

A JURISPRUDENTIAL ANALYSIS ON THE RIGHT TO MARRY OF SAME-SEX COUPLE

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ABSTRACT

Marriage refers to an individual's right to enter into a legally and spiritually recognized relationship with another person. In common parlance, right is same as the freedoms one gets. However, in the context of law and jurisprudence, Rights and Freedom are two completely different concepts. Through this paper, it would be brought forth whether the Right to Marry is a Right or a Freedom, and a jurisprudential outlook on the marriage in the context of same-sex couples. This paper has been written by relying on mostly doctrinal sources of information, and aims to decode the school of thought behind the legal recognition of marriage as an institution, while at the same time delving into the issue of same-sex marriage. The end result of this paper is to offer the readers an insight into marriage and a view of homosexual couples on this institution of the society.

Keywords: Right; Freedom; Jurisprudence; Marriage; Same-sex couple.

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Introduction

Contemporary legal developments have seen many new concepts being discussed in the Indian society. Transgender rights and same- sex marriage are amongst those concepts. However, while the former has been recognized by the various High Courts and the Supreme Court of India, the latter is an idea that is still despised by various sections of the society. Mainly due to societal bias and the skepticism of the lawmakers, this concept still doesn't enjoy the stance that it should have.

The Universal Declaration of Human Rights, 1948 (hereinafter UDHR 1948), is one of the foremost documents dealing with the rights of human beings in the international arena. Among other rights contained in this text, it is notable that article 16 of the UDHR 1948 talks of marriage and family.¹ This article has been very carefully drafted to depict its gender neutral stance on views of marriage, by using the word '*spouse*' in place of '*wife*'. This clearly displays that back in 1948 also, there did exist the concept of homosexual couples and marriages, although not expressly spoken, but impliedly protected. Therefore, the concept of same-sex marriages has been thought about in history as well.

The Constitution of India, the lengthiest constitution in the world, talks about various fundamental rights of the citizens of India, under Part III, that the government is obligated to provide. Within this, we have articles like article 14, talking about the Right to Equality, Article 15 talking about the Right to not be discriminated against, Article 19(1)(a) talking about the Right to freedom of speech and expression, and Article 21 talking about the right to life and liberty.² While all these rights, in writing, do look like a powerful force against injustice, yet, these rights have failed the hopes of the same-sex couples to get marriage rights.

¹Universal Declaration of Human Rights 1948,
https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf.

² INDIA CONST., art 14; INDIA CONST., art 15; INDIA CONST., art 19 cl. (1)(a); INDIA CONST., art 21.

Apart from this law, there exists the Protection of Human Rights Act 1993, which states that “human rights” means “*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.*”³ Hence, even under Indian laws, human rights does include that a person have liberty, liberty of thought, liberty of expression, liberty of faith and finally, liberty to marry anyone of their choice consensually.

Time and again, the judiciary as well as the government has refused to give in to such preposterous demands, killing all the shine in the eyes of these couples. Another important issue being that due to lack of knowledge amongst people of the country, people often confuse between right and freedom. Marriage, in many instances, has been held as a right. However, from a legal and jurisprudential point of view, marriage is a not a right, as will be proved further in this paper.

Legal History of Same-Sex Marriage

India has had an interesting history when it comes to same sex marriages. The Indian Penal Code, that was passed by the Imperial Parliament back in 1860, had specifically included section 377 in the legal texts, so as to prevent any form of intercourse, that was, *against the order of nature*. In one of the earliest judgments of the Court on this topic, the Court held that:

“section 377 IPC punishes certain persons who have carnal intercourse against the order of nature with inter alia human beings.... [if the oral sex committed in this case is carnal intercourse], it is clearly against the order of nature, because the natural object of carnal intercourse is that there should be the possibility of conception of human beings, which in the case of coitus per os is impossible.”- Kennedy A.J.C. , Khanu v. Emperor⁴

Hence, sexual intercourse between people of the same gender was considered a taboo then. This clearly depicts their vehemence for even thinking of marriage between same-sex couples. This prevented the lawmakers then to engage in such discussions. Consequently, at that time, the dominant culture in the legislature as well as judiciary was the British, who had even prevented

³ The Protection of Human Rights Act 1993, s. 2, cl. 1(d), No. 10, Acts of Parliament, 1994 (INDIA).

⁴ Khanu v. Emperor, AIR 1925 Sind 286 (British India).

such forms of relationships in their own country. A part of this reasoning was their highly religious views that prevented them from allowing such relations.

Following the same reasoning, the judgment in *Naz Foundation v. Govt. of NCT of Delhi and Ors.*, wherein it was held that ban on consensual sexual activities among adults in section 377 is violative of articles 14, 15 and 21, was reversed in another case, wherein the validity of the section was held, and declared that section 377 was not ultra vires to the Constitution.⁵

It was only in the subsequent case of *Navtej Singh Johar v. Union of India* that section 377 was held to be unconstitutional, violating articles 14, 15, and 21.

“Thus analysed, Section 377 IPC, so far as it penalises any consensual sexual activity between two adults, be it homosexuals (man and a man), heterosexuals (man and a woman) and lesbians (woman and a woman), cannot be regarded as constitutional.”-
Dipak Mishra, CJI⁶

This judgment brought about a huge breakthrough in light of gay and lesbian relations, however, the question still left to probe is whether this judgment held them in legitimizing their claims for legalizing marriage.

The Right to Marry: A Right or a Freedom

Salmond has defined Right as- *“A right is an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard of which is a wrong.”* Therefore, applying this definition on the Right to Marry, there should be an opposite duty to this right and there should also be a wrong (legal injury) if this right is not followed. Now, in the Right to Marry, if duty is said to be a couple’s right against the entire world to let them stay peacefully married, then why aren’t same-sex couple allowed to marry? Salmond, in his book, says- *“We have seen that the law consists of the principles in accordance with which justice is administered by the state, and that the administration of justice consists in the use of the physical force of the state in enforcing rights and punishing the violation of them.”* Therefore, if Marriage is a right, then shouldn’t the state punish those who are against this right of same-sex couple?

⁵ Suresh Kumar Koushal and Anr. v. Naz Foundation and Ors., (2013) 4 SCC (Cri) 1.

⁶ Navtej Singh Johar and Ors. v. Union of India, (2019) 1 SCC (Cri) 1.

Another outlook can be that if wrong is said to be an act done to disturb/interfere in their marital life, then isn't the same also available to a same sex couple? In *X v Z Hospital case*, the Court had said that the Right to marry cannot be given to a person suffering from a venereal disease⁷. However, is marriage really a right?

The Hindu Marriage Act 1955, section 5 starts as-“*A marriage may be solemnized between any two Hindus...*”⁸. The Parsi Marriage Act 1936, section 2(6) states that- “*marriage*” means a marriage between Parsis whether contracted before or after the commencement of this Act”⁹. The Christian Marriage Act 1872, section 4 states-“*Every marriage between persons, one or both of whom is or are a Christian, or Christians, shall be solemnized in accordance with the provisions of the next following section...*”¹⁰. Even the Special Marriage Act hasn't explicitly spoken about the requirement of both a male and female. Therefore, all these personal/marriage laws are gender neutral, that do not mention that marriage requires both male and a female. Also, they do not mention that marriage is compulsory. They have been made with the intent that if a couple wants to marry, then they have to abide by the rules given in the statutes. It does not in any way penalize the non-performance of a marriage. Therefore, the ‘Right to Marry’ is actually not a Right. It can be called as a Privilege or Freedom granted to a person.

Marriage as a Privilege

Hohfeld has defined a Right as “*An enforceable claim to performance, action or forbearance by another*”. A Privilege, as per him, is the liberty to conduct themselves as a person pleases, without any penalty for disobedience and not for the benefit of anyone except that person. Therefore, Marriage clearly fits into the category of Privilege, since the State cannot be approached or held liable if a person is not able to marry someone else.

Now, applying the above-mentioned concepts to Marriage, if Marriage is actually a privilege, then why aren't same-sex couple allowed the same? In a recent Delhi High Court case, the Centre strongly objected to legalizing the same, stating that it was against the established reasons

⁷ Mr. X v Hospital Z, AIR 1999 SC 495.

⁸ The Hindu Marriage Act 1955, s. 5, No. 25, Acts of Parliament, 1955 (India).

⁹ The Parsi Marriage Act, 1936, s. 2 cl.6, No. 3, Acts of British Parliament, 1936 (British India).

¹⁰ The Christian Marriage Act 1872, s. 4, No. 15, Acts of Imperative Legislative Council, 1872 (British India).

and customs of law¹¹. It had also said in its reply that marriage is a term associated with heterosexual couple. It has also been noted that such couples are rejected certain basic rights like owning a house, opening a bank account, and having a family life insurance. Same-sex couple, akin to a normal couple, do have the Privilege to marry the person of their choice. As mentioned before, since all the marriage laws in India are gender neutral, hence a human being has the freedom or privilege to marry another human being.

Implementation of the New Outlook

All that glitters is not gold. Similarly, this new idea of a marriage being a privilege and same – sex marriage being read in the same parlance cannot change the society. It is a far-fetched concept, which although looks good on paper, but the reality is far from this. The framework for such a concept has to be meticulously laid in order to implement it. Such a framework should first start with differentiating marriage from the society. Marriage, as explained before, is a privilege granted to people, which they may either choose to exercise or not. However, in the Indian society, marriage is seen as something that a person is obligated to do or have at the right time, since their birth. Secondly, the concept of marriage should exclude the sexuality or gender of a person from its ambit.

Marriage as Being an Exclusive Concept in the Context of Society

Marriage has always been viewed as a part of the society. Society is nothing but a group of people coming together to live collectively over an area. There have been theories of various jurists like Rousseau, Hobbes, Locke and Aristotle for the establishment of a societal order, further leading to the formation of various laws, but in all cases, it has been held that the society formed was majorly responsible for the laws made, and for governing the conduct of the people through it. Hence, it is not surprising that marriage as a concept has always been closely related to society.

¹¹ Kanav N. Sahgal, *Same –sex marriage in India: why are Indian Courts taking so long?*, THE LEAFLET (30th March, 2022, accessed on 20th June, 2022), <https://theleaflet.in/same-sex-marriage-in-india-why-are-indian-courts-taking-so-long/>.

A person who is living in a society is considered to be married off at some point of time in their life. The main rationale behind the formation of such a stigma is procreation. Since time immemorial, the Indian society has been driven by the need to have children for carrying out their family names. The most famous institution that emerged out of this concept was the *Institution of Sonship*, wherein people in the Indian society wanted a son. This institution, although weakened, still holds true for some parts of India, wherein couples are forced to have children until a son is born. Hence, marriage has been viewed as a way to carry on the task of procreation.

People are pressurized to get married in today's time in order to have children. Although alternative methods of having a child is also available in the advanced 21st century society that currently pervades India, yet, marriage is seen as an easy option to get a child. This significantly affects the society, wherein the child born may have come on earth more for the society than for his/her parents. The child also goes on to possess a similar mindset, and this vicious cycle of societal brainwash continues, having adverse consequences on the familial institutions, that may consist of conflicts and disputes, as well as lack of economical, mental, emotional, and psychological support given to a child. Studies have also shown that maximum percentage of cases of *children in conflict with law* (CICL), about 42.5 per cent, comes from children who belong to economically weaker sections, or those who haven't been counseled properly in their tender years¹².

When such children become adults, they still lack the basic qualities of understanding the gravity of this situation, and end up committing the same mistake of forced marriage as their parents. This is more profound in cases of the weaker sections of the society, who go by the concept of *more people, more earnings*, rather than following *more people, more mouths to feed*. Such households pave the way for their children to be involved in such forms of organized and unorganized crimes, thereby darkening their scope of a brighter future.

¹² Anonymous, *Children in Conflict with Law*, VIKASPEDIA (accessed on 20th June, 2022), <https://vikaspedia.in/social-welfare/women-and-child-development/child-development-1/children-in-conflict-with-law>.

Another reason that the society gives for marriage being done by anyone is loneliness. It is natural that a human being has to become old and infirm at some point in life. These characteristics are also followed by societal withdrawal due to their non-supportive physical condition. It is herein that the society steps in and says that marriage is important as it ensures that a person has a support in the form of his/her spouse for the rest of their lives. Here again, the person's personal opinion is not taken into consideration, rather, it is the society's expressions that's more important. And for this, the most effective mechanism in the eyes of society is marriage.

The incompatibility between couples due to forced marriages, leads to divorce, which is on a rise in India, and has increased to 10 per 1000 families, as against the 7.40 per 1000 families a decade ago¹³. Although, this rate is still less compared to developed countries like the USA, Sweden, etc., but it is on a rise is what is worrisome. This is mainly because of the anachronous attitude of the people that points out towards marriage being a solution of majority of the problems in the society which is not true.

These two reason act as deterrents for the society to even consider same-sex couple as being a viable option for marriage. It completely defeats the first reason, that is, the want of a child, as children cannot be born (naturally) out of such marriages or unions, without even considering the alternatives available. Secondly, as marriage is viewed as a source of reducing loneliness, hence, the relationship between same-sex couple is stereotyped in India. It is because of these reasons, that same-sex marriage was a completely rules out concept in India until the 2000s.

Exclusion of Sexuality with respect to Marriage

Marriage, as mentioned before, is seen as a union of a male and a female, rather than being seen a union of two souls in India. Therefore, gender plays an important role in marriage here. The stigma attached to the various gender roles is something that will take time to be completely removed from the Indian society. Here, it is said that a women needs a man to protect herself,

¹³ Anonymous, *Divorce Rate in India*, ADVOCATE KHOJ, (accessed on 21st June, 2022) <https://www.advocatekhaj.com/library/lawareas/divorceinindia/9.php?Title=Divorce%20rate%20in%20India>.

who is her husband. Therefore, a husband is wiser and stronger, while women are made to be kind and maintain peace. A man is supposed to earn for the house, while a woman is supposed to look after the house. Although certain notions like working outside house, women becoming stronger through self-defense, etc. has been shattered with time, however, it is unmissable to not note the role they play in forming society's opinions even today.

However, the same-sex marriage beliefs completely ruin this perfect fantasy by placing homogenous people together. A man is supposed to be both the earner as well as the caretaker of the household, or a woman is supposed to protect both herself and her wife from outsiders. Hence, this newfound credence destroys society's image of the gender roles, indirectly attacking the gender bias that prevails in the Indian society even today. It leads to lowering the self-esteem of people, both women and men, who then blindly start following the roles earmarked for them by the society. As a result, people are forced to tune themselves to the roles for them. This leads to a lot of psychological trauma for the victims of such exercises.

A survey conducted back in 2021 to know the view of Indians with respect to same-sex marriages¹⁴. Depicts that only 24 per cent of the Indians agree that India should allow for same-sex marriage. About 62 per cent of them (majority) agree that same-sex marriage is a disaster, and the concept is not worth a mention. The remaining 14 per cent could not decide.

Another report shows that 3% of the Indian Population identify as homosexual (Including Gay and Lesbian), 9% identify as bisexual, 1% identify as pansexual and 2% identify as asexual. Totally, 17% identify as not heterosexual (excluding 'do not know', and 'prefer not to answer'). In contrast, a developed country like the USA has about 6.4 per cent of individuals who have identified themselves as homosexuals¹⁵. Therefore, the Indian society still needs to combat numerous problems to reach a stage wherein a person feels comfortable with sharing his/her sexuality without the fear of being ostracized from the society.

¹⁴ The information has been taken from a survey conducted by India Today to know the opinion of Indian people on homogenous marriages. It can be found:

Anonymous, *Where is the love*, INDIA TODAY (25th January 2019, assessed on 4th February 2019) <https://www.indiatoday.in/magazine/web-exclusive/story/20190204-motn-same-sex-marriage-lgbt-rights-section-377-india-1439545-2019-01-25>.

¹⁵ Charlotte J. Patterson (Editor); Anthony R. D'Augelli (Editor) (2012). *Handbook of Psychology and Sexual Orientation*. Oxford University Press. p. 71. ISBN 978-0199765218.

This also hampers same-sex marriages, wherein, due to fear factor, people keep their passion within themselves and get guided by the informal rules of the society. This later on creates havoc in their marital life, and destroys the inner peace of the persons involved, leading to severe mental problems which in turn deteriorate the health of the person. Hence, it is imperative to remove the stigma attached to gender roles, and see a person as an individual, possessing his/her own personality, likes and dislikes, etc., without attaching gender norms to them. Only then can there be change in the perspective of people towards same-sex marriage.

Based on whatever has been discussed above, same-sex marriages face backlash mainly because of the expectation of people with respect to marriages and gender roles. While having a closer look on these two points, it can be inferred that the problems underlying these two institutions need to be dealt with delicately in order to avoid an uproar in the society as these matters are closely related to the faith and beliefs of people.

Effect of Decriminalization of Section 377

While the courts in India have been successful in decriminalizing homosexuality under section 377 of the Indian Penal Code 1860, but there's still a lot more to do¹⁶. The Supreme Court in this famous judgment has held a person's right to his body by allowing homosexual people to exercise their liberties within the constraints of their household, provided it is done consensually¹⁷. Such a milestone should be applauded, wherein, it allowed certain individuals to break through their shackles and live their life without fearing the society's reaction. However, this decision was not reached immediately by the court. In *Suresh Kumar Koushal and Another v. Naz Foundation and Others*, the validity of section 377 was upheld. In this particular case, wherein, the court was approached on grounds of violation of Articles 14, 15 and 21, the court's present stance on the issue of same-sex marriage is still unassertive. The court hasn't commented on this issue till now. The Delhi High Court has seen cases piling up in favour of such marriages, but there has been no proper conclusion. Long back in 2011, when same-sex marriage was as a concept still under development, a Haryana Court approved of a lesbian marriage, which later on

¹⁶ Navtej Singh Johar v. Union of India, AIR 2018 INSC 746.

¹⁷ Anonymous, *Section 377 verdict: Here are the Highlights*, THE INDIAN EXPRESS [8th September, 2018], <https://indianexpress.com/article/india/section-377-supreme-court-verdict-gay-lgbtq-5343225/>.

got accepted by the society¹⁸. No doubt that the couple had to face their own share of hardships, however, they triumphed in the end.

Seeing their love story, many other couples also aspired to have such an ending, but sadly they didn't. The decriminalization of section 377 gave hopes to people for a legislation to come in this regard, but even after 5 years of passing of the judgment on *Navtej Singh case*, there seems no sign of any law for this. However, certain unofficially official marriages have taken up under the guise of striking down of section 377. This has been done mainly for the mental satisfaction of a person, and to give such couples an experience of marriage. The example of Supriyo Chakraborty and Abhay Dang's gay marriage is one of those¹⁹.

Recently, in an interview conducted of a gay couple by one of the legal news reporters has shed some light upon their lifestyle, and the difficulties and challenges faced by them in their day-to-day lives.²⁰ The couple, Sonu and Nikesh, got married back in 2018, after the Navtej Singh Case verdict was declared. Anticipating some friendly results, the couple did not expect the people around to question the legality of their relation, which is when it dawned upon them that they are still not legally married. Furthermore, they were gloomy to find that the insurance claims and bank documents still required a legally marriage for nominee, while they were nothing but a couple in a relationship in the eyes of law. Saddened by the chain of events, they filed a case in the Kerala High Court, which has now been taken over by the Supreme Court. Their life story just offers an insight into the everyday difficulties faced by such couples.

However, at the end of the day, the glaring thought that pervades their thought is that *such marriages do not have any legal sanctity*. Moreover, if the present laws in India are carefully perused, like the Indian Penal Code (IPC), then it can be seen that such laws have already accepted, or rather, assumed, that marriage can only take place between man and a woman.

¹⁸ Dipak Kumar Dash & Sanjay Yadav, *In a first, Gurgaon Court recognizes lesbian marriage*, THE TIMES OF INDIA (29th July, 2011), <https://timesofindia.indiatimes.com/city/gurgaon/In-a-first-Gurgaon-court-recognizes-lesbian-marriage/articleshow/9401421.cms>.

¹⁹ Sushmita Pathak, *To society, they're married. To Indian courts, they're roommates*, THE CHRISTIAN SCIENCE MONITOR (14th March, 2022), <https://www.csmonitor.com/World/Asia-South-Central/2022/0314/To-society-they-re-married.-To-India-s-courts-they-re-roommates>.

²⁰ Rintu mariam Biju, *Legalising Same-Sex Marriages: Interview of Kerala's First 'Married' Gay Couple*, LIVELAW (Jan. 10, 2022), <https://www.livelaw.in/interviews/legalising-same-sex-marriages-interview-of-keralas-first-married-gay-couple-218517?infinite-scroll=1>.

Section 27 of the IPC talks about ‘Property in possession of wife, clerk or servant’²¹. Note that the word ‘wife’ has been used, and not ‘spouse’, clearly indicating the nature of marriage that this law applies to. There are many other such instances also. The laws on domestic violence are also gender bias, and not gender neutral, favouring women more. For the State to introduce a concept like same-sex marriage, the first step should be to neutralize all laws and make them inclusive of all communities so that they do not discriminate people on the basis of gender, and the outreach of justice is increased to reach one and all.

Stance of Same-Sex Marriage in Other Countries

Same-sex marriage has always been an extremely controversial issue to speak on. Many people consider it as something that is against their faith, and look down on the people indulging in such activities. They face prejudice, and are often shunned from various posts based on their sexuality. The government, or the courts, by legally recognizing same-sex marriages, will be expanding on the ideal of liberty of a person mentioned in Article 21 of the Constitution of India²². However, this struggle is not unknown to the homosexual community, who have faced similar struggles elsewhere in the world as well. In *B.B. v. United Kingdom (2004)*, the homosexual community was able to get the same rights as heterosexuals after this case²³. In 2008 *Constitutional Court of Columbia, Sentence C-336 de 2008*, dealing with pension rights, the Court held that same-sex couples must also be beneficiaries of such civil and economic rights²⁴. Even in the case of *1999 Constitutional Court of South Africa- National Coalition for Gay and Lesbian Equality and others. v. Ministry of Home Affairs and others*, protected the status of same-sex couples, and asked the government to amend the prevailing laws, which in a way granted legal recognition to the same-sex marriage²⁵. The USA legalized same sex marriage across all its 50 states in 2015 by a verdict in the case of *Obergefell v. Hodges*²⁶. Therefore, there are countries in the world that recognise this institution. However, India is still waiting for such a

²¹ Indian Penal Code, 1860, s. 27, No. 45, Imperial Legislative Council (British India).

²² INDIA CONST., art. 21.

²³ *B.B. v United Kingdom*, Application No. 53760/00 (2004).

²⁴ Anonymous, *Important International Jurisprudence concerning LGBTQ Rights*, HRW (25th May, 2009), <https://www.hrw.org/news/2009/05/25/important-international-jurisprudence-concerning-lgbt-rights?search=>.

²⁵ *Id.*

²⁶ *Obergefell v. Hodges*, 576 U.S. 644 (the U.S.A.2015).

revolution. Same-sex couple, akin to a normal couple, should be given the privilege to marry the person of their choice, irrespective of the gender of the person.

In fact, there are many countries in the world that have already granted this right to its citizens. The Netherlands was one of the first countries of the world to pass a law legitimizing same-sex marriage back in 2000.²⁷ As of 2023, marriage between same-sex couples is legally performed and recognized in 33 countries, constituting some 1.35 billion people (17% of the world's population), with the most recent being Mexico.²⁸ Andorra is another country that will soon give marriage rights to same-sex couples with effect from February, 2023. Hence, legal recognition to same-sex marriages has now been internationally recognized, and hailed as a way of providing means to such couples to live life in their own terms, while adhering to the law and order.

Conclusion

Marriage is a Privilege that an individual has, and he/she cannot be penalized for enjoying a privilege is what Hohfeld said. However, in contemporary India, marriage of same-sex couples is strongly opposed and is not allowed to be registered. In such a situation, Hohfeld's idea of privilege fails and marriage then again turns into one of the many rights that citizens are depended on the State to give. The pros and cons of such a thought have already been discussed in the paper above. And so have the reasons for India not being able to implement such outlooks. Moreover, seeing the examples of the different countries across the globe, India should also try to make marriage a privilege in its actual sense by removing the restrictions on registration as it is for the enjoyment of everyone who wants to indulge in this activity. This would also ensure that such couples get the benefits of a married life provided by other entities like banks.

The laws of same-sex marriages will not just help in empowering this community, but it will also help in removing the stigma of gender roles, and promoting individuality of a person as mentioned before. This will also help India in moving towards a gender neutral society, thereby also accomplishing the goal of becoming an egalitarian society soon. Sadly, for India to reach such a stage, it will first have to start with providing the basic marriage rights to every married

²⁷ Caroline Winter, In 14 Years, Same-Sex Marriage Has Spread Around the World, BLOOMBERG (Dec. 4, 2014), <https://www.bloomberg.com/news/articles/2014-12-04/gay-marriage-same-sex-partners-can-wed-in-many-countries>.

²⁸ WORLD POPULATION REVIEW, <https://worldpopulationreview.com/state-rankings/same-sex-marriage-states>.

couple (homosexual). The Indian culture will, apart from the legal changes, also have to induce changes within its family system, for including such couples, as well as granting adoption rights, divorce rights, maintenance rights, and other marital rights generally associated with heterosexual married couples.

However, as has been discussed before, the path before India for reaching that position is lengthy, filled with all kinds of toils and turmoil. Furthermore, such laws will presently require not just amendments in the present laws of the land, but also a change in the perspective of people. People of India will have to move from their ultra-conservative and illiberal to an indulgent outlook so as to accept these changes. Only then can there be any scope for improvement. And this can be done by increasing the literacy levels of the people, and making them more aware of their surroundings, their acts, its consequences, and also by establishing a speedy system of grievance redressal. An efficient system of counseling can also play an important role. These mechanisms will ensure that the society is able to see things in new perspective, instead of acting on their age-old beliefs, and bring some revolution.