
BEYOND MARRIAGE: LEGAL STATUS OF SAME - SEX RELATIONSHIPS TODAY

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ABSTRACT

This article explores the evolving legal interpretations of marriage, focusing on the exclusion of same-sex couples within traditional frameworks. It critically analyses judicial opinions, the role of procreation, and contemporary understandings of marriage. The discussion advocates for inclusive definitions that recognize the legal and emotional legitimacy of same-sex unions, supported by the contributions of advocacy organizations such as the National Organization for Women (NOW). Queer and LGBTQ individuals in India continue to face significant social and legal challenges. Same-sex marriage, which represents the union of two individuals of the same gender, often clashes with traditional cultural norms. One of the most pressing contemporary issues is the legal recognition of same-sex unions in India. Following the decriminalization of Section 377 of the Indian Penal Code (1860), same-sex relationships began to gain greater visibility and acceptance. However, prior to this landmark judgment in 2018, such relationships were widely stigmatized. While certain states in India have extended rights to individuals identifying as the third gender, there remains a lack of institutional or governmental support for same-sex couples. Existing legal frameworks and institutions largely exclude same-sex unions, leaving them without the protections afforded to heterosexual marriages. This article seeks to examine the current socio-legal landscape surrounding same-sex marriage in India and emphasizes the need for inclusive legal recognition.

Keywords: Queer/LGBTQ, same-sex marriage, legal foundation, International human rights Frame work, legal protection.

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1. INTRODUCTION

In the late twentieth and early twenty-first centuries, there has been a notable shift in global discourse toward recognizing marriage as a fundamental human right. This evolving perspective advocates for the inclusion of same-sex couples within the legal framework of marriage. Legal recognition of marital unions offers access to a broad array of rights and entitlements—such as social security benefits, taxation reliefs, inheritance rights, immigration privileges, and more—which are often denied to couples whose relationships are not legally sanctioned.

Restricting marriage to opposite-sex couples effectively excludes same-sex partners from accessing these essential legal benefits. While certain rights associated with marriage can be replicated through private legal mechanisms—such as contracts or wills—such substitutes do not offer the same legal certainty or protection. Consequently, same-sex couples continue to face insecurity in matters relating to inheritance, adoption, immigration, and other family-related legal rights¹.

Marriage laws in most countries traditionally define the institution as a union between a man and a woman. However, in the absence of clear legislative definitions or reforms, the interpretation of such terms has been left to judicial discretion. Courts have often interpreted marriage in ways that reinforce conventional gender norms, thereby excluding same-sex relationships and insulating the institution from broader, more inclusive interpretations. Although homosexual behaviours has been decriminalized or acknowledged in various jurisdictions, this recognition rarely extends to the legal status of same-sex unions².

In contemporary society, the legal institution of marriage is still largely framed within a heterosexual context. While some jurisdictions have adopted gender-neutral language, most

¹Gay marriage, Bamboo web Dictionary, <http://www.bambooweb.com/article/g/a/gay_marriage.html>as on May 16,2006.

²Sharpe, Andrew, Transgender jurisprudence: Dysphoric Bodies of Law (U.K:Cavendish publishing Limited,2002),p.91.

statutory frameworks continue to restrict marriage to male-female unions. As a result, same-sex couples—irrespective of the duration or depth of their commitment—are denied many of the legal, financial, and social protections automatically conferred by marriage. These include, but are not limited to, employment benefits, tax exemptions, and rights related to inheritance or the death of a partner.

Although many of these benefits are now extended to heterosexual de facto couples in various countries, including India, same-sex couples remain excluded from similar recognition and protection under the law. This legal disparity underscores the urgent need for reforms that ensure equal rights for all couples, regardless of sexual orientation.

2. LEGAL FOUNDATIONS AND TRADITIONAL INTERPRETATIONS

2.1 Sex and The Institution of marriage: -

Marriage is widely regarded as a foundational institution through which individuals establish a recognized union and often form a household. Traditionally, it has been viewed as a prerequisite for starting a family, serving both personal and societal interests. Beyond the partnership of two individuals, marriage confers social legitimacy and legal entitlements such as:

- Rights related to child-rearing
- Property ownership and inheritance
- Sexual conduct and kinship recognition
- Marriage in Religious and Cultural Contexts etc.³

In major religious traditions—including Hinduism, Islam, Christianity, and Judaism—marriage has historically functioned as a moral and legal boundary for sexual relations. Unmarried individuals engaging in sex face social disapproval or legal penalties, often labelled as fornication or adultery. Such behaviour is not only stigmatized but, in some jurisdictions, criminalized⁴.

³ Marriage, Bamboo web Dictionary, <http://www.bambooweb.com/articles/m/Marriage.html> as on May 16,2006.

⁴ Ibid

2.2 Gendered Interpretations of Marriage:

Traditional legal and religious doctrines have long defined marriage as a union exclusively between a man and a woman. This view implies that same-sex relationships, regardless of legal neutrality in statutory language, are inherently excluded from the scope of "marriage."

2.3 The Classical Legal Definition:

One of the most enduring legal interpretations of marriage was articulated in **Hyde v. Hyde and Woodmansee**⁵, where Lord Penzance defined marriage as: "The voluntary union for life of one man and one woman, to the exclusion of all others."

This common law definition outlines five essential elements:

- **Voluntariness** – The union must be entered into freely.
- **Union** – It must constitute a formal legal bond.
- **Permanence** – Intended to last for life.
- **Heteronormativity** – Between one man and one woman.
- **Exclusivity** – To the exclusion of all other partners.

For the current discourse, the fourth element—requiring the union to be between a man and a woman—is particularly contentious. The interpretation of the terms man and woman remains central to legal debates concerning the recognition of same-sex marriages. Without reform, these definitions continue to reinforce exclusionary practices⁶.

2.4 Legal Considerations of Sex and Marriage:

The role of biological sex is a critical determinant in legal definitions of marriage. In the landmark case **Corbett v. Corbett, Ormrod J. asserted**⁷: "Sex is clearly an essential determinant of the relationship called marriage, because it is and always has been recognized as the union of a

⁵ (1866) LR 1 PD 130;(1861-73) All ER Rep175.

⁶ .(1970)2All ER 33.

⁷ See Baxter v. Baxter (1948) AC 274; B v B. (1954) 3 WLR 237;(1955)2 All ER 598, at42.

man and a woman. It is the institution on which the family is built, and in which the capacity for natural heterosexual intercourse is an essential element.”

This perspective emphasizes that heterosexual intercourse, particularly the ability to procreate, is considered a core component of lawful marriage in traditional jurisprudence. Although companionship and emotional support are significant aspects of marriage, traditional legal interpretations often prioritize biological complementarity between partners. Procreation and Nullity in Common Law-In English common law, there has never been a binding requirement that marriage must involve procreation or even the capacity to procreate. The suggestion that a marriage is invalid without consummation belongs more to ecclesiastical than civil law. While common law may involve inquiries into consummation, these investigations reflect traditional practices and do not inherently justify the exclusion of same-sex couples from the institution of marriage⁸.

2.5 Contemporary Definitions of Marriage:

Modern interpretations proposed by LGBTQ+ rights advocates challenge these restrictive definitions. They argue for a broader, more inclusive understanding of marriage, which recognizes shared values and mutual responsibilities, regardless of gender or sexual orientation. A revised definition might be articulated as follows: “A socially sanctioned, voluntary, committed, monogamous, legally contracted union of two adult people, which the government and/or society recognizes by conferring certain rights, privileges, and responsibilities—such as finances, taxes, inheritance, child-rearing, adoption, visitation, and medical decision-making.”

7. One fundamental problem same sex marriage is defining the terms “man” & “women”. If defined genetically, same sex couples would be prohibited from marrying. Here it may be pointed out that, in case of marriage under the Hindu marriage Act, 1955 there is no explicit reference to the requirement that a marriage must be between a man and women.

This definition acknowledges that marriage is fundamentally about a partnership between consenting adults, regardless of gender, and that the legal benefits traditionally tied to heterosexual marriage should equally apply to same-sex unions.

⁸ Gay Marriage, Bombooweb Dictionary, supra n.1.

2.6 Marriage as a Symbol of Equality and Autonomy:

Gay and lesbian individuals have long advocated for the right to marry—not only to secure legal and economic rights but also to affirm their relationships as meaningful and legitimate. Marriage symbolizes intimacy, love, and commitment. The very term “marriage” conveys social recognition and emotional validation, contributing to a sense of permanence and acceptance⁹.

Organizations such as the **National Organization for Women (NOW)** have been at the forefront of these efforts. As early as 1971, NOW issued a policy statement identifying lesbian rights as integral to feminist advocacy. The statement acknowledged that a woman's right to self-determination includes the freedom to define her sexuality and choose her lifestyle. This recognition laid the groundwork for the broader inclusion of LGBTQ/ rights within the movement for gender equality.

3. EVOLVING PARTNERSHIPS: THE RISE OF SAME SEX MARRIAGE AND CIVIL UNIONS

Same-sex marriage and civil partnerships are legal relationships between two people of the same sex, offering legal recognition and rights like those granted in heterosexual marriages. While both options provide legal protections and rights, there are some distinctions in terms of terminology, legal recognition, and certain benefits, depending on the jurisdiction. Same-sex marriage typically provides full marriage rights, including the right to adopt children, tax benefits, inheritance rights, and the ability to make medical decisions for a partner. Civil partnerships, though similar, might not always offer the same level of recognition or rights in every country. The legal status of both continues to evolve globally, with some countries fully embracing same-sex marriage, while others offer civil partnerships or similar legal frameworks as a compromise.

Same-sex marriage refers to the legal union between two individuals of the same gender. Common terms include "gender-neutral marriage," "gay marriage," "lesbian marriage," and "same-gender marriage." Many advocates prefer the term "equal marriage," emphasizing the principle of equality in legal and social recognition. While the term “homosexual marriage” is sometimes used,

⁹ The Netherlands was the first country in the world to legalise same-sex marriage in 2001.

it is often viewed as outdated or stigmatizing, and therefore discouraged by proponents of LGBTQ/ rights.

As of now, same-sex marriage is legally recognized in a limited number of countries. Nations such as Spain, Canada, South Africa, Belgium, and the Netherlands have granted full legal recognition. In the United States, the legal status of same-sex marriage evolved over time, with Massachusetts being the first state to legalize it. However, prior to nationwide recognition, laws varied significantly across states and territories¹⁰.

In some jurisdictions, same-sex couples may access legal recognition through civil unions or registered partnerships. These arrangements typically provide limited legal protections and rights, and often fall short of the full benefits associated with marriage. While some view these frameworks as a step toward equality, others criticize them for reinforcing a separate—and inherently unequal—status¹¹.

Globally, over fifteen countries permit same-sex registered partnerships. However, these partnerships often lack the comprehensive rights granted to married couples. For example, registered partnerships may not include access to the full range of tax, inheritance, immigration, and social security benefits that marriage provides.

While civil unions and domestic partnerships represent progress, they do not equate to full legal equality. In many cases, they create a two-tiered system that maintains inequality under the law.

In the U.S., even where civil partnerships were permitted, same-sex couples were historically excluded from accessing more than 1,000 federal benefits reserved for married couples¹².

Registered partnership legislation was first introduced in Denmark in 1988 and subsequently in Norway in 1993. In practice, these frameworks grant same-sex couples many of the rights and responsibilities associated with marriage, including obligations such as spousal

¹⁰ The SC. Of Massachusetts ruled on 18 Nov2003 that the state could not refuse to marry same-sex couples. Marriage has been available for both opposite -sex and same-sex couples. law allows same sex marriage only to residents of the state.

¹¹ Same-sex marriage is a feminist issues, National organisation for women <http://www.now.org/issues/lgb/marriage.html> on may 16,2006.

¹² West side observe ,June 1993,p.8.

support following relationship dissolution. However, the legal rights conferred through registered partnerships are typically more limited than those granted through full marital recognition, and may also have implications under international law.

In the United States, several states have recognized same-sex partnerships in various forms. Vermont was the first state to legalize civil unions for same-sex couples through the Civil Unions Act. This legislation granted same-sex partners legal rights and responsibilities equivalent to those of heterosexual married couples. Although the Act did not label these unions as “marriage,” it was explicitly designed to ensure equal legal standing and protections. Its provisions closely aligned with Vermont’s existing marriage laws, requiring only minimal residency and procedural conditions for entry and dissolution.

Despite these advances at the state level, civil unions were not recognized by the federal government and therefore excluded same-sex couples from federal benefits tied to marriage. California and Hawaii later introduced domestic partnership laws that offered partial recognition and access to select benefits. However, these arrangements also fell short of full legal equality, lacking access to the extensive set of federal benefits afforded to married couples¹³.

A landmark development occurred on November 18, 2003, when the Massachusetts Supreme Court ruled that the state constitution guarantees marriage equality. This decision affirmed that both same-sex and opposite-sex couples are entitled to equal marriage rights under state law. Similarly, civil partnership registration in England and Wales has adopted provisions that align closely with Vermont’s legislation, offering comparable legal protections.

The provision of registered partnership benefits for same-sex couples varies significantly across countries. In both Canada and Belgium, there are no nationality-based restrictions.

However, countries such as the Netherlands enforce strict residency requirements, while Massachusetts includes a “resident only” clause in its marriage law. In Brazil, same-sex partners

¹³ The U.S state of Vermont enacted legislation in April 2000 providing for civil union between same-sex couples. The law was passed in response to a December 1999 decision of the Vermont SC. Holding that the state’s constitution required Vermont law .

are granted the same legal rights as married couples in areas such as pensions, social security, and taxation¹⁴.

Despite these legal frameworks, many within the LGBTQ/community have expressed dissatisfaction with alternatives to marriage, such as civil unions and domestic partnerships. These arrangements are often viewed as inadequate remedies for individuals excluded from the institution of marriage. Although civil unions can extend certain legal rights to same-sex couples, critics argue that such arrangements create a “separate but equal” status, leaving same-sex partners without full marital recognition¹⁵.

In the United States, heterosexual marriages receive statutory protection from the federal government and individual states. The Defense of Marriage Act (DOMA), enacted in 1996 and signed by then-President Bill Clinton, defined marriage at the federal level as “the legal union between one man and one woman.” Under DOMA, states were not required to recognize same-sex marriages legally performed in other jurisdictions. In addition, 38 states enacted their own versions of the Defense of Marriage Act¹⁶. These state-level laws generally addressed same-sex relationships in two primary ways: They preserved the existing definition of marriage as a union between one man and one woman, ensuring that the legal framework for heterosexual couples remained unchanged with respect to rights, obligations, and benefits.

They permitted the creation of parallel legal structures—often referred to as civil unions—for same-sex couples, such as partnerships between two men or two women. While such arrangements could extend access to many of the approximately 400 state-level benefits associated with marriage, they did not grant access to over 1,000 federal rights and protections reserved for married couples. Due to the federal provisions of DOMA, these rights remained inaccessible to couples in civil unions.

4. FROM SILENCE TO SOLIDARITY: INTERNATIONAL LAW AND LGBTQ+ RIGHTS

Judicial decisions concerning the rights to privacy, marriage, and family life for gay men and lesbians have contributed to the evolution of international human rights discourse. Notably,

¹⁴ Lesbian and Gay Rights ,human rights watch world report 2001,<<http://www.hrw.org/wr2K1/special/gay.html>>as on march 28,2006.

¹⁵ See Christopher j.keller ,Divining the priest :cast, comment and Baehr v Lewin,12 Law & Ineq.j.483,522(1994).

¹⁶ See Christopher j.keller ,Divining the priest :cast, comment and Baehr v Lewin,12 Law & Ineq.j.483,522(1994).

the International Covenant on Civil and Political Rights (ICCPR) plays a pivotal role in this context. In the landmark **case of Toonen v. Australia (1994)**,¹⁷ the United Nations Human Rights Committee interpreted the term “sex” under Articles 2(1) (non-discrimination) and 26 (equality before the law) of the ICCPR to include sexual orientation. This interpretation marked a significant precedent in recognizing protections against discrimination based on sexual orientation within the UN human rights system. United Nations(1948).Universal Declaration of Human Rights.¹⁸

Beyond the anti-discrimination provisions of the ICCPR, international law also encompasses obligations to safeguard and promote the rights of sexual minorities. A particularly relevant instrument in this regard is the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), to which India is a state party. The ICESCR underscores the inherent dignity of the human person and recognizes rights essential to personal and social development. These include the right to pursue economic, social, and cultural development—principles that can support claims by same-sex couples seeking the legal right to marry and form a family. Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) may be invoked in cases of discrimination against lesbians, bisexuals, and transgender individuals, particularly where they are denied equal legal benefits or protections based on sexual orientation.

In the European context, lesbian and gay activists have experienced relative success in asserting their rights through various regional legal mechanisms. Significant progress has been made under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). **Articles 8 and 12** of the Convention are especially relevant to issues concerning private and family life, as well as the right to marry. European court of human rights (2015) Oliari and Others v. Italy, App.N,18766/11 and 36030/11¹⁹.

Article 8 of the ECHR states:

- . Everyone has the right to respect for his private and family life, his home, and his correspondence.

¹⁷ Toonen v. Australia (1994)

¹⁸ x

¹⁹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

- There shall be no interference by a public authority with the exercise of this right except in accordance with the law and as necessary in a democratic society, in the interests of national security, public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others²⁰.

The legal recognition of same-sex marriages continues to be a contested issue within the framework of international human rights law. Advocates for marriage equality assert that in many jurisdictions, marital status determines access to a wide array of rights and benefits, including tax relief, inheritance, healthcare decision-making, and immigration status. Denial of marriage rights to same-sex couples, they argue, constitutes a violation of the principle of equal protection and contradicts the constitutional guarantees afforded to individuals regardless of sexual orientation. International Lesbian ,Gay,Bisexual, Trans and Intersex Association (ILGA World)2023.²¹

This perspective gained judicial support in the landmark decision of **Lawrence v. Texas** by the United States Supreme Court, which held that consensual intimate conduct between adults is part of the liberty protected under the Due Process Clause of the Constitution. By affirming the private nature of such relationships, the Court laid a foundation for broader claims to legal recognition and equality. Conversely, critics of same-sex marriage rights frequently invoke traditional or biologically grounded definitions of marriage as being inherently between a man and a woman. Under Article 12 of the European Convention on Human Rights (ECHR), for example, the right to marry has historically been interpreted within the context of opposite-sex unions²². While Article 8 of the ECHR protects the right to private and family life, the European Court of Human Rights (ECtHR) has repeatedly held that same-sex relationships are not equivalent in legal terms to heterosexual marriage, and thus may be subject to differential treatment.²³

²⁰ <https://www.un.org/en/about-us/universal-declaration-of-human-Rights>.

²¹ <https://hudoc.echr.coe.int>.

²² <https://ilga.org/state-sponsored-homophobia-report-2023>.

²³ United nations human rights committee, report of the human rights committee, communication No,488/1992,U.N Doc CCPR/C/50/D/488(4April1994).

The Court has maintained that this differentiation does not amount to unjust discrimination under Article 14 of the Convention, when read alongside Article 12. In several decisions, it has reasoned that distinctions based on the traditional understanding of marriage are objectively justifiable and proportionate within the scope of member states' margin of appreciation. Article 12 of the ECHR provides that: "men and women of marriageable age have the right to marry and to found a family according to the national laws in these rights". The European court of human rights had an opportunity to determine the legality of same-sex marriage. In *Rees*²⁴, *Cossey*²⁵ and *Sheffield and Horsham*²⁶ the court marriage as protected under Article 12 of the ECHR, was the union of two persons of the opposite sex, thus restricting gay men's and lesbians rights to marry.

Despite these rulings, legal and societal attitudes toward same-sex marriage continue to evolve. The jurisprudence of international and regional human rights bodies reflects a tension between established legal traditions and the growing movement toward substantive equality for LGBTQ+ individuals.

5. LEGAL PROTECTION OF SAME SEX -MARRIAGES: BALANCING RIGHTS, MORALITY

Many advocates for same-sex marriage have noted that the Texas ruling under the Fourteenth Amendment significantly advanced the legal recognition of such unions. Opponents of same-sex marriage often argue that its primary purpose is procreation, and since same-sex unions inherently lack the potential for biological reproduction, they challenge the validity of such marriages. Some assert that legalizing same-sex marriage may deter individuals from entering heterosexual relationships and, subsequently, from having children. This perspective is often rooted in the belief that marriage serves as a long-standing institution supporting legal, social, and economic stability through family growth. The constitution which provides for equal protection and substantive due process under the law, one-person cannot be denied those rights of marriage.

²⁴ Reports :European Commission of Human Rights 278.

²⁵ *Rees v U.K*(1987)(EHRR 56).

²⁶ *Cossey v U.K* (1991)13 EHRR 622.

In 2003 the U.S SC. In *Lawrence v Texas*²⁷, held that intimate consensual sexual conduct was part of the liberty protected by substantive due process under the 14th Amendment.

However, this viewpoint does not justify the denial of marriage rights to same-sex couples. It is highly improbable that the intent behind marriage laws was to limit marriage solely to couples capable of biological procreation. No legislation currently prohibits the union between a sterile woman and a fertile man, or vice versa. Additionally, there is no legal requirement mandating that married couples must procreate. If procreation were truly a legislative priority, regulations would exist regarding the marriages of sterile individuals, which is not the case. Therefore, it is evident that procreation is not a central concern in marriage legislation.

It is incorrect to assert that same-sex couples are incapable of raising children. While they may not biologically reproduce within their union, numerous avenues exist for them to have children, including adoption and assisted reproductive technologies such as artificial insemination. Although same-sex couples may face more complex legal and procedural challenges—particularly as single applicants in jurisdictions such as Western Australia—adoption remains a viable option.

Although procreation is of great importance to many couples considering marriage, it is not the defining characteristic of the institution. The fundamental motivations behind marriage, particularly in modern contexts, are love, emotional connection, and companionship. Committed same-sex couples who wish to legally affirm their partnership should be granted the same rights and recognition as opposite-sex couples. Denial of marriage licenses to such couples based on sexual orientation is unjustifiable.²⁸

While registered partnerships offer some legal protections, they are not a comprehensive substitute for full marriage rights. Nonetheless, they represent a step toward equality by affording same-sex couples' certain benefits traditionally reserved for married couples.

There is considerable consensus among international scientific research that sexual orientation is primarily influenced by genetic factors and is generally established at an early age.

²⁷ *Sheffield and Horsham v U.K* (1999) 27 EHRR 163.

²⁸ *Lawrence v Texas*, Human watch (July 2, 2003), <http://www.hrw.org/press/2003/07/hrw-amicubrief.htm> as on May 18, 2006

Individuals do not choose to be heterosexual or homosexual, although societal pressures may lead some to conceal their sexual identity. Public perception often portrays homosexual individuals as promiscuous; however, many same-sex couples maintain long-term, committed relationships. In fact, research suggests that same-sex relationships can be as stable—if not more so—than heterosexual relationships of similar duration. If same-sex couples are allowed to adopt, it would eliminate the need for orphanages, as no child would be left without a family. These children would receive proper care and upbringing within a stable home environment. This shift would also help reduce the social stigma of children being perceived as burdens on society. Furthermore, legal recognition of same-sex unions may lead to a decline in divorce rates, as the commitment within these partnerships would be better understood and accepted by society.²⁹

Economic benefits are also anticipated. With greater social acceptance and legal support, issues such as domestic violence and dowry-related disputes could diminish. Increased employment opportunities for members of the LGBTQ+ community would boost economic productivity. The community would gain social recognition, and many individuals would attain financial independence and professional success³⁰. Such progress would encourage others to step forward, reducing societal discrimination and promoting inclusivity in workplaces, educational institutions, and public life.

Once legally recognized, same-sex couples would no longer need to struggle for equal rights or face discrimination. They would be entitled to the same fundamental human rights as all citizens, as guaranteed by the Constitution of India. This would foster dignity, freedom, and social stability. Families of LGBTQ+ individuals would also experience less stigma and be more accepting. Internationally, countries like the United States, France, and Canada have granted legal status to same-sex marriages, which has contributed positively to their societies and economies. One observation for registered has been made in Denmark that majority of applicants for registered partnerships are men. Decriminalisation of homosexuality and same sex marriage have not led to a decrease in heterosexual marriages nor it is developed in homosexual behaviours.³¹

²⁹ See Section 3(1) of the Adoption of children Act, 1896(WA). But the Adoption by single person is possible only with judicial consent.

³⁰ Strasser, family Definitions and the constitution, *supra* n.48 at 1026.

³¹ *Ibid* at 993

Mackenzie, Robin, Transsexual's legal status and same sex marriage in New Zealand 7(4) Otago Law Review (1992)569.

Arguments for Legal Protection of Same-Sex Marriage:

- a) **Human Rights and Equality:** Denying same-sex couples the right to marry constitutes a violation of basic human rights and equality before the law. Legal recognition affirms the dignity, autonomy, and personal liberty of LGBTQ+ individuals.
- b) **Social and Psychological Benefits:** Marriage provides social validation and reduces stigma, contributing to mental and emotional well-being. It enables same-sex couples to raise children in legally protected family units.
- c) **Legal and Financial Security:** Legal marriage ensures access to rights related to inheritance, taxation, medical decisions, joint property, and spousal benefits.
- d) **Strengthening Social Stability:** Recognizing same-sex unions promotes long-term, stable relationships, reducing the marginalization of LGBTQ+ individuals.
- e) **International Precedents:** Many progressive democracies, such as the U.S., Canada, and several European countries, have legalized same-sex marriage without adverse societal impacts.

Arguments against Legal Protection of Same-Sex Marriage:

- a) **Traditional and Cultural Norms:** Opponents argue that marriage has historically been defined as a union between a man and a woman, often rooted in religious or cultural beliefs.
- b) **Impact on Family Structure:** Some believe that legalizing same-sex marriage may challenge the traditional family unit, potentially affecting child-rearing and societal values.
- c) **Religious Opposition:** Various religious groups oppose same-sex marriage on doctrinal grounds, viewing it as incompatible with sacred texts and moral teachings.
- d) **Social Backlash and Division:** In countries with conservative populations, legalizing same-sex marriage may provoke social unrest or intensify polarization.
- e) **Concerns Over Slippery Slope:** Critics fear that changing the definition of marriage could open the door to demands for legal recognition of other non-traditional unions.

6. CONCLUSION

Traditional concepts of marriage have already experienced significant transformation. Practices such as polygamy have been abolished, married women are no longer considered the property of their husbands, and legal frameworks now permit divorce, contraception, and abortion. Furthermore, most modern societies have eliminated laws prohibiting inter-caste and inter-religious marriages. The conventional notion of a family composed strictly of a mother, father, and children no longer reflects contemporary societal realities. These changes in marriage customs and norms support the argument that marriage is an evolving institution. The recognition of same-sex marriage represents a continuation of this evolutionary process in response to shifting lifestyles and societal values.

While the foundational reasoning behind traditional arguments for heterosexual marriage lacks strong justification, societal hesitation to expand the definition of marriage beyond heterosexual unions remains prevalent.

The institution of marriage, as currently defined, is deeply embedded in cultural and legal systems, making shifts in its definition challenging. In many societies, including India, the prevailing framework views marriage as the union of one man and one woman, a concept not formally codified but widely upheld in family law. Consequently, altering this entrenched view is unlikely without significant institutional reform. Governments and legislatures are generally hesitant to discard the traditional model in favor of one inclusive of non-heterosexual couples. Legal recognition of same-sex marriage may also provoke strong emotional and political reactions, potentially resulting in backlash against the LGBTQ+ community.

Moreover, legalizing same-sex marriages or civil unions would require substantial changes in legislation related to employment, healthcare, family law, criminal justice, and more. These complexities raise serious questions about the feasibility of such reform, particularly in nations with deeply rooted cultural traditions—such as India—where the likelihood of constitutional amendments being successfully enacted remains minimal.

Since the early 21st century, many countries have legally recognized civil and common-law unions. However, there remains a noticeable disparity in global attitudes toward same-sex marriage. In many regions, including India, same-sex couples still face societal stigma and legal

exclusion. Although verbal expressions of support may exist, actual legislative action has yet to be taken in many cases. In Indian society, same-sex marriage is often viewed as unnatural due to cultural conditioning. While older generations perceive it as unethical or even as a disease, younger generations increasingly view it as natural and acceptable. Despite this shift, legal recognition remains limited, and the LGBTQ+ community continues to face systemic barriers.

Although homosexuality has been decriminalized in India, same-sex marriages have yet to be recognized. This lack of recognition is deeply rooted in societal norms and conservative attitudes. If legal reforms are undertaken to support LGBTQ+ rights, India could position itself as a progressive, inclusive nation. Yet the road to such reform remains challenging. The law must evolve to reflect the rights of all citizens, including the estimated 15% of the population identifying as LGBTQ+ or transgender. While progress has been slow, there is hope that current and future legislative efforts will pave the way for greater equality under Indian law. Recognizing and legalizing same-sex marriage would be a significant step forward in affirming the rights and dignity of LGBTQ+ individuals.