



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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A CRITICAL ANALYSIS OF LAW AND MORALITY **REGARDING SAME-SEX MARRIAGES IN** **CONTEMPORARY INDIA**

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ABSTRACT

The concepts of privacy, individual liberty, and constitutional morality have recently taken on a new vocabulary for the Supreme Court of India. The culmination of this is the recognition of several hitherto unrecognized rights, such as the right to privacy and the freedom to marry whoever one desires. A thorough explanation of the right to intimate connections. The paper asserts that all the necessary legal conditions for marriage equality have already been met. These conditions include the equal recognition of same-sex marriage and traditional opposite-sex marriage. Limiting marriage to a “one man, one woman” arrangement is discriminatory against women, according to the article. This is in violation of Articles 14 and 15. This study examines the relationship between law and morality, as well as the extent of their interconnection. The advent of natural law concepts has intrigued legal thinkers over the relationship between morality and law. From their perspective, conservative morality regulates the legal system and hinders its ability to promote an open vision. This study will examine the formal similarities between morality and law. Furthermore, analytic jurisprudence scholars have recently focused on the potential of a rule to illuminate the concept of law itself.

Keywords: *Right to Life, Right to equality, Natural Law, Same Sex Marriages, Law and Morality.*

Introduction:

“Morality” denotes a collection of regulative standards designed to foster decent and deter evil within both distinct and societal contexts, whereas “law” signifies a formal enactment established by the state, supported by mechanisms of physical enforcement. Upon the violation of these statutes, the judiciary enforces sanctions that are intended to reflect the principles of

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state policy. The capacity of the government to fulfil its responsibilities to the populace is underpinned by “the rule of law”, which functions as a mediator among conflicting “political, social, and economic interests.”¹ The legal method serves as a manifestation of the societal and psychological needs inherent within a community. Legal and moral systems serve as normative frameworks that regulate and guide behaviour within human communities, aiming to promote peaceful and productive interactions among individuals who uphold each other’s intrinsic dignity and rights. Both concepts are rooted in the fundamental principle of individual dignity and the autonomy to exercise personal decision-making.²

There has been an infinite amount of rhetoric around the connection between law and morality over the entire history of philosophy, intellectualism, jurisprudence, judicial thought, and social science. Many modern jurists have sought to establish a chain of legal reasoning that begins with Confucius, Manu, and Buddha in ancient China and India and continues through Socrates, Plato, and Aristotle in ancient Greece and Rome. Notable examples of this scholarship include Hart and Fuller as well as Hart and Devlin. The question of whether or not law contains morality has long been a topic of discussion among jurists as they consider the link between law and morality. The relationship between law and morality is a contentious topic because, although both “govern and regulate human conduct to varying degrees in every society”, the most basic to the most complex, it is clear that neither of these factors can sustain social order in isolation.

Judgement and legislation are products of collaborative efforts between lawmakers and judges. Social norms influence their decisions. Cultural norms inform the development of legal principles by lawmakers and judges. Values extend much beyond the scope of possible legislative documents. You can use them to figure out whether a bill is good or bad. Decisions made by judges are inherently impacted by ethical and value systems. The term “same-sex marriage” describes unions in which the bride and groom are of the same gender. In India, there are ongoing movements to legalise same-sex weddings.³

As we have seen, the law acknowledges man as an individual with “free will, but

¹ Anurag Singh and Nishikant Kumar, “*Rule of Law and State Political Morality: An Analytical Study*”, IJCRT, Volume 12, Issue 3 March 2024.

² Justice D.P. Singh, *Morality in Law*, 1st Edn., Eastern Book Company, Lucknow 2012

³ Seethal Kuttappan & Dalliandeep Kaur Tiwana, “*The future of Same-sex marriage in India – An analysis with other countries*”, Social Sciences & Humanities Open, Volume 11, 2025.

morality recognises just one will the will to do what is right”. Thus, morality does not call for any deliberate action on side of the individual, whereas the law refers to the aspects of behaviour that are unrelated to one’s intentions or religious beliefs. Both the state and society uphold morality and the law.

Historical Evolution of Law and Morality:

Law and morality truly come into their own in contemporary social structures, notwithstanding the fact that the *Hart Fuller*⁴ question has been addressed in legal literature. It was long thought that morality and law both originated in local custom and should be considered equivalent in any culture. However, recent observations reveal that these two concepts have started to develop in quite distinct ways. Most people are skeptical of the idea that morality should be enforced through the law in the hopes of creating a more peaceful and harmonious society.

In India, during the Vedic and Epic periods, the public’s morality was defined by sages and saints, and when a disagreement emerged about how those standards applied to a specific case of behaviour, the ruler was expected to maintain justice. The Smiriti of Manu, “the Mahabharata, and the Arthshashtra of Kautilya all concur that the institution of monarchy was established to protect public morality or the Dharma”, ensuring that the powerful would not use their passions to oppress the powerless. As a guiding principle, the ancient Indian idea of dharma is losing ground in today’s culture.⁵

The law, society, and morality all have the potential to intertwine. Unlike morality, which can differ substantially from one person to the next, the law is constant and applies equally to all. While morality has always been an integral aspect of human civilisation, it was only in the modern era that it began to have an impact on the development of laws.

The Law is defined by the Oxford English Dictionary as “*the corpus of rules that a particular state or community recognises as binding on its members or subjects,*” regardless of whether these laws originate from formal enactment or custom.⁶ The term “law” is inherently

⁴ H.L.A Hart, *Positivism and the Separation of Law and Morals*, Harvard Law Review, Volume 71, No. 4, Feb., 1958, pp. 593-629.

⁵ Pradeep Kumar Gautam, *Understanding Dharma and Artha in Statecraft through Kautilya’s Arthashastra*, IDSA Monograph Series, No. 53, New Delhi on July 2016.

⁶ *Oxford English Dictionary*, Vol. II, Oxford University Press, 1989.

vague and subject to several interpretations, but in order to make sense of the complicated web of human affairs, we need nuanced definitions. “*Law is an ordination of reason for the common good by him who has care of the community and promulgated,*” goes the conventional wisdom, which includes every facet of the idea of law.⁷

Everybody agrees that Constitution of India is the supreme law of the nation. A combination of organic and noble building blocks makes up this document. It is seen by the Indian Judiciary as an active document that aids in case decisions. A sense of right and wrong, equality before the law, brotherhood, and justice serve as guiding principles for all facets of government. In order to maintain social fairness, the judiciary must from time to time propose new ideas or theories.

Discipline in Society Strictly speaking, morality, according to Bentham⁸, directs ideal behaviour norms that are congruent with what is good and right. Since morality is fundamentally an inward force that speaks to the human conscience and imposes penalties primarily from within, the capacity to discern good from evil is a hallmark of moral reasoning. Meanwhile, constructive morality differs among eras and regions. A community’s positive morality is the set of rules that its members have collectively decided are obligatory on everyone’s conscience because they were deemed rational, practical, and convenient at a certain point in time.

The term “Constitutional morality” is not defined elsewhere in the document. The result is that the judges have come to different conclusions. Thus, the Preamble, “*the Rule of Law, the Right to Equality, the Unity and Integrity of Nation, Social Justice, Individual Liberty, and Freedom of Expression*” are the major components of “constitutional morality” within the framework of the Indian Constitution.⁹

In the case of *Manoj Narula v. Union of India*¹⁰, the court observed that freely and fairly serves the interests of its citizens is necessary for morality based on the Constitution. The Constitution of India contains the following fundamental principles: democracy, socialism,

⁷ Vaishampayan, “*Law and Morality*”, ILE Legal Blog, on 7th July, 2022.

⁸ Justice G. Lodha, “*Law Morality and Politics*”, Unique Traders, Jaipur, 1981.

⁹ Dr. Shridevi S. Suvarnakhandi, “*Social Justice Provision in Indian Constitution*”, International Journal of Political Science (IJPS), Volume 6, Issue 3, 2020, pp. 1-9.

¹⁰ (2014) 9 SSC 1.

equality, truthfulness, and integrity. Similarly, in *Navtej Singh Johar & Ors. v. Union of India*¹¹, the Court held that everyone benefits when individuals adhere to constitutional morality because the state's structure is based on constitutional principles.

Concept Relating to Same-Sex Marriage under Personal Laws:

Indian society has traditionally had arranged marriages. The some people still struggle to reconcile to the abrupt “shift from arranged to love marriage”, let alone same-sex unions. LGBTQ+ people slammed the first decriminalisation of homosexuality. LGBT activist and Gaylaxy publisher Sukhdev Singh said, “*There are a host of other battles to be fought and won.*” Gay partnerships are often thought to be “a product of modern, individualistic, mechanically utilitarian society.” In distinction, “homosexual partnerships are not new”. Evidence has been found in ancient, mediaeval, and modern India. Legalising gay marriage is often thought to increase homosexuality, but sexual orientation is defined by genes, therefore decriminalisation can only encourage people to embrace their identity.

In Indian society, social commitments like marriage are highly valued. An act that emphasises the heavenly roles is called a sacrament. It delves into the various complexities that can emerge in lesbian marriages, such as religious rites and the ritual of exchanging shrines during feasts.

For example, in 1988, a Hindu ceremony was used to marry two female police officers.¹² Their loved ones and cultural customs welcomed them as husband and wife, even though their marriage was not recognised legally, leading to the termination of both of their employment. To think that many non-LGBTQ individuals living in residential areas and those whose first language is not English have come out as gay partners is fascinating.¹³

There are two ways to have a same-sex marriage accepted under Hindu personal law. First, same-sex unions can be legally recognised within the current legal framework. The second is recognising the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) group as an independent subculture whose values promote monogamy. The objective was to legalise

¹¹ (2018) 10 SCC 1.

¹² Sushila Bhawasar, “*Wedded- Woman Cops to Challenge Sack,*” Times of India, Feb. 23, 1988.

¹³ Ruth Vanita, “*Wedding of two souls: same-sex marriage and Hindu traditions*”, Journal Feminist Studies in Religion, Vol. 20, Issue 2 , 2004.

same-sex marriages by reviewing the Hindu Marriage Act of 1955 for constitutionality. Legalising same-sex weddings through Act amendment. Since the provision is gender-neutral and the phrase “wedding” does not apply, one could claim that “the regulation solemnises same-sex couples unless one of them is a male and the other is a wife.” A number of lesbian couples tried that. One of the spouses goes by the names “bride” twice. There is no substantive law to back this up since it twists the meaning of the words “engagement,” “mother,” and “engagement” and restricts the statute’s effectiveness.¹⁴ It would appear that the phrase also serves to normalise same-sex marriages. This perspective maintains the following assumptions: racial differences are innate, conventional family roles are unchangeable, and a romantic partnership and marriage can only thrive when the partners are of the same sex.¹⁵

Same-Sex Marriage under the Special Marriages Act:

Legalising same-sex marriage through an amendment to the Special Marriage Act of 1954 is another tactic to keep from causing a moral uproar. One lay law that facilitates marriages amongst people of different faiths or who do not wish to confine their own legal systems is the SMA. An engagement ceremony is not performed at a religious facility but rather “the engagement is documented by the marriage officer.” The present age necessities for men and women in the SMA 21 and 18, respectively- indicate that it is exclusively designed for heterosexual couples. Democracy has nothing to do with this argument; it’s a religious one. The practice’s repulsive, obnoxious, and unethical character has prompted severe opposition from many, including those in India. The fact that they are unable to duplicate infants is one reason why some people refuse to acknowledge it as normal. Since the Bible makes no mention of Adam and Steve, the theological idea that God created them must be at the heart of the legality of homosexual marriage. This culture values marriage and the cooperative roles played by the sexes. The structure of civilisation was designed to endure.¹⁶

The issue of equal equality is fundamentally undermined when we limit the rights of individuals who require marriage, treat them unfairly, put them at a moral and physical disadvantage, and put them at risk of severe bodily injury. Because it is a severe action to limit people’s capacity to get married, societies should only do so when they are sure it is needed to

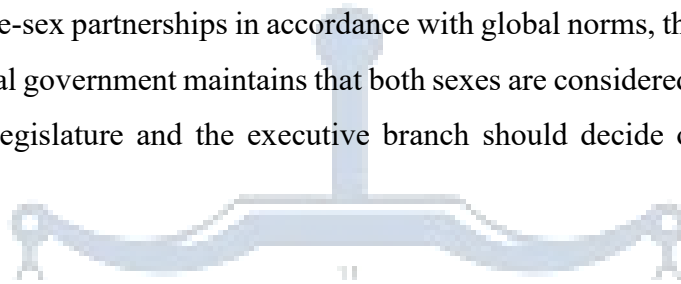
¹⁴ *Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920.

¹⁵ Risha Fatema, “*Legality of Same-Sex Marriage in India*”, *Journal of Legal Research and Polity*, Volume 2, Issue 2, October 2025.

¹⁶ Kanav N Sahgal, “*Same-Sex Marriages in India: The Case for Judicial Intervention*”, on 20 April 2023.

safeguard people and communities from danger. This is why some of the brightest minds in the legal field have argued about it, such when justices on the Supreme Court told proponents of gay marriage that there was no way to rationally argue against the potential harm it could do to society.

Recently, *Abhijit Iyer Mitra case*¹⁷, the Indian laws of Hindu Marriage Act and Special Marriage Act are examined with regard to the recognition of same-sex marriage. Seeking recognition of same-sex partnerships in accordance with global norms, the petitioner makes the case. But the federal government maintains that both sexes are considered spouses under Hindu law and that the legislature and the executive branch should decide on issues of marriage equality.



The merger of individuals of the same sex has no impact on anyone. No individual's union is adversely affected by another, and the validity of a person's right to marry is not contingent upon the exclusion of others. The assertion that heterosexual marriage, in any capacity, is detrimental is misguided. "No adverse effects of same-sex marriage laws" have been documented.

Judicial Pronouncements of Same Sex Marriages:

The judiciary has been essential in securing rights for the LGBTQ community concerning same-sex marriages. Judges have interpreted the concept of same-sex marriage in diverse and intricate manners over time. The interpretations made by the Honourable Judges pertain to natural justice and fair play. The following cases are enumerated under:

In *S. Khushboo v. Kanniammal*¹⁸, the Supreme Court observed that the positivist rationale was that forbidding "same-sex or live-in marriages" would not result in the elimination of the civil liberties afforded to all individuals. All individuals must be afforded equal treatment under the law, despite this contradicting prevailing societal ethics. Engaging in such actions out of a sense of obligation would be a violation of "Articles 14 and 21 of the Indian Constitution, which ensure the right to equality and the right to live with dignity." But it would be a stretch to say that Indian courts blindly adhere to positivism or ignore societal

¹⁷ Mahi Thakur, "Same-Sex Marriage And Indian Case Laws: A Journey Towards Equality", IJLLR Journal, May 1, 2025, Volume VII, Issue II,

¹⁸ 2010 (5) SCC 600.

morality in the ways mentioned above. Even the court has acknowledged the necessity to limit positivism for the benefit of public health and safety. The courts have made it quite plain that we must not sacrifice morality for legality. A happy medium between the two is required, with positivism occasionally tipping the scales in favour of the people.

The Supreme Court ruled in the case of *Naz Foundation v. Government of NCT Delhi*¹⁹, that Section 377 of IPC- a law that criminalised gay relationships and infringed their basic rights was unconstitutional.

In the case of *NALSA v. Union of India*²⁰, the Apex Court observed, LGBT community's legal standing was finally addressed in this landmark lawsuit, which acknowledged them as a distinct gender and fought for their access to basic human rights. Article 15, which forbids discrimination based on gender, is a fundamental right that the court ruled is violated by the treatment these individuals have received.

In a seminal case decided by the Apex Court, *Navtej Singh Johar v. Union of India*²¹, a group of five justices took a fresh approach to interpreting Section 377. Three fundamental principles of constitutional law i.e. the right to privacy, constitutional morality, and transformative constitutionalism formed the basis of the Court's conclusion. These three principles ultimately prevailed against the outmoded Section 377. While reviewing the *Navtej Singh Johar case*, then-Chief Justice Dipak Misra made the observation that the textual words of the Constitution do not limit constitutional morality. Adhering to certain fundamental constitutional regulations is just the beginning. As a matter of fact, it paves the way for a more tolerant and varied society.

The fundamental freedoms necessary for the development of Indian society were safeguarded in the Indian Constitution. At the time our Indian Constitution was adopted, the idea of Constitutional morality was conceived with the expectation that the Judiciary, the Legislature, and the Executive would all work together to preserve it. Attempts to ideologically homogenise society run counter to the principles enshrined in the Constitution. Therefore, official institutions must ensure that majoritarian beliefs do not influence policy decisions in a

¹⁹ 2009 (6) SCC 712.

²⁰ (2014) 5 SCC 438.

²¹ AIR 2018 SC 4321.

manner that infringes the rights of minorities.

It was noted by the Apex Court in *Government of NCT of Delhi v. Union of India and Ors*²², that when properly interpreted, “Constitutional morality refers to the morality” that is embedded in the standards and morality of the Constitution. To be constitutional, an act must have the ability to generate justification. The courts must maintain the guiding “principles of the Constitution” and base their verdicts on the text of the law, not popular opinion. The separation of powers within the legal system from the prevailing social worldview is a fundamental obligation. The broad acceptance of unfounded conventions and beliefs is directly challenged by Section 377 of the Indian Penal Code. Nothing that lacks legal standing should be allowed to stifle the moral fibre of the Constitution.

Therefore, the courts can be guided by constitutional morality to make decisions that are fair and right for all parts of society, no matter how tiny that part may be. The people of India have entrusted the government with the duty of safeguarding their fundamental liberties.

Conclusion:

Therefore, it may be concluded that the law and morality are not mutually exclusive, despite their differences; rather, they impact each other. Morality cannot be ignored in this modern era, where new ideas and perspectives are changing the game, even though it can be a public advocate for morality and occasionally seeks validation through social approval. While it would be a stretch to say that morality and the law are incompatible, the fact remains that as the law changes to accommodate new situations and values, the two do inevitably clash. These two ideas will always be diametrically opposed.

Thus, the moral and legal frameworks around same-sex marriages in contemporary India are constantly changing. There has been a marked shift in public and legislative sentiment in support of LGBTQ rights and individual agency. But long-standing religious and cultural norms still influence the conversation. The continuing discussion emphasises the significance of guaranteeing “equal rights and protections for all individuals, irrespective of their sexual orientation”, and the necessity for a sophisticated comprehension of the relationship between ethics and the law.

²² 2023 LiveLaw (SC) 423.