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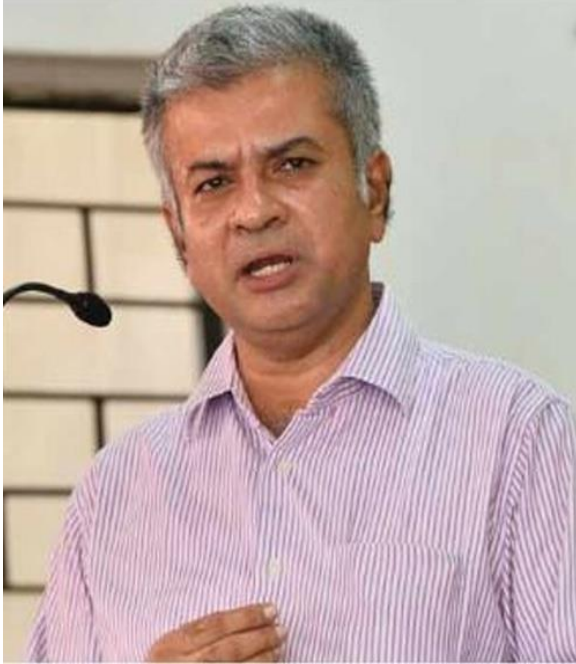
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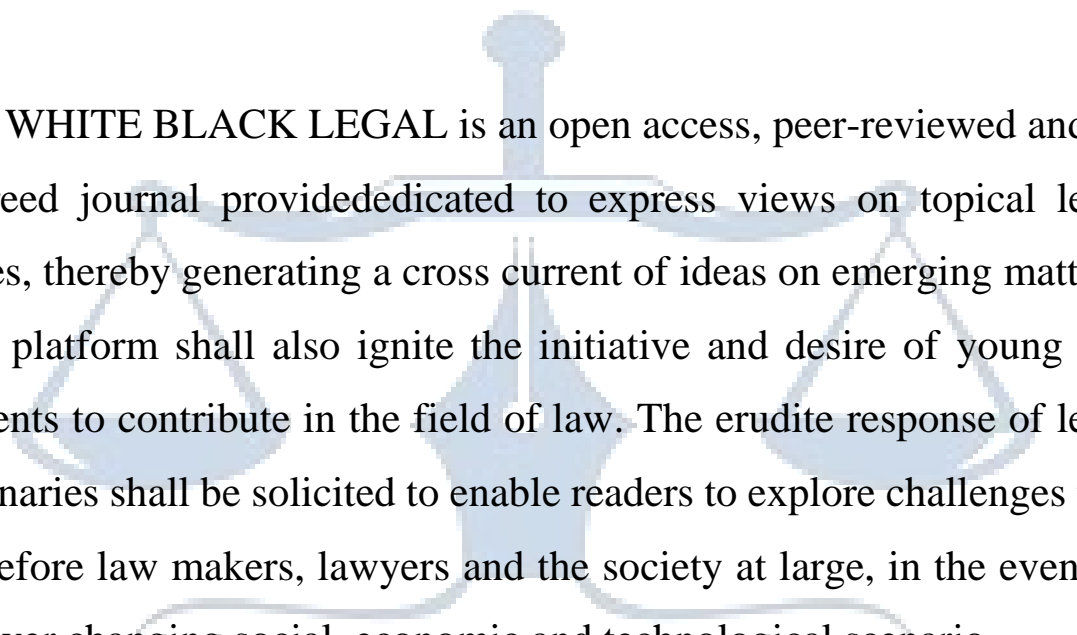
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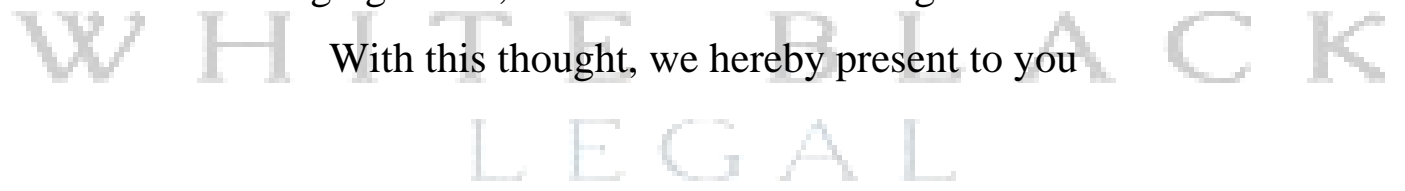
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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



“ANALYSING MARRIAGE RIGHTS AND SOCIAL IMPLICATIONS: A HOLISTIC EXAMINATION OF LGBTQ+ COMMUNITIES”

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• **Abstract:**

The fight for marriage equality has become a central issue in contemporary constitutional jurisprudence. The paper will delve into the concept of equality enshrined in constitutions, analysing how it applies to discrimination based on sexual orientation.

This paper delves into the intersection of equality, love, and fundamental rights within the context of LGBTQ+ in constitutional jurisprudence. With an increasing global recognition of the rights of LGBTQ+ individuals, the legal landscape surrounding rights of marriage has evolved significantly. Through a comprehensive analysis of relevant constitutional frameworks, judicial precedents, and legislative developments, this paper aims to explore the evolving understanding of equality in the context of love and marriage.

Furthermore, it discusses the ongoing challenges, debates, and future prospects concerning the realization of equality in love through the lens of constitutional law. By critically evaluating the legal discourse surrounding LGBTQ+, this paper seeks to contribute to the broader discussion on human rights, social justice, and the role of law in fostering inclusive societies.

Additionally, it will explore arguments for and against LGBTQ+ marriage rights, considering the legal frameworks surrounding marriage and the potential impact of marriage equality on individuals and society. This research examines the challenges, successes, and ongoing struggles faced by LGBTQ+ individuals in their pursuit of marital recognition. The findings shed light on the complexities surrounding marriage rights and underscore the importance of inclusive legal

frameworks and social acceptance.

The paper concludes by assessing the current state of LGBTQ+ marriage rights in India and considering the ongoing legal battles for marriage equality. It will also explore potential future directions for constitutional jurisprudence in ensuring equal access to marriage for all.

- **Keywords:** Marriage rights, LGBTQ+ communities, legal impact, social dynamics, equality, inclusivity

• **Introduction:**

“A hundred and fifty–eight years is too long a period for the LGBT community to suffer the indignities of denial. That it has taken 68 years even after the advent of the Constitution is sobering reminder of the unfinished task which lies ahead. It is also a time to invoke the transformative power of the Constitution.”¹

Throughout the beginning of human history, marriage has been one of the most significant, universal, and ancient social institutions. It is generally the conjunction of a man and woman, in a constant society, and agreement of living together; until the contract is dissolved by death or breach of faith or some notorious misbehaviour, bride and bridegroom accepts each other and vows to keep with utmost love and respect till the last breath of their life.

Marriage, a foundational element of social and legal structures throughout history, has traditionally excluded LGBTQ+ individuals. This exclusion has denied them not only the legal benefits associated with marriage, but also the social recognition and validation of their relationships. However, the landscape of marriage rights is undergoing a significant transformation. This paper delves into this evolving landscape, conducting a holistic examination of the legal and social impacts of marriage equality on LGBTQ+ communities.

Here, we will dissect the impact on various aspects of LGBTQ+ lives, such as adoption & guardianship rights, healthcare benefits, Surrogacy rights, Inheritance rights, taxation etc. Examining

¹ 1 Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, ¶616 (per Chandrachud, J

these legal ramifications will demonstrate how marriage equality contributes to a more secure and equitable environment for LGBTQ+ families.

The social impact of marriage equality on LGBTQ+ communities will also be explored. We will examine how marriage recognition fosters greater acceptance and inclusion within society. This section will analyse how marriage equality increases the visibility and normalization of LGBTQ+ families, potentially influencing the mental well-being of LGBTQ+ individuals and empowering LGBTQ+ youth to envision a future that includes marriage and family.

However, the paper acknowledges that achieving marriage equality is not without its challenges. We will delve into the ongoing difficulties faced by non-binary and gender non-conforming individuals. The limitations of the current binary structure of marriage laws and potential restrictions based on gender identity will be discussed.

By providing a comprehensive examination of the historical, legal, and social aspects of marriage equality for LGBTQ+ communities, this paper aims to contribute to a deeper understanding of this ongoing social and legal transformation.

• **Concept of Marriage**

The right to marry and start a family belongs to both men and women of legal age, without distinction on the basis of race, nationality, or religion. In Hindu institution marriage is a sacrament (Samskara) and not a mere socio-legal Contract² Marriages are made in heaven but performed on earth, so object of Marriage is to perform religious ceremonies, duties³, dharma and rites in the companionship of his wife otherwise they will not bear any fruits⁴. Marriage is wishes of a continued conjugal relationship provided the couple has attained the age of marriage, as required by law⁵. It is the beginning of the family and is a life-long commitment; it is not only a physical but a spiritual and emotional union also. Thus, marriage is a socially acknowledged and legally ratified union between an adult male and

²1 Gopal Krishna v. Bhagwanthymma, AIR 1962 Mad. 40

³2 Sundarbai v. Shivnarayana (1908) 32 Bom. 81

⁴ 3 Mahabharat Anushashan Parva 46.1-13, Manu IX, 96

⁵ Deepika and other v. State Of U.P Allahabad High Court, W.P. No. - 33919 of 2013 11 November, 2013

adult female⁶. It is neither performed for mere emotional gratification nor a mere betrothal⁷.

- **Consent of parties for Marriage**

The consent of parties plays an important part in the formation of marriage⁸. No marriage shall be legally entered into without the full and free consent of both parties. Such marriage shall be entered into only with the free and full consent of the intending spouses⁹, certain customs, ancient laws and practices relating to marriage and the families were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights, 1948. Reiterating that all states should take all necessary steps, including those that are in charge of managing Trust Territories and Non-Self-Governing Territories until they gain independence with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of spouse....¹⁰

- **Personal Laws and Concept of Marriage:**

Personal laws, such as those governing marriage, inheritance, and adoption, vary widely around the world and can have significant implications for LGBTQ individuals and communities. In some countries, LGBTQ rights are protected and recognized in personal laws, allowing for marriage equality, adoption rights, and equal inheritance. However, in other places, LGBTQ individuals may face legal barriers and discrimination due to their sexual orientation or gender identity. It's important for laws to evolve to ensure equality and protection for all individuals, regardless of sexual orientation or gender identity.

Marriage, according to the Hindu Law,

Marriage is a body for the performance of religious duties. It is deemed as a holy union in Hindu Law. It is also considered to be an union of flesh and flesh and blood and blood. It is a religious sacrament and not a civil contract.

⁶ Collins Dictionary of Sociology, 1st edition, Harper Collins 1991

⁷ 6 Gopal Krishna v. Mithilesh Kumar AIR 1979 ALL 316

⁸ Sec 5 Hindu Marriage Act, 1955, see also Special marriage Act, 1954 and other marriage laws

⁹ Art. 16 Universal Declaration of Human Rights, 1948

¹⁰ General Assembly of the United Nations declared, by resolution 843 (IX) of 17 December 1954.

Marriage, according to the Muslim law,

Quran states "every person must marry". Quran asserts that marriage is the only way to satisfy one's desire. Marriage (nikha) is defined to be a contract which has for its object the procreation and the legalizing of children.

Marriage laws under personal laws can vary significantly depending on the country and its legal framework. In some places, LGBTQ individuals have gained the right to marry under personal laws, either through legislative changes or judicial rulings. This allows same-sex couples to legally marry and enjoy the same rights and responsibilities as heterosexual couples.

However, in other jurisdictions, personal laws may still define marriage as strictly between a man and a woman, thereby excluding LGBTQ individuals from legal marriage. In such cases, advocacy efforts often focus on legal reform to recognize and protect the rights of LGBTQ individuals to marry.

Even if marriage equality cannot be located within the framework of existing personal law, same-sex marriages can be solemnised under the Special Marriage Act, 1954. The Special Marriage Act has neither a religious character nor a religious origin, and even today enables an individual's right to marry a partner of their choice where not permitted by religious law, e.g., marriage of a Hindu to a non-Hindu, marriage of a Sunni Muslim woman to a non-kitabiya without conversion of the spouse to Islam. Even individuals of the same religion, who may marry under their personal law, may instead opt to marry under the Special Marriage Act. Overall, the recognition of marriage rights for LGBTQ individuals under personal laws reflects broader societal attitudes towards equality and inclusivity.

• Social Issues faced by the LGBTQ+ community:

1. Stigma and Discrimination:

- LGBTQ+ individuals often face stigma and discrimination in various aspects of their lives, including education, employment, healthcare, and housing.
- Social stigma can lead to psychological distress, lower self-esteem, and internalized homophobia or transphobia among LGBTQ+ individuals.
- Discrimination may result in exclusion from social circles, family rejection, and limited access to resources and opportunities.

2. Family and Relationships:

- LGBTQ+ individuals may experience strained relationships with family members who are not accepting of their sexual orientation or gender identity.
- Legal recognition of same-sex relationships and marriage varies across different jurisdictions, affecting the rights and protections available to LGBTQ+ couples and families.
- Adoption and parenting rights may be limited for LGBTQ+ individuals and couples, leading to legal and social challenges in forming and maintaining families.

3. Mental Health and Well-being:

- LGBTQ+ individuals are at a higher risk of experiencing mental health issues such as depression, anxiety, and substance abuse compared to the general population.
- Minority stress theory suggests that the experience of discrimination and social marginalization contributes to poorer mental health outcomes among LGBTQ+ people.
- Access to culturally competent mental health services and support networks is essential for promoting the well-being of LGBTQ+ individuals.

4. Physical Health Disparities:

- LGBTQ+ individuals may face barriers to accessing healthcare services, including discrimination from healthcare providers and lack of inclusive policies and practices.
- Higher rates of certain health issues, such as HIV/AIDS, sexually transmitted infections (STIs), and certain cancers, are observed within the LGBTQ+ community.
- Comprehensive healthcare services that address the unique needs and concerns of LGBTQ+ individuals are essential for promoting physical health and well-being.

5. Social Support and Community Resilience:

- LGBTQ+ individuals often rely on social support networks, including chosen families, LGBTQ+ community centres, and online forums, for validation, acceptance, and empowerment.
- Community resilience refers to the ability of LGBTQ+ individuals and communities to navigate and overcome adversity, including discrimination and violence, through collective action and mutual support.
- LGBTQ+ community organizations and advocacy groups play a crucial role in providing

resources, advocacy, and services to address the social needs of LGBTQ+ individuals.

Understanding and addressing these social implications are crucial for promoting inclusivity, equality, and well-being within the LGBTQ+ community and society at large. Efforts to combat stigma, discrimination, and disparities in healthcare and social services are essential for creating a more supportive and equitable environment for LGBTQ+ individuals.

- **The legal implications for the LGBTQ+ community: -**

The legal implications for the LGBTQ+ community vary significantly depending on the jurisdiction, but here are some common legal issues faced by LGBTQ+ individuals:

1. Marriage and Relationship Recognition:

- Legal recognition of same-sex marriages and relationships varies across different countries and regions.
- In jurisdictions where same-sex marriage is legal, LGBTQ+ couples may enjoy the same rights and benefits as heterosexual couples, including access to spousal benefits, inheritance rights, and parental rights.
- In areas where same-sex marriage is not recognized, LGBTQ+ couples may face challenges in accessing legal protections and benefits available to married couples.

2. Adoption and Parenting Rights:

- LGBTQ+ individuals and couples may face legal barriers to adoption and parenting, including restrictions on joint adoption and second-parent adoption.
- In some jurisdictions, LGBTQ+ individuals may be prohibited from adopting children altogether or may face discrimination and bias in the adoption process.
- Legal recognition of parental rights for non-biological parents in same-sex relationships can vary, impacting custody, visitation, and decision-making authority.

3. Employment Discrimination:

- LGBTQ+ individuals may face discrimination and harassment in the workplace based on their sexual orientation or gender identity.

- Legal protections against employment discrimination vary by jurisdiction, with some countries and states offering explicit protections for LGBTQ+ workers, while others do not.

- Efforts to pass comprehensive anti-discrimination legislation, such as the Employment Non-Discrimination Act (ENDA) in the United States, aim to address workplace discrimination based on sexual orientation and gender identity.

4. Housing and Public Accommodations:

- LGBTQ+ individuals may face discrimination in housing and public accommodations, including denial of housing, eviction, and refusal of service based on sexual orientation or gender identity.

- Legal protections against housing and public accommodations discrimination vary by jurisdiction, with some areas offering explicit protections for LGBTQ+ individuals and others lacking adequate safeguards.

5. Healthcare Access:

- LGBTQ+ individuals may encounter barriers to accessing healthcare services, including discrimination from healthcare providers, lack of culturally competent care, and denial of coverage for transition-related care.

- Legal protections for LGBTQ+ patients vary by jurisdiction, with some countries and states implementing laws and policies to prohibit discrimination in healthcare settings.

6. Gender Recognition and Identity Documents:

- Transgender and non-binary individuals may face legal barriers to obtaining accurate identity documents, such as birth certificates, driver's licenses, and passports, that reflect their gender identity.

- Legal processes for changing gender markers on identity documents vary by jurisdiction, with some areas requiring medical or legal interventions and others adopting more inclusive and streamlined procedures.

Addressing these legal implications requires comprehensive legal reforms, including the enactment of anti-discrimination laws, marriage equality legislation, adoption and parenting rights protections, and gender identity recognition laws. Advocacy efforts by LGBTQ+ organizations and allies play a crucial role in advancing legal protections and promoting equality for LGBTQ+ individuals.

- **Some other Legal Impact of Same-Sex Marriage:**

The legalization of same-sex marriage has had a profound impact on various legal aspects of LGBTQ+ lives. Here's a closer look:

Adoption: Marriage equality allows same-sex couples to adopt children jointly, providing a stable and secure family environment.

Healthcare: Spousal benefits, such as hospital visitation rights and decision-making authority regarding medical care, are now extended to same-sex spouses.

Taxation: Married couples can enjoy joint tax filing benefits, leading to financial advantages.

Immigration: Same-sex spouses of foreign nationals can now qualify for sponsorship, facilitating immigration and family reunification.

Marriage licenses and recognition: Same-sex couples can now obtain marriage licenses and have their marriages recognized by the government, granting them access to the same legal benefits as heterosexual couples.

Social Security benefits: Surviving spouses in a same-sex marriage are now eligible for Social Security survivor benefits.

Inheritance rights: Spouses in a same-sex marriage can inherit property and assets from each other automatically, without needing a will.

These legal implications contribute to greater equality and security for LGBTQ+ families.

- **Legal Frameworks & Judicial Activism:**

In India, LGBTQ rights have seen some progress in recent years, but there are still legal challenges and social stigmas. Here are some key legal provisions:

Section 377 of the Indian Penal Code: Historically, this section criminalized consensual sexual acts between adults of the same sex. However, in 2018, the Supreme Court of India struck down this section, decriminalizing homosexuality.

Transgender Persons (Protection of Rights) Act, 2019: This law recognizes the rights of transgender persons and prohibits discrimination against them in areas such as education, employment, healthcare, etc. It also provides for the establishment of welfare boards for transgender persons.

Art.14,15,17and 21 of The Indian Constitution: The Indian Constitution, under Articles 14, 15, 17 and 21, guarantees fundamental rights like equality, non-discrimination, and right to life and liberty, which have been interpreted by courts to apply to LGBTQ+ people as well.

Sexual orientation is not explicitly mentioned as a prohibited ground for discrimination under Article 15. However, a common feature of the Constitution is providing a constitutional concept, whilst also providing conceptions of its application in specific cases. Thus, Article 14 states the broad right to equality and freedom from non-discrimination, while Article 15 underlines non-discrimination under five specific grounds and Article 17 prohibits one particular form of discrimination, i.e. untouchability.

Right to choose in relationships:

Every prudent adult has the right to marriage and have a family. Marriage is a fulfilling experience. In some Indian societies, women's freedom to make choices about their relationships is often denied. A woman's "right to choose in relationships" means she can decide when, with whom, and whether to be in a relationship. Laws and court rulings protect this right.

In **Lata Singh vs. State of U. P**¹¹The Supreme Court condemned violence against inter-caste marriages, emphasizing that the caste system is a curse on the nation and that such marriages are in the national interest, as they contribute to dismantling this system. It affirmed that in a free and democratic country, individuals have the right to marry whomever they choose once they reach adulthood, and parents cannot harass them for their inter-caste or interreligious marriage decisions.

In **In Re v. Indian Woman Says Gang-Raped Suo Motu W. P. (Criminal) No. 24 of 2014**¹²The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution is the freedom of choice in marriage.

In **Vikas Yadav vs. State of U.P.**¹³ Vikas and Vishal Yadav convicted for 25 years imprisonment

¹¹ 10 (2006) 5 SCC 475

¹² 1 (2014) 4 SCC 786

¹³ (2016) 9 SCC 541

for brutally murdering Nitish Katara who was in love with their sister, while delivering the judgment Apex court said “neither the family members nor the members of the collective have any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honor or class honor by eliminating her choice is a crime of extreme brutality.”

In **Asha Ranjan vs. State of Bihar**¹⁴, the Supreme Court again declared the right of a person in choosing a partner to be legitimate constitutional right recognized under Article 19 (1) (c) and 14 of the Constitution of India “.....choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognized in the Constitution under Article 19”.

In **Shakti Vahini vs. Union of India**¹⁵ The Hon’ble Supreme Court affirmed that the consent of family or community is unnecessary when two adults choose to marry, emphasizing that interference with this right is a constitutional violation recognized under Article 19(1)(c) and 21 of the Constitution, as it upholds individual autonomy in various aspects of life, including the choice of a life partner. Our constitutional strength lies in guaranteeing the freedom to decide on matters like whom to love and partner with, recognizing the fundamental importance of individual choice in numerous aspects of daily life¹⁶.”

In **Dr. Sangamitra Acharya and others vs. State of Delhi**¹⁷ and others^{17A} 23-year-old woman, residing with her music teacher since turning 18, was forcibly taken away, violating her fundamental rights under Article 21 of the Indian Constitution due to her exercising freedom of choice in her living arrangements. Once person reaches adulthood, their parents no longer have the authority to dictate their living arrangements, even if it's unconventional by societal standards, as long as it's within legal bounds¹⁸.

In **Shafin Jahan v. Asokan K.M**¹⁹ -The Supreme Court affirmed that an individual's right to choose

¹⁴ (2017) 4 SCC 397

¹⁵ 5 (2017) 4 SCC 397

¹⁶ 6 Common Cause (A Regd. Society) vs. Union of India reported in (2018) 5 SCC 1, held: (SCC p.194, Para 346)

¹⁷ WP.No. (Cri.) 1804/2017, 18 April, 2018

¹⁸ Payal Sharma v. Superintendent, Nari Niketan, Agra and Others 2001(3) AWC 1778

¹⁹ Appeal No. 366/2018, arising out of SPL (Cri.) No 5777 of 2017, decided on April 9, 2018

their partner and practice their faith is inviolable, emphasizing the importance of individual autonomy in marriage and faith matters. Hence, we are citizen of democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes²⁰.

Right to Privacy and Marriage:

Recognition of right to privacy by apex court has opened a new area for discussion, which is related with marital rights. A citizen has the right to protect his or her own private, as well as the privacy of his or her family, marriage, reproduction, maternity, child-bearing, and education.

In **Smt. Safiya Sultana through Husband Abhishek Kumar Pandey & another**²¹. on the inter cast marriage of petitioner Hon'ble Vivek Chaudhary, J. held - A notice under Section 5 of the Special Marriage Act 1954 is considered optional and not an invasion of the right to privacy. If the marriage officer has doubts, they can request relevant details/proof as needed, as young couples often avoid litigation to protect their privacy and avoid unnecessary social pressure on their choice of life partner.

In **Smt Pooja Arya & Anr v. State of UP & Ors**²²- on the Hindu-Muslim inter Cast marriage, Allahabad High Court directs the police 'not to interfere with the matrimonial life of the petitioners, and to provide adequate protection to them, as and when necessary'.

In **Ashok Kumar Todi v. Kishwar Jahan**²³ Hon'ble supreme court reiterate The police and law enforcement have no right to interfere in the married life of consenting adults who have married of their own will, as such inter-caste marriages contribute to breaking the caste system and fostering communal harmony, and the law should respect their choices just as it does for other relationships²⁴."

Recognition of Transgender as the third gender: -

In **National Legal Ser. Auth vs Union of India & Ors** on 15 April, 2014 SC recognized the rights of transgender people and affirmed their equal status under the law, including the right to self-identify their gender. The court directed the government to take measures to end discrimination and provide

²⁰ Salamat Ansari and Others vs. State Of U.P. Criminal Misc. WP No. - 11367 of 2020, on 11 November, 2020 see also Soni Gerry v Gerry Douglas, AIR 2018 SC 346

²¹ Allahabad High Court, Habeas Corpus No.- 16907 of 2020, Delivered on: 12.01.2021

²² 2006 (1) ALJ 424 (DB) at 424

²³ AIR 2011 SC1254

²⁴ Salamat Ansari and Others vs. State Of U.P, Criminal Misc. WP No. - 11367 of 2020, on 11 November, 2020

affirmative action for transgender individuals. It was a significant step towards recognizing and protecting the rights of transgender people in India²⁵.

Constitutional Validity of Sec.377 Indian Penal Code 1860: -

Section 377 of the IPC categorised consensual sexual intercourse between same-sex people as an “unnatural offence” which is “against the order of nature”. It prescribed a punishment of 10 years imprisonment. The provision is a Victorian-era law, which survived into the 21st century. Interestingly, about 123 countries around the World have never penalized or decriminalized homosexuality. Currently, 57 countries actively criminalize same-sex relations.

In **Naz Foundation vs Government of Nct of Delhi and Others**²⁶, Naz Foundation (India) Trust challenged the constitutionality of Section 377 of the Indian Penal Code under Articles 14, 15, 19 and 21 before the Delhi High Court. The Foundation contended that Section 377 reflects an antiquated understanding of the purpose of sex, namely as a means of procreation, and has no place in modern society. Further, the police had weaponised the provision, which impeded efforts aimed at preventing the spread of HIV/AIDS. The Foundation cited an instance in 2001 in Lucknow where HIV prevention workers, who were distributing condoms to homosexual men, were arrested on the allegation that they were conspiring to commit an offence. The Naz Foundation also argued that the provision was being misused to punish consensual sex acts that are not peno-vaginal.

In 2009, the Delhi High Court decided that punishing sexual activity between two consenting adults with Section 377 would be against Article 21 of the Constitution, which protects the right to privacy and personal liberty. According to the Court, discrimination against and categorization of homosexuals are violations of Article 14 of the Constitution's equal protection guarantee. Human dignity, which is the cornerstone of the Indian Constitution, was thereby infringed by Section 377.

The Delhi High Court's ruling was appealed to the Supreme Court by a number of groups and individuals. They contended that the right to privacy did not extend to the freedom to commit any crime, and that decriminalizing homosexuality would encourage homosexual behaviour among

²⁵ National Legal Services Authority (NALSA) vs. Union of India, (2014) 5 SCC 438

²⁶ 2010 CRI. L. J. 94, 2009 (6) SCC 712

young people and be harmful to the institution of marriage.

The Supreme Court reversed the Delhi High Court verdict in 2013 in **Suresh Kumar Koushal V. Naz Foundation Trust [AIR 2014 SUPREME COURT 563]**, held that Section 377 criminalises certain acts and not any particular class of people. The court argued that Section 377 is not discriminatory on its face because it applies to everyone, regardless of sexual orientation. The law penalizes "carnal intercourse against the order of nature" and doesn't target a specific sexual orientation. The court acknowledged that the law might have been misused, but that's not a reason to strike it down. The court believed that the issue of homosexuality and Section 377 should be debated by Parliament, the legislative body, rather than decided by the judiciary.

In the **Navtej Singh Johar vs. Union of India [AIR 2018 SUPREME COURT 4321]**, the Supreme Court of India ruled that Section 377 of the Indian Penal Code (IPC), which criminalized consensual homosexual activities, was unconstitutional to the extent that it applied to consensual sexual acts between adults. The court held that discrimination on the basis of sexual orientation violates fundamental rights guaranteed by the Indian Constitution, including the rights to equality, dignity, and privacy. The judgment decriminalized consensual homosexual relationships between adults, marking a significant milestone for LGBTQ+ rights in India.

The **Justice K.S.Puttaswamy(Retd) vs Union Of India AIR 2018 SC (SUPP) 1841** judgment affirmed the fundamental right to privacy as an intrinsic part of individual liberty and dignity under the Indian Constitution. It emphasized that privacy is essential for the exercise of other fundamental rights and cannot be infringed upon without valid justification. The ruling set significant precedents for data protection and privacy laws in India, ensuring that citizens' personal information is safeguarded from unwarranted intrusion by the state or private entities.

In **Supriyo @ Supriya Chakraborty vs Union of India 2023 INSC 920**, the SC held that the right to marry isn't guaranteed by the Constitution, Same-sex marriage wasn't legalized, but the court recognized the right to choose a partner and the court also said only Parliament can change laws to allow same-sex marriage.

Thus, law relating to LGBT rights in India till this time needs to be evolved to a great extent in order

to accommodate the people of the community and give them equal protection under the law. The LGBT community might have equal protection in the eyes of the law, but in reality, these individuals face discrimination in workplaces and educational institutions to such an extent that it has become a part of their daily lives.

- **Conclusion:**

“The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. Such a right or choice is not expected to succumb to the concept of ‘class honour’ or ‘group thinking’.

We must have faith in the constitutional values instilled in us, and not allow the growing misinformation campaigns to draw lines between those practicing different faiths.

When individuals consensually choose each other as life partners, it's a manifestation of their rights under Articles 19(1)(c) and 21 of the Indian Constitution, which must be protected. Family, community, or clan consent is unnecessary once two adults agree to marry, and any threats or violence against inter-caste marriages are unacceptable violations of these constitutional rights. Their consent has to be piously given primacy. As old saying goes “Jab miya bibi razi toa kay karega kazi!” When the husband and wife are agreeing who is the kazi (in olden days kazi was a judge) to decide.

In Indian Constitution this right not expressly mention, But it is interpreted under Art 21 .right to marry is universal right. It is available to all persons but whether it includes same sex marriage. Marriage right is recognized at international level but in India there is no special law for marriage right.

Marriage right is mentioned under various covenant but it does not include person of same sex marriage. Indian constitution provides for right to marry but it is not fundamental right.

Same-sex marriage has gained significant ground in recent decades. As of 2024, 37 countries, representing 1.4 billion people, recognize and perform weddings between same-sex couples This progress is a culmination of tireless activism by LGBTQ+ communities around the world.

Landmark court cases like Obergefell v. Hodges (2015) in the United States and rulings in Argentina (2010) paved the way for national legalization. Despite this progress, many countries still lack legal recognition, highlighting the ongoing fight for global marriage equality.

While not legalizing same-sex marriage, the 2018 Navtej Singh Johar case recognized the rights of LGBTQ+ individuals to equality and non-discrimination. The 2023 judgment, however, did not recognize a fundamental right to marriage but called for the elimination of indirect discrimination against same-sex couples.

There is also a need for an anti-discrimination law on paper which punishes those who treat LGBTQ+ individuals with prejudice. This will ensure that they are protected under Article 15 and do not have to struggle for equal opportunities in the workplace.

The right to marry has been ruled to be an essential right under Article 21 of the Indian Constitution, yet this right has not been granted to same-sex couples to this day. For the same reasons, surrogacy and adoption laws are also not inclusive of same-sex couples as the laws define a 'couple' referring to a man and woman in a relationship, married or otherwise, respectively.

The Navtej Singh Johar case and the NALSA judgement were only stepping stones towards the development and protection of the fundamental rights of the LGBT community of India, we still have a very long way to go. To treat these people like they are not normal is a crime in itself, nobody deserves to feel that way, especially not based solely on their sexual choices.

India is progressing continuously in various sectors, and we are being recognised for our innovations and our technology. Why not be recognised for our inclusivity? We all studied in school that "unity in diversity" is India's most distinguishing feature as a democracy. It's time that we follow it in reality. Our history, our culture, our monuments, all have accepted same-sex relationships, then why can't we people do the same? We are the youth of the country, and I say, it's time to work on a better society, for one and for all. It is essential to ensure that our future Cultural Perspectives:

Last but not least, we, as citizens, must practice more appropriate behaviour towards individuals of the LGBT community so that they feel safer and have a sense of belonging within our society. Asking them their preferred pronouns and referring to them by the same is a good way to start.

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