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LEGISLATION ON SAME-SEX MARRIAGE AND ADOPTION RIGHTS



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Introduction

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When it comes to navigating the sensitivities of the various groups with diverse sexual orientations or gender identities, India has the advantage of having historically acknowledged all groups and variations as part of its cultural and societal framework. Our ancient scriptures are often quoted with reference to the discussions surrounding the diverse Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics (SOGIESC) community.

As India develops at a rapid pace and social media brings the various groups across the country closer, the SOGIESC community has come to the forefront to highlight their different points of views, ambitions, concerns and experiences.

India Foundation organised a round table discussion in the month of November, 2023 with a focus on understanding the issues and challenges surrounding the present discourse on same-sex marriage and adoption rights within the context of legal and social realities. The aim was to understand different positions on the subject

This monograph contains the views of the participants who were present at the round table discussion. The round table discussion included perspectives of members of the diverse SOGIESC community, legal experts who have followed and participated in the legal discourse surrounding the issue in India and experts on the experience of the western world and their approach to the community.

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Legislation on Same Sex Marriage & Adoption Rights : The Evolving Approach of the Government of India

Abhijit Iyer-Mitra

In 2018 the supreme court of India decriminalised homosexuality¹. Unlike the previous UPA government that supported SOGIESC rights outside court but opposed it in court², the BJP government maintained a studied silence outside, while leaving it to the court's wisdom to decide the issue. Lack of governmental opposition is an important determinant of how supreme court decisions go. While there has been much debate on judicial activism in the country, as a rule the supreme court is conservative in judgements - in that legislative and executive acquiescence are key to crucial social judgements. As a rule the whole of government acts together and avoids internal strife. However in 2023, when the issue of marriage equality came up, the same BJP opposed it tooth and nail. What was interesting was the arguments used were entirely technical in nature - the fact that this was a complex myriad of laws that couldn't just be made gender neutral overnight, and the fact that this was a legislative prerogative. The Supreme Court agreed with this but asked the government to sort out the issues in a time bound and institutional manner.

The question is what led to this change of stance towards sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) issues between 2018 and 2023? As this paper will explore,

while politics did have some role to play, most of the Government's concerns had to do with the continuing lack of gender neutrality in a whole host of civil and personal laws, deep systemic and capacity limitations.

Political Barriers

The BJP has been the most proactively pro SOGIESC government in India's history. While its tacit acceptance of decriminalising homosexuality in 2018 was just that - tacit, its championing of trans persons has been nothing short of phenomenal. The first salvo in these pro SOGIESC legislations came in 2016 when the Transgender Persons (Protection of Rights) Bill was introduced³. For the first time it not just recognised trans-persons but accorded them rights and protections denied to them since independence. Following on this, the election of a BJP government in Uttar Pradesh saw promises of a dedicated university⁴ for transgender persons and significant rise in visibility including the painting of a noida metro station⁵ in SOGIESC colours and employing persons from the community. Similarly many trans persons have been celebrated in the annual honours list^{6,7} and awarded national awards given annually by the president.

However simultaneously India was also watching with alarm, the rise of "gender ideology" in the united states - essentially the mainstreaming of a plethora of mental diseases under the guise of inclusivity including the horrific genital mutilation of children under the guise of "gender affirmation"⁸. The explosion of a set of phenomena referred to collectively as "woke"; not to mention the integration of these into the global left, led to increasing suspicion within India. Indeed it can be said that between 2016 and 2023, the slow buildup of support for greater

SOGIESC inclusivity rapidly eroded to the point the BJP could not support marriage equality. However the lack of support was highly nuanced. For example by 2023 the head of the RSS had confirmed that the RSS supported same-sex relationships, and described it as both natural, and to be treated as a “normal relationship without much hullabaloo.... Neither condemned, nor celebrated”⁹. This was an important nuance, because it indicated a support of same-sex unions but devoid of the public professions of support and forced celebrations required by left-wing politics that has weaponized the issue. With the benefit of hindsight it should have been clear that this was a call for the community to disentangle from the left, a call that went unheeded. Within the BJP, it seemed quite clear that this had less to do with what was being debated, rather who was debating it and how it was being debated. Being a conservative party, its philosophy has been to avoid social change enforced by caveat from the top, but rather slow and steady change ground up - the exact opposite of the leftist view of radical, socially abrasive change by diktat, top down.

Irrespective, a debate on social mores was not the basis of its opposition which had less to do with the conjoining of SOGIESC issues with the global left (though it almost certainly did play a role) and more to do with a convoluted maze of laws.

Legal Barriers

The government's main thrust in court revolved around three distinct axes.

1. That marriage is not a fundamental right
2. That recognising marriage equality would impact the wording of lots of other laws that required systematic reforms

3. That the scope of these reforms would require parliamentary intervention and was over and above the judiciary's powers

The first position was brought about because some of the litigants brought up marriage equality as an issue of fundamental rights, to move past the limitations of Public Interest Litigations in this regard. Here the government made a fine distinction acknowledging that choosing one's partner is indeed an inalienable right. However, a legal marriage is not a right¹⁰ but an administrative issue, one involving a plethora of other laws, including the religious rights of others. This argument was upheld by the court, which for the first time, ruled that marriage was not a fundamental right¹¹. Even here, there was a caveat. Transgender and Intersex persons were given the right to legal marriage¹² based on their identity, under current laws. Again this was not a recognition of a right to marriage but rather who could avail the administrative facility of legal marriage and what constituted "different genders". One important distinction the government sought to bring out here, which was accepted by the courts, is the difference between determined rights and inferred (unenumerated) rights¹³. For example, nobody contests the right to equality under which some of the litigants lodged their pleas. The right to equality is an expressly determined right as dictated by the constitution. However the inferred rights that flow from this are a right to equal education, equal clean air, and equal security. Yet, while inferred corollaries of the right to equality, the average waiter's son cannot be given the same education as a top industrialist's son. Nor can the northern states of India, enveloped under a thick blanket of smog be provided the same clean air enjoyed by the south of the country; nor can the average citizen be provided the

same level of security as the prime minister. Equality therefore is deemed as contextual and subject to practicality.

This brings us to the second issue - the interconnectedness of marriage equality with a whole host of other laws - many of which are religious, was where the government focussed its attention. The first problem the government pointed out was simply one of definitions. For example, the Hindu Marriage Act of 1955¹⁴ does not mention the gender terms "man and woman" but rather uses marriage roles "bride" and "bridegroom" as well as the gender neutral spouse. Indeed the term "man" is never used and even the term "woman" is used only once in paragraph 25-3 in a reference as to what constitutes adultery. The Special Marriage Act as well as the other religious acts all specifically refer to man and woman. Importantly many of the domestic violence legislations in India and laws governing divorce and settlement, very specifically mention women. It is curious to note here that many of the litigants supporting marriage equality, were vocal supporters and drafters of these same gynocentric pieces of legislation, that the government cited, who had explicitly sought to specify "woman" as the victim by default and deny gender equality in cases of domestic violence, divorce, settlement, sexual violence, and inheritance. It is therefore a fact that it was the same people who had lobbied for "women" specific legislation and gynocentric laws, were responsible both for legislative precedent, and the whole body of jurisprudence denying marriage equality.

Let us look at some of these laws and the sheer scope of the problem involved. The 2005 Verma Committee ended up with a piece of legislation called the PWDVA (Protection of Women against Domestic Violence Act)¹⁵. Notice, even the title of act is gender specific. The

Arguments made for this act were in fact very specific to exclude men from its ambit, despite being possible victims, and reversing jurisprudence from the Anglo-Saxon norm of “innocent till proven guilty” to the Napoleonic jurisprudence of “guilty till innocent”. This act is just one in a set of decades long legislative precedence that not just denies gender equality through preferential treatment, but also reverses the jurisprudential basis of what constitutes guilt or innocence. Many such acts/statutes/provisions exist - including the right of maintenance under Section 125 of the code of criminal procedure 1973¹⁶, and a whole host of Inheritance, Taxation and Banking laws. Each of these are further connected to religious and community specific laws, customs governing inheritance and civil relations, not to mention gender specific economic incentives for women. All of these have come up in a very specific context, related to the cultural norms and the urban - rural divide and lack of industrialisation that provided the impetus for progressive gender equality legislation. Essentially the case for marriage equality, would mean a mass inapplicability or acute confusion as to how to apply these other laws if marriage equality was granted.

For example, Should two men - one Hindu and one Muslim get married under the special marriage act, how would the inheritance for the Muslim spouse work, should the Hindu spouse die, if his business runs under the Hindu Joint Family Business legislation? Should the government then allow adoptions, and the child is raised in the Muslim faith, how would the Muslim inheritance laws work with regards to the right of the child and how would the Hindu Joint Family Business model protect his/her inheritance rights? Would those communities

accept with a tinkering of what they see as religiously mandated laws? Similarly, should a case of domestic violence break out in a same sex marriage, how would the provisions of domestic violence apply as the relevant laws automatically confer the woman a victim, and do not provide protections to men. This is just a small sliver of the deep complexities of the problem involved. In the research done for this paper, the sheer volume of extant laws that face this problem, should marriage equality be mandated, was so vast that it spanned literally hundreds of laws, with knockdown effects on jurisprudence. Indeed most of these were so gender specific, gynocentric, or language and context specific, that a mere caveat substituting marriage roles (husband, wife) with biological sex (man, woman) would not have sufficed.

It is precisely for this reason, that the Government's position was that the scope and intersectionality of marriage equality with other laws, was so vast and complex that the jurisdiction lay firmly with parliament and that this was way beyond the powers of the judiciary.

Capacity Deficit

The final argument that has emerged is the chronic structural limitations - not just of changing hundreds of pieces of interconnected legislation, but also the ability to do so in a time bound manner and to enforce said legislation. As it is the Indian police have a very low rate of investigative success and case resolution¹⁷, while judicial pendency is a national scandal with over 50 million cases pending¹⁸, and several running for well over 30 years¹⁹. Compounding this is the poor calibre²⁰ of entry level judicial staff including advocates, an extremely poor

understanding of laws depending on region and urbanisation, and one of the lowest police to population ratios of any major country.

Added to this is the chronic abuse²¹ of previously legislated gynocentric laws, which are now used for harassment. All of these have combined to provide a reality check on the government. This is the same reason that government also opposed the proposed marital rape laws, precisely because it was not gender neutral, but was also impossible to investigate or protect from abuse given the severe human capacity deficit within the police, and that it was superfluous given the PWDVA laws. Similarly it is prohibited for a single man to adopt a girl child precisely because India does not have the social security networks to ensure child protection on a constant basis. Merely having legislation enabling marriage equality, does not negate the capacity deficit in terms of monitoring abuses that could result from inferred rights that ensue from said legislation.

Conclusion

While it is accurate to say that the Government does oppose marriage-equality, to portray this as an un-evolved or retrograde step is a blatant mischaracterisation. The BJP and RSS have significantly evolved their position on SOGIESC issues and in the case of Transgender and Intersex rights have been nothing short of revolutionary. However, there are hard systemic limitations referred to in this paper, changing any of which, would bring about charges of being “misogynist” or “anti minority”. Unfortunately the near complete hijack of SOGIESC issues by the far left means that there is no political incentive for the BJP to expend massive political capital on an issue that will bring it no political

gains. Moreover, it suits the government to show how “progressivist” and “secularist” gender and religion specific laws, advocated for by activists have now come home to roost, in an issue championed by those same activists.

Ultimately the government's position has been determined not by any social conservatism, but the hard structural limitations - the burden of which is so great that the government is unwilling to expend the required political capital. It all comes down to priorities - not just of the government, but those who ostensibly advocate for these rights in public, while destroying the political goodwill and capital in order to silently enact these rights.

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Harmonising Tradition and Equality: The Path to Legislation on Same-Sex Marriage and Adoption Rights in India

Shubhendu Anand & Pradosh Shetty

Introduction

In India's complex social fabric, marriage transcends a simple agreement between two people, embodying a profound, culturally and religiously ingrained institution. It's traditionally seen as a bond between a man and a woman, with a focus on procreation and upholding social norms. This view is shaped by long-standing religious beliefs and customs, reflecting a shared societal identity more than an individual choice. Indian law has historically mirrored this approach, outlining specific gender roles and duties in marriageⁱ.

The 2018 ruling by the Supreme Court of India, which decriminalised homosexuality, was a significant stride for personal freedom and rightsⁱⁱ. Yet, this did not directly lead to the recognition or acceptance of same-sex marriages. In 2023, the Supreme Court chose not to legalize same-sex marriage, leaving the matter to Parliament. This decision underscores the delicate balance in Indian society and law between personal liberties and traditional values that have long characterised marriage.

This section aims to examine these complex elements, looking at how marriage is traditionally viewed in Indian society and contrasting this

with the current debates on same-sex marriage recognition. The focus is to understand how India's deep-seated cultural and religious beliefs sometimes clash with modern views on human rights, including the acceptance of various types of partnerships.

As India navigates these issues, the same-sex marriage debate sparks wider conversations about changing social norms, global human rights influences, and the role of legal systems in driving social transformation. This section intends to provide an in-depth analysis of these factors, exploring the intricate relationship between traditional values, evolving international views on personal rights, and the legal complexities of potentially redefining marriage in this diverse and populous country.

Historic and Legal Context

The institution of marriage in India is deeply rooted in a rich historical and legal context, primarily viewed as a bond between a man and a woman. This perspective is deeply entrenched in religious texts and societal expectations, positioning marriage as a cornerstone of social structure, deeply intertwined with familial and community roles. Throughout history, Indian legislation has mirrored these conventional values. Key laws like the Hindu Marriage Act of 1955 and the Muslim Personal Law (Shariat) Application Act of 1937, along with other personal laws for various religious groups, have all recognized marriage as an inherently heterosexual institution. These laws go beyond mere legalities, encapsulating the cultural and religious ethos of their respective communities.

However, the legal narrative in India has been gradually shifting, particularly after the pivotal 2018 ruling that decriminalised homosexuality. This Supreme Court decision marked an advance in acknowledging personal rights, though it stopped short of redefining the legal concept of marriage. The court's stance in 2023 on same-sex marriage further reflects the careful way the Indian judiciary addresses the complex interplay of law, tradition, and evolving social normsⁱⁱⁱ.

This historical and legal backdrop of marriage in India is a multifaceted landscape where traditional beliefs, religious doctrines, and legal frameworks coexist, sometimes conflicting with new global viewpoints and the movement for individual rights. The ongoing debate over same-sex marriage in India transcends legal discussions, signifying wider social shifts and the challenging task of balancing longstanding traditions with contemporary values of equality and personal freedom.

This exploration aims to shed light on the ongoing challenges and possible future directions concerning same-sex marriage and adoption rights in India. It will discuss the impact of these debates on the broader social fabric, looking at how India can manage these changes while honouring its rich cultural and religious diversity. The goal is to offer a balanced viewpoint that recognizes the significance of traditional perspectives while also considering how shifting social attitudes and legal interpretations might influence marriage equality in India's future.

The Judiciary in 2023

The 2023 ruling by the Supreme Court of India on same-sex marriage marks a crucial juncture in the country's legal and social history, shedding light on the interplay between legal interpretations, societal norms, and human rights. The Court's decision to not legalize same-sex marriage, but instead leave this matter to Parliament, reflects an intricate understanding of India's social fabric. This verdict is the outcome of prolonged legal debates and shifting societal dynamics^{iv}.

Central to the Supreme Court's decision was the distinction between judicial and legislative roles. By deferring the decision to Parliament, the Court recognized the deep cultural, religious, and traditional influences shaping the concept of marriage in India. This move underscores the judiciary's task of interpreting laws within constitutional boundaries, while acknowledging that significant societal changes might be more suitably addressed through legislative channels.

The implications of this ruling are significant. It places the LGBTQIA+ community in a liminal space, yet simultaneously creates opportunities for legislative action and public discussion. The decision highlights the ongoing challenges for equality and acceptance that the LGBTQIA+ community faces in India. It emphasises the necessity for a wider societal conversation and a reassessment of current laws in the context of evolving social perspectives.

Moreover, this ruling highlights the complexities of aligning constitutional rights with deep-seated societal norms and traditions. It raises important questions about the judiciary's influence in forming social policy and how far legal interpretations can drive social change.

Thus, the ruling is not just about legally acknowledging same-sex marriages, but also about the dynamic interrelation between law, society, and culture in modern India.

As India progresses, this ruling will serve as a critical reference in debates on individual rights, societal values, and the legal system's role in navigating complex social issues. The road ahead involves not just legal deliberations but also a profound engagement with India's cultural and moral landscape. This makes the quest for equality and acceptance a complicated and multifaceted challenge.

Societal and Cultural Perspectives

In Indian society, the institution of marriage is firmly embedded within a complex web of religious, cultural, and social norms. This intricate network contributes significantly to the resistance against the concept of same-sex marriage. This opposition stems not solely from religious teachings but also from a societal perspective that views marriage as a fundamental element of social stability, primarily geared towards procreation and the continuation of family lineage.

Culturally, marriage in India is often depicted as a sacred bond, emphasising duties, obligations, and roles that extend beyond the individual couple to encompass the wider family and community. Given this backdrop, the idea of same-sex marriage poses a challenge to these deep-seated narratives, calling for a reevaluation of traditional beliefs surrounding family structures, gender roles, and societal norms.

The resistance is further intensified by apprehensions about how such changes might impact the conventional family structure. The concept

of family in India is intricately linked to cultural and religious customs, with each member playing specific, often gender-defined roles. From this perspective, same-sex marriage is viewed as a potential disruptor of these traditional roles and the societal cohesion they support.

Additionally, there is a widespread belief, cutting across various communities in India, that same-sex marriage contradicts the natural order and established cultural conventions. This belief extends beyond religious doctrine, embodying deeply ingrained societal values that have been handed down through generations.

The Debate: Tradition vs. Modernity

The discussion surrounding same-sex marriage in India intricately navigates between the steadfast shores of tradition and the dynamic waves of modernity. On one side of this debate are the traditionalists, who view marriage through the lens of long-standing historical, religious, and cultural norms. They regard marriage as a key element of social structure and continuity, integral to maintaining the fabric of traditional family values and roles deeply rooted in Indian society. Their argument is that extending the definition of marriage to encompass same-sex unions might disrupt this established social fabric⁵.

On the other side, modernists – including human rights activists, some legal experts, and progressive intellectuals – argue for the evolution of social norms. They push for redefining the concepts of marriage and family to be inclusive, aligning with contemporary interpretations of human rights and individual freedoms. This perspective stresses the need to acknowledge and uphold the rights and dignity of LGBTQIA+

individuals, advocating for the legal and societal recognition of same-sex marriages as an embodiment of equality and non-discrimination^{vi}.

Understanding these societal and cultural perspectives is crucial. For the same reason, we aimed to delve deeply into these traditional views on marriage and the layered resistance to redefining its boundaries in the context of same-sex relationships. By exploring these viewpoints, the chapter sheds light on India's intricate balance between tradition, culture, and modernity. It aims to highlight the nuances and sensitivities that play a pivotal role in the ongoing debate about same-sex marriage, offering a comprehensive view of the complexities involved in this significant societal discourse.

The debate surrounding same-sex marriage in India encapsulates a profound cultural and legal conundrum, symbolic of the ongoing struggle to reconcile traditional values with contemporary principles of equality and human rights. This chapter has meticulously traversed the historical and legal contexts, examined societal and cultural perspectives, and scrutinized the intricate dynamics between tradition and modernity that influence the discourse on same-sex marriage in India.

As India continues to navigate these complexities, the path forward necessitates an exquisitely nuanced approach that reveres its rich cultural diversity while embracing progressive change. The journey toward greater inclusivity and the acknowledgement of diverse relationships forms undoubtedly challenges and transforms societal norms. Nonetheless, it also presents an unprecedented opportunity for India to redefine its social fabric in a manner that unwaveringly upholds the dignity and rights of all its citizens.

In conclusion, it becomes unmistakably clear that the discourse surrounding same-sex marriage in India transcends the mere realm of law, penetrating deep into the heart of societal values and cultural norms. While paying due homage to traditional perspectives, a compelling need arises for a forward-looking approach that recognizes the evolving global human rights standards. This approach must foster open dialogue and mutual understanding, effectively bridging the chasm between tradition and modernity. It involves active engagement with a diverse array of stakeholders, encompassing religious leaders and human rights activists, with the shared objective of seeking common ground that respects cultural sensitivities while progressively upholding the rights of the LGBTQIA+ community. The journey ahead is an intricate dance, meticulously choreographed to balance the reverence for India's rich cultural tapestry with the imperatives of social justice and equality in an ever-evolving world.

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Legalisation of Same Sex Marriage and Adoption Rights from the Queer Community's Point View

Ankit Bhuptani

As equal citizens and taxpayers, the queer community deserves the same rights and recognition under the law. Legalising same-sex marriage is about accessing the full promise of equality enshrined in India's constitution. It upholds the fundamental principles of dignity and privacy outlined by the Supreme Court. Simply put, one's sexual orientation should not determine access to civil rights and protections. Marriage equality affirms the humanity in all of us.

The legalisation of same-sex marriage is significant for the queer community on two key levels:

1. First, on a personal level, it validates same-sex relationships and the right to love who you want. After the decriminalization of homosexuality in India, legalising same-sex marriage is a logical next step towards full equality and privacy rights. It provides legal and social recognition of our relationships, which heterosexual couples are enjoying.
2. Second, on a policy level, legalising same-sex marriage confers many practical rights and protections. Without legal recognition, same-sex couples cannot apply for loans together, jointly purchase a property, receive/inherit property from their partner without high

risk of future disputes from other claimants or have hospital visitation rights. In cases where tough medical decisions must be made, a same-sex partner may not have the right to make those choices and may be questioned by the family members. Essentially, the lack of marriage equality denies same-sex couples access to rights and benefits that different-sex couples receive automatically.

The Supreme Court's stance that there is no fundamental right to same-sex marriageⁱ negatively impacts the queer community in multiple ways. Socially and emotionally, it conveys that queer identities and relationships are still not fully valid or acceptable. This can reinforce feelings of depression, isolation, and low self-worth, especially among queer youth discovering their identities. It also hampers social acceptance and visibility of the community. Economically and politically, the lack of marriage equality denies same-sex couples important legal rights and protections when it comes to owning property, accessing healthcare, adopting children, and more. It also encourages talent drain, as accomplished queer people leave India for countries with more equality. This stifles economic growth and innovation. Fundamentally, the Supreme Court's position contradicts constitutional promises of equality, dignity, privacy for all citizens. Without marriage equality, queer citizens cannot access the full rights of citizenship.

Legal recognition of same-sex marriages would accelerate social acceptance of the queer community, just as decriminalisation of homosexuality did. It would signal that India acknowledges the full humanity and personhood of queer citizens. Denying this basic human

right has short-term emotional impacts, long-term political and economic consequences, and affects India's aspirations to be an inclusive global leader. A truly strategic, forward-thinking approach requires enshrining the dignity of all citizens equally under the law. This starts with marriage equality. The queer community deserves the same rights and freedoms guaranteed to every Indian. The Supreme Court must reconsider its position and stand on the right side of history.

There are pragmatic ways to address the concerns of the queer community without overhauling existing marriage laws. Rather than getting stuck on the terminology of "marriage", the focus should be on securing equal civil rights and protections. One approach could be creating an equivalent legal framework like civil unions or registered partnerships under the Special Marriage Act. This allows extending the same legal rights without redefining "marriage" for those uncomfortable with it. Many nations have taken this conciliatory path to progress while respecting traditional voicesⁱⁱ.

The queer community cares most about accessing healthcare, adoption, property, and other rights heterosexual couples receive through marriage. The labelling is secondary. If identical rights and protections can be guaranteed through an alternative framework, it would still uphold constitutional principles of equality, privacy, dignity. Disappointingly, the Supreme Court missed an opportunity to show such pragmatic leadership. But there is still room for the Parliament to pass legislation, or for the Court to revisit this matter more broadly. The ideal vision is an India where all citizens can equally partake in civil institutions fundamental to a free democracy. With basic rights secured for all, the rest will follow in due course.

Present Priorities for the Queer Rights movement

There is a diversity of views within the queer community on priorities going forward. After the unity in challenging Section 377, individuals and groups now pursue varied legal approaches based on their circumstances. For example, within the marriage rights case, we can see that there are petitions filed under the Special Marriage Act, some petitions include adoption rights as a concern to be addressed, others don't. Broadly though, furthering partnership rights seems a common goal, whether through personal or uniform laws.

Alongside, we could prioritise supporting the most vulnerable - such as transgender individuals facing exclusion even after the NALSA judgement under which the Supreme Court directed the centre on the vertical reservation of transgender folks. But that has not yet been implemented. Measures like affirmative action can uplift them socioeconomically. Simultaneously, steady thoughtful steps like adoption rights expansions seem feasible via expert guided child welfare policies where progress can be made on a case-by-case basis.

About Adoption Rights

It is important to note here that, right to adoption and the legalization of same-sex marriage are related but separate issues that the community continues to advocate for. Adoption rights grant the opportunity to provide a loving home to a child and a third life in the couple's life, while marriage equality promotes full civil rights and societal inclusion involving two mature individuals who are in love. So, it does not necessarily go hand in hand.

Progress often happens gradually, with incremental steps towards greater acceptance. Some countries initially recognised same-sex partnerships and later expanded adoption rights. Focusing the current dialogue on legalising marriage, building greater public awareness and trust, before revisiting adoption rights might be a more organic approach to societal change.

However, the two issues stem from the same underlying principle - that LGBTQ individuals and couples should not face discrimination in their personal relationships and family structures. A child in need is best served in a safe, supportive environment with parents ready to nurture them, regardless of gender identity or sexual orientation. With proper investigation and assessing all parameters which are existing for straight couples, same-sex couples can provide the same quality parenting as others.

There are thoughtful perspectives on both sides of this complex issue. Some ask - what effects might being raised by a same-sex couple have on a child's development?ⁱⁱⁱ It's a fair question, considering the lack of long-term research so far. Every family is different, as families come in different shapes and sizes. Many children, when asked, speak of loving homes and positive role models, regardless of parental gender suggesting that it's the love that makes the family, not the gender. And there are children in need of the stability which an adoptive family can provide. Broader adoption rights would relieve pressure on social support systems and grant more children the benefits of growing up in a household rooted in love.

So there are risks we cannot yet quantify, and there are known benefits too^{iv}. We must weigh them carefully, with expertise and open minds,

keeping the child's well-being foremost. More study would help guide wise policies. In the meantime, proper screening and support systems remain key. If implemented appropriately for all adoptions, they can address the worst fears like abuse and pedophilia. With care on all sides, perhaps we can have faith that there are many "right" kinds of families, anchored in compassion. The ones that will emerge and thrive are those grounded in the unifying values of respect, responsibility and love. Incremental policy changes should promote equality in all aspects of civic life for LGBTQ citizens. Their right to adoption deserves fair consideration once the climate is receptive.

At the core, pursuing pluralism and dignity for all could be a unifying spirit. Accommodating diversity of opinion on space and methods, the law hopefully moves towards equal liberty, justice and equity. Dialogue and mutual understanding will light the way. Step-by-step, with compassion driving and prudence checking, India can get there.

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The Question Of Homosexual Unions and its Implications

Côme Carpentier de Gourdon

Logically, any essay on this topic must cover two separate subjects without mixing them up. First, there is the issue of homosexuality that has always existed as a marginal deviation from the norm but has become a matter of daily conversation and promotion in the last few years and second, there are the legal and ethical questions surrounding the institution of marriage which is seen in most, but not in all cultures as a ritual sacrament as well as a contract.

A few words need to be said about the first of the two subjects. It is a matter of elementary biological evidence that there are two sexes or genders in all orders of the mammalian class and most others and that natural reproduction requires the coupling and collaboration of individuals of both sexes. Any association between members of the same gender or sex is of a different order, whether it is motivated by friendship, mutual need, convenience, physical desire, or dependency of one upon the other. There are enough famous and intimate friendships between two men and between two women in history, not to mention group solidarities, to demonstrate that such bonds, whether sexual or not, have always existed and have generally been accepted or at least tolerated by societies in all ages and climes, at least as long as they did not openly breach the local ethics, laws, and customs of their

times. They were acknowledged as sterile couplings, indulging in anomalous or 'counter-natural' practices. The attempt to equate such relationships with marriage has never succeeded because the latter is primarily about the creation of a family through the begetting of offspring whereas the former, even when they lead to cohabitation, are motivated by individual motives and desires of a different order. There is always the urge to mimic the biological norm in those who for any reason do not fall under it and marriage is no exception. Those who are not attracted to what was designated as 'the opposite sex' are often driven to imitate marital unions by playing the traditional roles of partners in a couple but such constructions are biologically misled and therefore have been morally condemned or disapproved of as a rule, even when they were socially tolerated.

There are rare cases of sexual dysmorphia which require and deserve suitable dispensations depending upon the wishes and possibilities of those affected but there is no scientific evidence that what is now dubbed sexual dysphoria is anything but a mental affliction¹. Dysphoria leads to dystopia and should not be taken as a natural equivalent of biologically sound feelings and behaviour. Picturing gender dysphoria as a common and even natural state of being that should be feted and displayed is a contemporary strategy in the service of a socio-political and cultural agenda.

The Woke Deconstructionist Agenda

The current psychological theories that subordinate objective realities to individual feelings and urges are pernicious derivations from the evolving theory of human rights, used to legitimise any behaviour that

allegedly does not harm others and to put what people are (or believe they are) above what they do; these theories belong to the wider ideology of transhumanismⁱⁱ and posthumanism that makes the individual the sole judge and authority over his or her (or its) own nature, to the point of abolishing humanity, and mankind altogether, to make it an undefined 'something else'.

Once we admit that bad examples and precedents are misleading and harmful for society at large and particularly for its more vulnerable members, it is difficult to argue that unnatural behaviour is innocent and harmless. That is why the moral codes of most societies did not approve of homosexuality or other aberrant tendencies and often condemned and punished them. The Hindu tradition is pluralistic, causally analytical rather than condemnatory and open to all things in nature which it seeks to understand and when possible improve rather than repress. However, it unambiguously emphasizes the centrality of the couple and the family and places major importance on the union of man and woman for the perpetuation of societyⁱⁱⁱ whereas the *Manusmṛti* states that sexual relations between males are forbidden and lead to the loss of their social status or *jati*. The Vedic scriptures extoll the fundamental role of the *grihastha*: the virtuous householder who supports all other human stations, including those of ascetics, celibate sages and students^{iv}. *Sanatana Dharma* allows special places and functions for those who deviate from the norm and are called to exercise certain professions described in the *Kamasutras* and related sociological texts^v. Each one has his or her *svadharma* within the cosmic *varnashramadharmas*.

Without exceeding the scope of this necessarily brief reflection, it must be pointed out that there is no homogenous homosexual 'community',

contrary to what contemporary American and European liberal dogmas claim by lumping all sorts of unrelated sexual peculiarities under the 'woke' LGBTQX label. For many people such practices come from habits, often acquired early in life from peers or figures of authority or influenced by the family environment - like smoking or drinking that are not either innate dispositions - and are combined with 'normal' sexual activities, as when homosexuals are heterosexually married and are often defined as bisexual or metrosexual. Others fell into these persuasions, money or sheer pleasure without adhering to any ideology or political agenda. Others still, in increasing numbers, make careers as activists, often well paid and powerfully supported, claiming to be champions of oppressed minorities and requiring special rights and privileges, going from access to women's bathrooms for 'trans-men' to job reservations and political quotas, demanding 'community representation' and striving to propagate their practices among children and other vulnerable sections of society^{vi}. They seek to recruit 'converts' to enlarge their numbers so as to make the case that a very substantial part of society belongs to the 'community'. The widespread active and pervasive state-sponsored endeavour in many 'advanced nations' to reach out to children, even from kindergarten age, to incite them to explore their sexual identity and to offer them psychological counselling and corrective hormonal treatments, without informing their parents, if ever they feel that their biological sex may not conform to their 'gender' betrays a supra-national policy of promoting homosexual tendencies and spreading transgender 'transitions' among the upcoming generations.

The tactics and the jargon, entirely borrowed from an American playbook that originated in a leftist inspired trend in San Francisco in

the fifties and sixties^{vii}, incite people in all walks of life to 'come out' and become advocates and promoters of their 'lifestyle'. As a result, whole urban neighbourhoods and recreational resorts in many parts of the world have become enclaves for militant sexual minorities where those who don't belong generally feel unwelcome. Such 'communities' host a proliferation of facilities dedicated to the admittedly promiscuous habitual activities of their members, including bathhouses, massage parlours, bars, etc., all under the rainbow flag that has been given a meaning very different from the solar spectrum, just like the word 'gay' that signifies happy and boisterous in the English language has become a euphemism for something far less innocent, implying that people of that persuasion are euphoric, as opposed to the supposedly drab and dull 'straight' population. 'Gay' used to evoke the joyous mood of Christmas in old carols but is now best avoided if one does not wish to cast a shadow on the light of religious celebrations.

The creation of fringe communities that aspire to become mainstream and even to reshape the mainstream entails the frequent staging of public events such as 'Gay Pride' parades that have become de facto mandatory in many 'advanced' liberal societies and are formally intended to convince society at large that homosexual practices are healthy, pleasant and respectable and that even small children should be familiarised with them. The 'gay pride' ideology is openly about replacing honour by vanity, modesty by wantonness and decency by vulgarity and obscenity.

Despite the habitual claims of their promoters that those parades are good-natured and held in the spirit of 'peace and love' the very visible emphasis on 'drag queen' displays, orgies, sado-masochism and

pornography evinces a very different vision of life. The goal is to make society accede to all the desires of the self-styled leaders of the various LGBTQ denominations, including the most bizarre ones, such as those that profess to be non-binary, 'polysexual', transhuman or claim the right to have sex with children or animals or to 'transition' to animality themselves. Although many if not most homosexuals reject those aberrations the fact is that the overall transgressive movement has turned into a sect or rather a confederation of sects that calls for unlimited permissiveness and thereby opens the door to all excesses in the guise of tolerance and inclusion.

We must therefore once again establish a clear difference between those people who privately indulge in homo-erotic practices without promoting or canvassing for them and the ideologues who use the theories of minoritarism and 'structural oppression' to conquer power and change society in their image by imposing their physical desires onto all and sundry and penalising those who don't approve and wish to protect their families from the propaganda and the example set by them. Defining people's identities by their sexual practices brings us back to the Biblical allegories about Sodom and Gomorrah that evoke the divine punishment of similar habits.

The conclusion of this overview is that homosexual and related acts and lifestyles exist at various degrees of frequency, depending upon the permissiveness of a society and the physical and cultural conditions that shape it, but that they don't amount to a critical factor. Making the accommodation of deviant sexual activities a litmus test of 'democratic values' aims at the destruction of traditional moral norms built over

thousands of years according to the self-serving wishes of a very vocal and powerful minority.

An insidious plot has been hatched in recent decades to subvert foundational social structures, according to the Marxist-Trotskyist theory of critical deconstructionism espoused by the Frankfurt School^{viii}. An essential element of that conspiracy is the endeavour to replace traditional standards and customs by their opposites, often vaguely evoked as 'European values' or 'democratic norms' under the aegis of an arbitrary Atlantic-dominated 'rules-based' New World Order. The real objective is the fulfilment of a new imperialist agenda focused on the imposition of universal rules of conduct, misleadingly described as guidelines for achieving 'equality, gender equity, diversity, and inclusion', hailed as the abolition of all discriminations.

Totalitarianism is the unspoken but manifest corollary of this recent utopia promoted by some influential billionaires^{ix} and public figures through the political parties, associations, and lobbies they sponsor. Their goal is to infiltrate and transform every institution to the advantage of their persuasion and they have been particularly active in the educational, political, cultural, military, and judiciary sectors. They use other, initially unrelated causes like socialism, antiracism, antisemitism and environmental activism to advance their agenda and they effectively behave like the missionaries of a revealed faith in terms of the methods and operations. The introduction of subjects like 'queer studies' in academic curricula and the creation of mechanisms dedicated to the protection of sexual diversity and the popularisation (and imposition) of gender issues demonstrates the supra-national agenda at work in this domain.

There is evidence that certain powerful countries, particularly the United States of America and its closest allies and vassals ruled by neoliberal lobbies hoist the rainbow flag and use the LGBTXQ+ agenda (ever more categories are added to the label from time to time) as a viral weapon to extend their influence on other countries by posing as messengers of freedom, democracy and tolerance and berating more traditional cultures as backward, oppressive and patriarchal, the familiar shibboleths used by the neo-colonial hegemons to keep or recover their dominance on targeted nations by dividing and subverting them through deconstruction in the name of required progressive reform.

We are witnessing in many countries a rebellion against this neo-liberal post-moral imperialism and various states, from Russia to Brazil (under Bolsanaro) and from Turkey to Italy have expressed their rejection of what effectively amounts to a campaign against the national social traditions and the moral authority of their institutions, including marriage, the family, religion and culture. Recent legislation adopted by the Russian Federation, whose government disapproves of 'sterile sexual relations', bans 'homosexual propaganda' in all its forms (including gay pride parades) as an extremist ideology intended to destroy the country^x. Hungary has adopted similar laws and many (mainly Republican) legislators, educators, and judges in the United States have similar opinions about wokism and its sexual agenda. In China, the government is actively promoting traditional family values and encouraging women to put priority on the right upbringing and education of children. The fact that these nations are described as authoritarian or dictatorial in the 'democratic' community does not mean that they are wrong about the threat they face.

A last remark is relevant about the 'religious' strategy of the protagonists. In 'Abrahamic' civilisations the dualism of God and Devil is seminal, unlike in most neolithic, 'polytheistic' creeds such as those of India, China and Pre-Columbian America. In India the Daivic-Asuric dichotomy is equivalent but not identical to the Christian concept of the war between Good and Evil. By opposing the traditional morality of the monotheistic faiths born in West Asia, the LGBTQX leaders espouse the dialectic rooted in the affirmation that 'Daemon est Deus Inversus'. They tacitly accept that the liberation from the ancestral submission to God's commandments brings with it self-indulgence, pride, lust, narcissism, licentiousness and other cardinal sins that they champion. Indeed, it is no coincidence that this massive campaign in support of various kinds of what was called vice and perversion until not so long ago coincides with a reported explosion in the prevalence of human and especially child trafficking and avowed Satanism, touching high levels of government and society, in many parts of the world and particularly in North America and in Europe.^{xi}

Christian theology argues that the Devil is the ape of God, the LGBTQX creed seeks the imitative adoption of sacraments like matrimony (the term includes the word for 'mother') but in the reverse, whereby one of the two 'married' men has to play the role of the woman in the couple as in a masquerade. This anthropological travesty leads us to consider the demand and call for homosexual marriage from a sociological and spiritual viewpoint.

Marriage for All?

The case made by the advocates for 'gay marriage' is based on a literal interpretation of the notion of equality. All people being equal (which etymologically means identical), whether they are males, females, or belong to some other culturally defined gender, they all can marry anybody. That theory should imply that they can wed as many others as they wish. Throughout history many societies have allowed children to be married to adults and even to old persons and polygamy/polyandry was and is still practised in various regions. The general concept of modernity adopted in the Christian world, and now prevalent in most countries, is that social and moral progress and the notion of fairness between genders leads to and hinges on the practice of monogamous marriage between an adult man and an adult woman. Once that norm is rejected, polygamy in all its interpretations becomes a legitimate choice and there is no clear line to be drawn anywhere if marriage is seen as a right to cohabitation based solely on desire and convenience, which inevitably favours the rich and the powerful.

When the issue of homosexual unions became a matter of public debate in the West towards the end of the last century, the initial reason invoked by those who lobbied for it was that same-sex life partners did not have the rights to property and inheritance enjoyed by married couples. They demanded a legal status that would protect the economic interests and needs of both members of the pair and codify their mutual rights and duties. That demand was satisfied by the adoption in 1999, in France at least, of a contractual bond for all those who would not or could not marry but mainly for same-sex couples^{xii}.

Nevertheless, many homosexual militant leaders felt that was not enough and they demanded, in the name of equality, the right to marry on the same terms as 'normal' couples. Despite the growing realisation that such a concession would automatically trigger further demands, such as the right to have children by whatever means: adoption, 'test-tube procreation' or surrogate motherhood, the right to marriage was granted in several countries under the pressure of the politically correct ideology that made it a matter of humanitarian empathy and social justice. Many of those who approved of gay unions were – and remain – opposed to the adoption or begetting of offspring but, as expected by the more clear-sighted, there was no going back and many tens of thousands of homosexual couples are now raising or have at least bred children, usually through the 'rent-a-womb' procedure or by asking someone of the opposite sex to impregnate one of the (lesbian) partners or carry the foetus (for male couples) on their behalf. There is no clarity about the longer-term social consequences of this large-scale experiment which produces many children without a father or a mother being brought up by two fathers (one of them presumably being the biological parent) or two mothers and owing their lives to a generally anonymous genetic progenitor or surrogate (carrying) mother. Those individuals will remain in a minority in a society that remains determined by biological dimorphism with clearly separate sexual functions and, though in their long history, humans have adapted to the most varied and difficult circumstances, psychological problems for the offspring of same-sex unions may not always be easy to solve.

Final Remark

In conclusion, we are sailing uncharted and choppy waters in the ocean of norms and morals and the primary objective of social stability is being sacrificed in many countries, on the altar of undiscriminating demagoguery and short-term utilitarian egoism and wantonness. It should be the role of India, in the spirit of the Sanatana Dharma and the vedic Rita to restore sanity by invoking and applying timeless principles of good sense, based on a sense of responsibility towards future generations and respect for innate human nature and its needs.

It is advisable to allow a special dispensation for adults of the same sex who cohabit and wish to have the rights and obligations towards each other that are legally recognized for heterosexual couples but marriage should remain an institution and for many, a sacrament reserved for unions between men and women.

Endnotes:

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The Kamasutra is a descriptive account of sexual mores and practices that does not pass moral judgments. It alludes briefly to homosexual relations and acknowledges the existence of prostitutes of both sexes. In 'mythological' texts homosexual and lascivious activities are usually associated with asuras and raksasas, 'demonic' beings who don't obey the Daiva or Manava Dharma. Yaksas and gandharvas (semidivine, non-human creatures) are alluded to sometimes as belonging to a third gender but they are not manavas.

- vi. Haley, Samantha G., Diana M. Tordoff, Alena Z. Kantor, Julia M. Crouch, and Kym R. Ahrens. "Sex Education for Transgender and Non-Binary Youth: Previous Experiences and Recommended Content." *The Journal of Sexual Medicine* 16, no. 11 (2019): 1834–48.

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There are multiple cases of small children, even in kindergarten school, mostly in Western European and North American countries being exposed to the promotion of homosexuality, gender transition, and such practices as cross-dressing and the use of sex toys. This is mandated by certain national and state ministries of education in the name of abolishing all discriminations and prejudices and facilitating the gender transition of those children who are described as sexually dysphoric, even when they are far too young to have formed their own personalities and understood the nature of life. Needless to say, the age-old notion of childish innocence and purity has been discarded by the woke ideology and the ever-more prevalent reporting of child trafficking and sexual abuse of minors in wealthy liberal democracies may not be coincidental.

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The film 'Sound of Freedom' (2023), describing the sordid sexual trade in children in the USA and in many other parts of the world, faced a lot of opposition before its release and was panned by some critics who argued that it is an alarmist flick based on conspiracy theories (a familiar charge). However there is substantial evidence for the existence of powerful criminal networks trading in minors on the Dark Web and by other means. The unease and hostility it aroused in certain circles seems to betray the unwillingness of influential sectors in society to admit the existence of this plague. Though there is no linear relation between the total sexual license advocated by more extreme LGBTQ activists and the spread of this traffic, it is difficult not to see that the destruction of moral restraints and the banning of ancestral religiously sanctioned taboos pave the way for a state of affairs in which 'anything goes' in a global market ruled by the laws of offer and demand. A vivid illustration of the context is provided by the increasingly numerous self-declared 'Satanic' Pop & Rock singers and bands (e.g. the transsexual performer Kim Petras et al.) that target teenagers with explicitly dark, malevolent, and blasphemous messages. There are many allegations of pedophilia and related criminal activities in high places, (cases of Jeffrey Epstein, Hunter Biden, etc.) some of which have been uncovered and tried in the UK, the USA, Germany, and other states.

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