supporting marriage equality, emphasizing its role in social justice, democratic ideals, and economic inclusivity. It concludes by recommending legislative reforms, such as amending the Special Marriage Act, 1954, to secure equal rights.

INTRODUCTION

Securing the right to marry is not just a legal milestone, but a foundational pillar for building an inclusive, dignified, and gender-equal Asia. Sexual attraction and interpersonal affections are universal human experience that transcends gender dynamics, manifesting between individuals of the same or different sexes. Global jurisdictions have progressively evolved their legal frameworks to recognize sexual orientation based on mutual consent and emotional bond, independent of gender.

Contemporary jurisprudence increasingly recognizes marriage equality as a fundamental extension of personal autonomy, dignity, and the statutory protection of consenting adult relationships. **India**, stands at a critical crossroads where judicial caution contends with growing grassroots activism, while nations like **Taiwan, Thailand, and Nepal** have emerged as historic pioneers by legally recognizing same-sex unions, others.

SAME SEX MARRIAGE RIGHTS IN ASIA

Following decades of legal recognition in European nations began with Denmark recognizing same-sex unions as early as 1989; the 1st three Asian countries to legalize marriage equality were Taiwan (2019), Nepal (2023), and Thailand (2025).¹ The law gave same-sex couples the vital legal, tax, insurance, inheritance and healthcare benefits same as heterosexual couples. The highly fragmented global landscape of family law is defined by a stark conflict between progressive jurisdictions expanding marriage equality and conservative nations legally preserving traditional family structures.

Driven by shifting youth demographics and the economic imperative to attract foreign talent and tourism, this legislative momentum exert significant cross-border judicial pressure on neighboring democracies. Consequently, this dynamic accelerates the legal and ideological polarization between modernizing states and sovereign regimes that enforce strict, religiously grounded matrimonial restrictions².

¹ https://en.wikipedia.org/wiki/Recognition_of_same-sex_unions_in_Asia

² <https://youtu.be/ZFddWePFn-g>

Successful implementations demonstrate that legal recognition fosters social cohesion and economic vibrancy without destabilizing cultural identities. As more jurisdictions engage in constitutional grappling evaluation, Asia is poised to transition from absolute exclusion toward localized, incremental human rights progress. Socio-legal Impact on People/ Society:

- **Dignity & Equality:** Legal validation replaces state-sanctioned stigma with equal citizenship and belonging.
- **Mental Health:** Legal recognition significantly reduces anxiety, depression, and suicide rates by creating Compliant and non-discriminatory environments among LGBTQ+
- **Social Cohesion:** Legally visible families shift cultural attitudes, eroding biases and reducing public prejudice.



SAME SEX MARRIAGE RIGHTS IN INDIA

The primary fuel for legal battles was the promise of "equality before the law" written into modern Asian constitutions and the debate over Homosexual marriage in India ethos represents a critical intersection of human rights, constitutional law, and deep-rooted historically socio- cultural tradition of sacred sacrament marriages intended only between a biological man and a woman. Though India has made progressive strides toward LGBTQIA+ internalization over the last decade, the legal recognition of marriage remains one of the most fiercely contested issues in the country's modern legal history.

Section 377 of the IPC, which historically criminalized consensual homosexual acts, underwent a transformative constitutional evolution across 6 landmark judgments. The progressive standard established in *Naz Foundation (2009³)* (Delhi HC) was briefly overturned by *Suresh Kumar Koushal (2013⁴)* (SC), which re-criminalized homosexuality. However, the legal landscape shifted permanently with *NALSA (2014⁵)*, which recognized gender identity (Third Gender) as intrinsic to dignity, and *Justice K.S. Puttaswamy (2017⁶)*, which elevated **sexual orientation** to a protected facet of the fundamental **right to privacy** under Article 21. Utilizing these pillars, the Apex Court in *Navtej Singh Johar (2018⁷)* decisively **decriminalized consensual homosexual acts**, rendering Section 377 unconstitutional to that extent. Currently, the binding precedent is governed by *Supriyo @ Supriya Chakraborty (2023⁸)*, while the Court firmly protected queer couples from state discrimination and upheld their right to cohabit, it ruled by majority that there is **no fundamental right to marry** under the Indian Constitution.

While the decriminalization of homosexuality did not automatically confer civil rights, same-sex couples still face severe administrative hurdles and social stigma. India's journey toward LGBTQIA+ equality is a work-in-progress, the Supreme Court acknowledged this discrimination but exercised judicial restraint, leaving the legal recognition of marriage equality entirely to Parliament.

³ <https://indiankanoon.org/doc/100472805/>

⁴ <https://globalfreedomofexpression.columbia.edu/cases/koushal-v-naz-foundation/>

⁵ <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

⁶ <https://www.livelaw.in/articles/beyond-marriage-same-sex-gap-supreme-court-new-section498a-test->

⁷ <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/>

⁸ <https://www.scoobserver.in/cases/plea-for-marriage-equality/>

STATUTE CODE MARRIAGE MAP OF INDIA

No.	Law	Homosexual Marriage Permitted..??	Constituent
1.	Special Marriage Act 1954 (Inter-Caste / Inter-Religion)	No: Only Male & Female	Section 4(c)
2.	Foreign Marriage Act 1969 (Abroad – Indian)	No: Only Bridegroom & Bride	Section 4(c)
3.	Hindu Marriage Act 1955 (Hindu's, Sikh's, Buddhist's, Jain's)	No: Only Bridegroom & Bride	Section 5 (3)
4.	Muslim (Shariat) Personal Law 1937 (Muslim's)	No: Only Man & Women (Mulla's Principles of Mahomedan Law)	Un-codified Shia / Sunni Islamic Tradition's
5.	Christian Marriage Act 1872	No: Only Man & Women	Section 60 (1)
6.	Parsi Marriage Act 1936	No: Only Male & Female	Section 3 (1) (c)

CONCLUSION

Exploring the evolving legal, socio-economic and political landscape of matrimonial frameworks for the LGBTQIA+ community in the world's most populous region ultimately demands to focus on the **future trajectory of legislative reforms, strategic litigation, and societal shifts** to bridge the gap between pivotal decriminalization and true marriage equality. Opponents argue that altering the statutory definition of marriage would trigger a **complex legal ripple effect**, disrupting gender-coded personal laws across frameworks governing divorce, alimony, maintenance, domestic violence, and adoption (CARA guidelines).

"When you put love out in the world it travels, and it can touch people and reach people in ways that we never even expected."⁹

— LAVERNE COX, *Actress & Advocate*

True equality cannot be achieved by merely decriminalizing existence; it requires the active granting of civil rights. For India to evolve into a genuinely inclusive democracy, the Parliament must eventually address this gap. By legally embracing the universal right to love, society transforms constitutional democratic progress promises into an inclusive reality of ***Equality into Law & Equal Dignity for All***.

⁹ <https://www.today.com/life/quotes/lgbtq-quotes-rcna29630>