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Homosexuals are not made, they are born: social implications of same sex marriage in India

ABSTRACT-

There is a rich history in the context of same-sex marriage in India. While there are contradicting voices, an investigation of ancient Indian texts and sacred writings uncovers a more moderate society than one made in the post- colonial India. The introduction of criminal punishment for same sex marriage was attributable to the Britishers as they drafted the Indian penal Code, Section 377,criminalised such relationships with imprisonment and fine, subsequently making an unfriendly climate for such individuals. The social construction in India didn't contribute in facilitating such vulnerable section of society. With the advent of the 21st century and because of worldwide developments against the prejudicial mentality and enslavement, India too confronted a comparative uprising. Finally, with the landmark judgment Navtej singh Johar vs union of India, the supreme Court of India decriminalized same-sex relationships.

However, with the judicial pronouncement there are section inside the legislative bodies who keep on contradicting the possibility of same-sex relationships, which is obviously reflected for a situation before the eyes of the Delhi High Court. Considering the above mentioned, the paper will be a doctrinal examination of the LGBTQ development in India. The fundamental spotlight will be on the legal point of view and the commitment of the Supreme Court in breaking down and giving a liberal interpretation to safeguard the interests of this marginalized group and what might actually be the future game-plan in India.

Key points: Homosexual Marriage, Historical Background, legal challenges, arguments in favor and against , Different perspectives, Religious Stand , personal laws, Consequential benefits of society and benefits to LGBTQ community.

INTRODUCTION-

Same-sex marriage are the marriage between two people of a similar orientation i.e( same gender) . In India, same-sex marriage are not as of now legal, despite the fact that there are continuous endeavors to perceive and legalizing them. This topic is significant in light of the fact that it deals with the principle of basic fundamental rights of LGBTQ+ people and the acknowledgment and assurance of their marriage. Legalizing same-sex marriage wouldn't just give legitimate right and assurance to LGBTQ+ couples, but to protect their rights and remove discrimination . It is a significant issue for LGBTQ+ privileged activists and supporters all over the world, and its significance extends beyond the legal sphere to broader social and cultural attitudes towards the LGBTQ+ community.



There are several categories of flour mainly in the gay category which are described as follows -

Lesbian - A woman's attraction to another woman

Gay - One man's attraction towards another man

Bisexual - Attraction towards both (same and opposite) sexes

Transsexual - Changes in the opposite sex of the natural sex

Queer - They are not confident about their sexual attraction.

These categories are collectively combined with LGBTQ. They are said to represent the gay category.

HISTORY OF SAME-SEX RELATIONSHIP

Homosexuality has a long history in India, with evidence of same-sex relationships found in ancient manuscript, sculptures, and relics tracing back to 1500 BC. Be that as it may, the ascent of Vedic Brahmanism and British colonization prompted the suppression of homosexuality. The Manusmriti, for instance, prescribed harsh punishments for gay and lesbian . Married womens who took part in same-sex marriage were punished significantly more harshly.

The predominance of patriarchal society and the impact of Victorian ideals during British colonization further underestimated homosexuality in India. Western notions of "moral and spiritual" sexuality were forced on Indian culture, prompting the slander of same-sex desire. However, the meaning of homosexuality has developed over the course of the past hundred years, with numerous nations presently revering legitimate protection for LGBTQ+ people.

South Africa was the first country to perceive the privileges of homosexual in a civil manner in 1994. Different nations, including Australia, Germany, Luxembourg, the Netherlands, Switzerland, Iceland, Denmark, Sweden, and New Zealand, have additionally executed regulations to safeguard LGBTQ+ people against discrimination. In the US, the supreme Court decided in 1996 that no state could pass regulation victimizing homosexual. In India, the decriminalization of section 377 of the IPC in 2018 on account of Navtej Singh Johar V. Union of India was a huge step towards recognising the rights of LGBTQ+ people.A reference to marriage between same-sex couples shows up in the Sifra, which was written in the 3rd CE. The Book of Leviticus prohibited homosexual relations, and the Jews were cautioned not to "follow the act of the place that is known for Egypt or the act of the place where there is Canaan" . The Sifra explains what these ambiguous "acts" were, and that they included marriage between same-sex couples: "A man would wed a man and a woman a woman, a man would marry a woman and her daughter, and a woman would be married to two men." What is apparently the first historical notion of performance of marriage between same-sex couples happened during the early Roman empire historian John Boswell. These were normally detailed in a basic or ironical way.

As indicated by Craig A. Williams a few Romans as early as the first century obviously took part in quite a while in which two males were married. These relationships were viewed as abnormal: that's what williams composes "a marriage between two completely gendered 'men' was incomprehensible; assuming two males were combined, one of them must be 'the women.' The first Roman ruler to have married a man was Nero, who is accounted for to have married two different males on various events. The first was with one of Nero's own freedmen, Pythagoras, with whom Nero played the role of bride of the hour. Afterward, as a groom, Nero wedded Sporus, a young man, to supplant his significant other Poppaea Sabina following her demise, and wedded him in an extremely public ceremony with every one of the solemnities of matrimony, after which Sporus had to profess to be the female mistress that Nero had killed and go about like they were truly married. A companion gave the "lady of the hour" away as legally necessary. The marriage was praised in both Greece and Rome in a extravagant public ceremony. In 342 AD, Christian emperor Constantius II and Constans gave a regulation in the Theodosian precluding marriage between same-sex couples in Rome and requesting execution for those so married. Professor Fontaine of Cornell College classic department has brought up that there is no provision of marriage between same-sex couples in Roman laws, and the text from 342 CE is curroupt, "marry a woman" may be "hits the sack in a shameful way with a man" as a condemnation of homosexual way of behaving between men.

Homosexuality in ancient world: Talking from literary Proof:

Hindu scriptures

The ease of orientation, for human and yakshas, is a recognized idea in ancient India. Queerness can be followed back to Indian history, from antiquated stories and sacred texts to archaic writing, verse, arts and architecture . Following are instances complementing the presence of homosexuality and the acknowledgment of homoeroticism in India. Valmiki's Ramayana expresses that when Master Hanuman got back from Lanka after visiting Goddess Sita, he saw rakshasa women kissing and embracing women. Krittivasa Ramayana articulates the story of king Bhagiratha, who was born of two women. The text expresses that Ruler Dilip had two spouses, and he passed on without leaving a main successor. Following this, lord Shiva appeared in the dream of queens and let them know that they would bear a kid assuming that they had love to eachother. The bereaved queens did as directed, and one of them got pregnant, in the end giving birth to Ruler Bhagiratha. He is a popular lord known "to brought river Ganga from paradise on the planet". Mahabharatha has the account of Shikhandini or Shikandi, who was liable for the demise of Deveratt Bhishma. She was burn as a daughter t to Ruler Drupad however raised as a man. Later in her life, she took the assistance of a yaksha to turn into a man to enter the war zone of Kurukshetra and rout Bhishma. Matsya Purana has a fascinating story where lord Vishnu changed into a beautiful women, 'Mohini'. He planned to deceive the devils so divine beings drank all the amrut (blessed water). Further, after seeing Mohini, lord Shiva fell in love with her, and their union prompted the birth of lord Ayyappa. Chapter nine of Kamasutra by Vatsyayana talks about oral sexual acts, named Auparashtika, homosexuality and sexual activities among transgender . Chapter Purushayita likewise specifies svairini, an obstinate and independent women participated in sexual activity with different women. The book likewise references men who are drawn to a similar orientation. The text refers to these people as Tritiya-Prakriti or the third nature. Moreover, Kamasutra perceives eight types of marriage . For instance, the term 'gandharva vivah' recognized gay marriage or lesbian marriage. It in a real sense converts into a union or living together without the endorsement of guardians. The rig Veda references the story of Varun and Mitra, constantly refered to as Mitra-Varun. They are same sex couple accepted to be the representative of the two parts of the moon.

Graphic evidence:

Other than scholarly proof, Indian history has plentiful visual hints of homosexuality in India. These records exist as painting, artworks, models all through the country. One such account is safeguarded in the temple of Khajuraho. The Khajuraho temple figures, bulit by the Chandela Dynasty between 950 to 1050 AD, exhibit pictures where men expose their genitals to other men and womens are erotically embracing one another. Researchers and history specialists have deciphered this as an affirmation of homosexuality and same-sex love in those times. These figures stand as a statement of the sexual smoothness of men, women and the third orientation. Thirteenth-century Sun Temple in Konark in eastern Orissa, also called Surya Devalaya, displays comparable figures. The Sun temple is devoted to the Hindu Sun god, with the outside shrouded in sculptures portraying erotic scenes from the Kamasutra.Temples of Puri and Tanjore also depict unequivocal pictures of queer couples. Rajrani temple in Bhubaneswar has a sculpture portraying two women taking part in oral sex.Pictures at the Buddhist monastery caves at Ajanta and Ellora portray the existence of Gautam Budha. The painting and sculpture manifest design of a high request. The fundamental viewpoint is that among the canvases of Budha are others different compositions showing exotic nature and sensual scenes. These artworks depict men and women taking part in lovemaking with a similar sex.These visual records counter pretty much every conviction related with the shortfall of homosexuality from the Indian culture. Besides, these portrayals of one's sexuality were very shocking for the British colonizers, who expected to control such distinctive showcases of sexuality. Hence, the English colonizers impacted's comprehension India might interpret sexuality past the prohibition of 'unreasonable' sex. In addition to other things, they likewise anglicized India's ethical focal point.

Contemporary

The first same-sex couple to be married legally in modern times were Michael McConnell and Jack Baker in 1971, in Hennepin County, Minnesota. Historians variously trace the beginning of the modern movement in support of same-sex marriage to anywhere from around the 1980s to the 1990s. In the United States, same-sex marriage became an official request of homosexual rights movement after the Second National March on Washington for Lesbian and Gay Rights in 1987. In 1989, Denmark became the first country to legally recognize a relationship for same-sex couples, establishing registered partnerships, which gave those in same-sex relationships "most rights of married heterosexuals, but not the right to adopt or obtain joint custody of a child". In 2001, the continental Netherlands became the first country to broaden marriage laws to include same-sex couples. Since then, same-sex marriage has been established by law in 34 other countries, including most of the Americas and Western Europe. Yet its spread has been uneven -South Africa is the only country in Africa to take the step; Taiwan the only one.

LEGAL STEPS AND CHALLENGES

The Indian legal system doesn't recognize same-sex marriage, and the country's regulations characterize marriage as a contract between a man and a women. Section 377 of the IPC, which criminalized homosexuality, was struck down by the supreme Court of India in 2018, which was a significant triumph for LGBTQ+ right in the country. Be that as it may, the decriminalization of homosexuality didn't legitimize same-sex marriage. A few lawful cases have been documented in Indian courts trying to sanction same-sex marriage, however at this point, the courts have not yet conceded legitimate acknowledgment to same-sex couples. In 2017, the Delhi High Court proclaimed that same sex couples are qualified for be in a stable relationship, however avoided legitimizing same-sex marriage. There have been a few ongoing improvements in the Indian overall set of laws that could have implementation for the eventual fate of same-sex relationships in India. In 2020, the Indian government presented the person data protection Bill, which incorporates a provision that perceives the right to privacy as a fundamental right. A few lagal expertise accept that this provision could be utilized to contend for the legitimization of same-sex marriage, as it perceives the right of people to have command over their personal lives. Same-sex marriage isn't presently recognised in India. The Indian Constitution doesn't unequivocally make reference to sexual orientation, and homosexuality was decriminalized in 2018 by the supreme Court of India , however same-sex marriage is as yet not legitimate. LGBTQ+ people don't have similar legitimate privileges as hetero couples, including the right to marriage, adoption, and legacy & inheritance.

The historical backdrop of LGBTQ+ rights in India dates back to the colonial era when the English presented section 377 of the Indian penal Code in 1860, which criminalized homosexual acts. This law stayed set up even after India acquired freedom in 1947, and it kept on being utilized to oppress and arraign LGBTQ+ people for more than a long period. However, the battle for LGBTQ+ rights in India gained momentum in the late 20th century. During the 1990s, the first LGBTQ+ association, the AIDS Bhedbhav Virodhi Andolan (ABVA), was established in Delhi to battle against separation and discrimination faced by the LGBTQ+ people group. In 2001, the Naz foundation , an NGO, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of section 377. Despite or facing huge resistance from conservative groups and religious leaders , the LGBTQ+ people group and their partners kept on battling for their privileges, and in 2009, the Delhi High Court declared Section 377 is unconstitutional and decriminalized homosexuality. Nonetheless, this decision was overturned by the supreme Court of India in 2013, which reinstated section 377. Yet again in 2018, a five-judge bench of the Supreme Court of India declared section 377 unconstitutional, toppling the past decision and decriminalizing homosexuality. This was a significant triumph for LGBTQ+ privileges in India and a huge step towards ending discrimination and advancing equality. Notwithstanding, in spite of these lawful triumphs, the LGBTQ+ people group in India still faces critical difficulties. Separation and brutality against LGBTQ+ people stay predominant in Indian culture, and many keep on confronting disgrace and marginalization from their families, networks, and work environments. Transgender people, specifically, face various types of discrimination, including restricted admittance to education, employment and work, medical services, and lodging. Moreover, the legal recognition of same-sex marriage remains a distant dream for LGBTQ+ couples in India. The lack of legal recognition not only denies their legal and social benefits but also increases the risk of discrimination and violence. There have been several key events in India that have shaped the country’s approach to LGBTQ+ rights over the years. few of the most significant are presented here:

Introduction of Section 377:

In 1860, the British colonialism introduced Section 377 of the Indian Penal Code, which criminalized sexual activities “against the order of nature” and effectively criminalized homosexuality. Founding of LGBTQ+ organizations: In the 1990s, the first LGBTQ+ organization, the AIDS Bhedbhav Virodhi Andolan (ABVA), was founded in Delhi to fight against discrimination and violence faced by the LGBTQ+ community.

Naz Foundation’s PIL: In 2001, the Naz Foundation, a non-governmental organization, filed a public interest litigation (PIL) in the Delhi High Court challenging the constitutionality of Section 377.

Delhi High Court’s 2009 judgment : In 2009, the Delhi High Court declared Section 377 unconstitutional and decriminalized homosexuality.

Supreme Court’s decision of 2013 : In 2013, the Supreme Court of India overturned the Delhi High Court’s judgment and reinstated Section 377, criminalizing homosexuality once again.

Supreme Court’s 2018 decision: In 2018, a five-judge bench of the Supreme Court of India declared Section 377 unconstitutional, overturning the previous decision and decriminalizing homosexuality once again.

Transgender Persons (Protection of Rights) Act: In 2019, the Transgender Persons (Protection of Rights) Act was passed, which aimed to protect the rights of transgender individuals and provide them with legal recognition.

Despite legal victories, same-sex marriage remains unrecognized in India, denying LGBTQ+ couples legal and social benefits. These events have played a significant role in shaping India’s approach to LGBTQ+ rights, from the criminalization of homosexuality to the decriminalization and eventual legal recognition of LGBTQ+ individuals. However, challenges and discrimination still persist, and there is a need for continued advocacy and activism to ensure equal rights and protection for the LGBTQ+ community in India. Currently, same-sex marriage is not recognized in India. The country’s legal system does not provide for marriage equality and the rights and benefits that come with it, such as inheritance rights, joint property ownership, and adoption rights. The landmark decision of Navtej Singh Johar v. Union of India, delivered by the Supreme Court in 2018, decriminalized homosexuality in India by striking down Section 377 of the Indian Penal Code. This has been a significant milestone for the LGBTQ+ community in India, recognizing their right to love and intimacy without fear of persecution or prosecution. However, the LGBTQ+ community still faces significant challenges in India due to societal discrimination, lack of legal recognition, and limited protection under the law. Transgender individuals, in particular, face widespread discrimination and social exclusion. The Transgender Persons (Protection of Rights) Act, passed in 2019, has been criticized by many activists and experts as it fails to provide adequate protection and legal recognition for transgender individuals. The Indian legal system has taken some steps to recognize and protect the rights of the LGBTQ+ community. For instance, the National Legal Services Authority (NALSA) judgment in 2014 recognized the right to self-identification and legal recognition of gender identity for transgender individuals. Additionally, the Protection of Women from Domestic Violence Act, 2005, is gender-neutral and includes same-sex couples. The Indian government and judiciary have played a significant role in shaping the country’s approach to LGBTQ+ rights and same-sex marriage. And are resonating back to the efforts and cries of the activists with a positive and understanding approach. Here are some of the key developments:

Decriminalization of Homosexuality:- In September 2018, the Indian Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized homosexuality. This was a significant milestone for LGBTQ+ rights in India, as it removed the threat of criminal prosecution for consensual same-sex relationships.

Legal Recognition of Transgender Rights:- In 2014, the Supreme Court recognized transgender individuals as a third gender and ordered the government to provide them with equal rights and protections. In 2019, the government introduced the Transgender Persons (Protection of Rights) Act, which provides legal recognition to transgender individuals and protects their rights.

Same-Sex Marriage:- The Indian government has not yet legalized same-sex marriage. However, in 2017, the Delhi High Court ruled that the right to marry is a fundamental right and that denying same-sex couples the right to marry is a violation of their rights. This decision was later overturned by the Supreme Court, which held that the issue of same-sex marriage should be left to the legislature.

Anti-Discrimination Laws:- The Indian government has not yet passed comprehensive anti-discrimination laws to protect LGBTQ+ individuals from discrimination in employment, housing, and public accommodations. However, some states, such as Tamil Nadu and Kerala, have introduced anti-discrimination laws that include protections for LGBTQ+ individuals. Overall, while the Indian government and judiciary have taken some steps towards recognizing and protecting LGBTQ+ rights, there is still a long way to go towards achieving full equality and acceptance for the community. The legal recognition of same-sex marriage and comprehensive anti-discrimination laws are still pending, and there is a need for further advocacy and awareness-raising efforts to ensure that the rights of the LGBTQ+ community are fully protected.

Impacts of same-sex marriage on society:

Marriage being legalize will give the same sex couple's relationship more legitimacy in the eyes of family and relatives, prompting them to feel more comfortable, in this way prompting expanded support because of changes in apparent social norms. Marriage is viewed as a consecrated institution in India. It is view as a common agreement between two families and is viewed as a method for proceeding with family genealogy and customs. Customary Indian society is generally conservative, and same-sex marriage are not broadly acknowledged and accepted. LGBTQ+ people are frequently derided and victimized, and their relationship are viewed as unnatural.

Legitimizing same-sex relationships would have a significant bottom up impact being felt in the social design, beginning from the individual level and couple level, trailed by the family, community, lastly at the degree of society. Starting around 2023, marriage between same-sex couples is lawfully performed and perceived in 34 nations, comprising around 1.3 billion individuals, the latest being Andorra. In India, two landmark judgement were passed perceiving same-sex marriage. In the K.S. Puttaswamy v. Union of India case of 2017, the supreme Court held that the Right to privacy is safeguarded as a natural piece of the right to life and personal liberty under Article 21 of the Indian Constitution. Furthermore, in 2018 the supreme court ruled unanimously in the Navtej Singh Johar v. Union of India Case that section 377 of the Indian penal Code (IPC) was illegal. In the month of December 2022, the supreme Court gave notice to the central Government on a plea by two gay couples looking for legalization of same-sex marriage under the special Marriage Act 1954. Albeit the decision with respect to the same sex marriage is as yet forthcoming, it is fascinating to investigate the outcomes of legitimizing same-sex relationships on society. For a really long time scientists have revealed that lesbian, gay, Bisexual and transsexual (LGBT) people experience a scope of huge wellbeing incongruities. Teenagers with same-sex fascination are bound to endeavor commented sucide contrasted with their companions. Gay men are at higher gamble of contracting HIV and other physically sent contaminations, while lesbians are less inclined to get to preventive administrations for disease. LGBT individuals are bound to encounter social discrimination and face obstructions to getting to essential offices of care and as per the minority stress hypothesis, denied admittance to marriage compound the adverse consequences of marginalization. Consequently, as anyone might expect, LGBT individuals have higher paces of smoking and liquor and chronic drug use. In the US of America (USA), preceding the Obergefell versus Hodges choice which authorized same-sex marriage, there was assimilated homonegativity, confinement, and vicarious injury among the social minorities which were related with disgrace and issues of life fulfillment. Legitimizing same-sex will prompt effect would be seen fair and square of the person where there would be superior wellbeing results like cutting down mental pain and reduce discrimination. The individual would now have the opportunity to wed their preferred accomplice. At the degree of couples, there would be a more noteworthy feeling that everything is good connected with monetary (e.g., medical services, property right) and lawful (e.g., child adoption) benefits and decreased pressure while voyaging and movement. It would raise marriage rates essentially, decrease fetus removals and lessen the opportunity that kids experience childhood in single-headed families. Marriage being legitimized will give the same sex couple's relationship more legitimate according to the relatives, provoking them to feel more good, hence prompting expanded help because of changes in apparent accepted practices. There would be both direct (offering steady remarks to the couple, going to wedding services) and roundabout (same-sex companions being integrated into the family organization) expansions in the social consideration of sexual minorities at the local area level. At the cultural level, there would be a huge decrease in enemy of gay mentalities. There would be more noteworthy help for the freedoms of sexual minorities and conceivable future extension of privileges and assurances. In any case, the sanctioning of same-sex marriage would be trailed by clear approach changes which may on the other hand enrapture people in general, reinforcing and augmenting the distinctions among allies and rivals. Homosexually wedded couples may not be given overall a similar protection benefits as hetero wedded couples. Property inheritance could likewise be precarious for homosexual couples on the grounds that the companion for this situation isn't allowed to simply decide or acquire property consequently. It must be explicitly expressed in a will.

There may be arising difficulties with respect to policymaking by sanctioning same-sex relationships, yet the possibilities of negative externalities are low. In this manner, strategies should be formed from the perspective of balance, handling the financial and reasonable legitimate system. Media can assume an enormous part in building mindfulness among the majority. India being a signatory to the 2030 agenda of SDG, is thusly dedicated to maintaining the Feasible Improvement Objective (SDG)- 5 of orientation correspondence. The legitimization of same-sex relationships means to right a far greater wrong: the rejection of certain segments of society from significant social establishments. In spite of the fact that there is a requirement for conceptualizing and local area level anticipating homosexual freedoms, basically the most vital moves toward correspondence have been as of now taken. It was further observed that legalizing it would lead to a breakdown of social norms as it would pave the way for other forms of unconventional relationships and would ultimately threaten the country’s cultural and religious traditions. They believe that same-sex marriage is not consistent with the Indian cultural and religious beliefs, and that legalizing it would be a step towards westernization and would lead to the erosion of traditional values.

Arguments Against the Same Sex Marriage:

ARGUMENTS AGAINST SAME SEX MARRIAGE

.Undermine the traditional values and institutions:- opponents of legalizing same-sex marriage argue that marriage is a sacred institution that is defined as a union between a man and a woman. They believe that changing the definition of marriage to include same-sex couples would undermine traditional family values and the institution of marriage. They argue that the primary purpose of marriage is to procreate and raise children, and that same-sex couples cannot fulfil this purpose, thus making their union fundamentally different from that of opposite-sex couples.

.Negative impact on children:- it would have a negative impact on children raised by same-sex couples. They argue that children need both a mother and a father to have a well-rounded upbringing and that same-sex couples cannot provide this. They claim that children raised by same-sex couples are more likely to have emotional and behavioural problems, and that legalizing same-sex marriage would promote the adoption of children by same-sex couples, which they argue would be detrimental to the child’s well-being.

.Against Religious Definitions of Marriage:- Marriage has traditionally been between a man and a woman in many religions. The Special Marriage Act, 1954 was created to overcome the limitations of religious personal laws, not to create a new institution of marriage. Registration of same-sex marriage would result in a violation of existing personal as well as codified law provisions. Moreover, in a same-sex marriage, it is neither possible nor feasible to term one as ‘husband’ and the other as ‘wife’ in the context of the legislative scheme of various personal laws.

.Affects Legitimate’ Interest of State and society:- The state has a legitimate interest in regulating marriage and personal relationships, as seen in laws regarding age of consent, prohibited degrees of marriage, and divorce. The right to marry is not absolute and subject to state laws. Just like a parent cannot claim absolute control over their child's education, individuals cannot claim absolute control over their personal relationships.

.Conflicting Property rights and other civil rights:- Property rights post-marriage is a much-contested issue in India. Same-sex marriage will not create any immunity for the law but increase complex interpretations.

.Against public aspect of Right to Privacy:- In 2017, the Supreme Court recognized the right to privacy as a fundamental right and stated that sexual orientation is a crucial part of one's identity that must be protected without discrimination. However, privacy exists but it cannot be extended to marriage, which has a necessary public element. Consenting sexual relationships between adults are private, but marriage has a public aspect that cannot be ignored.

. Create confusion in the Interpretation of the Law:- The Special Marriage Act (SMA) cannot be interpreted to include same-sex marriage because the Act's entire architecture would need to be examined, not just a few words. For example, the Act provides specific rights to a wife, and it's unclear who would have these rights in a same-sex marriage. Additionally, allowing one party in a same-sex marriage to have a specific right could create a problem for heterosexual marriages. Law provides specific rights to a wife like “the law says that the wife acquires the domicile of the husband upon marriage. So, who will be the wife in a same-sex marriage?” under the SMA, a wife may seek divorce on the ground that her husband has been guilty of rape, sodomy, or bestiality.

.Problems in Adoption of Children:- When queer couples adopt children, it can lead to societal stigma, discrimination, and negative impacts on the child's emotional and psychological well-being, especially in Indian society where acceptance of the LGBTQIA+ community is not universal.

.'Bundle of privileges' being denied:- The LGBTQIA+ people group is being denied significant lawful advantages like tax breaks, clinical freedoms, legacy, and reception by not being permitted to wed. Marriage isn't just about respect, yet additionally an assortment of freedoms.

Arguments in Favor of Same Sex Marriage

PROMOTES EQUALITY

PROMOTES SECULARISM, DEMOCRACY

RECOGNIZES FUNDAMENTAL RIGHTS

ARGUMENTS IN FAVOR

RECOGNIZE MARRIAGE AS BASIC RIGHT

PROMOTES HUMAN RESPECT

PROMOTES ABSORPTION OF SAME SEX

.Provides Recognition to Fundamental Rights:- Proponents of legalizing same-sex marriage argue that denying individuals the right to marry based on their sexual orientation is a violation of their fundamental rights and freedoms and that all individuals, regardless of their sexual orientation, should have the right to choose who they marry and should be allowed to enjoy the same legal benefits and protections as heterosexual couples. Additionally, Cohabitation as a Fundamental Right The Chief Justice of India (CJI) acknowledged that cohabitation is a fundamental right, and it is the government's obligation to legally recognize the social impact of such relationships. The justices suggested that recognition is needed for such relationships to receive certain benefits, but not necessarily as marriage. The CJI emphasized the importance of providing a sense of security and social welfare for people in such relationships.The court suggested labels like "contract" or "partnership" instead of "marriage". The government said there is no fundamental right to seek recognition of same-sex relationships as marriage.The Supreme Court of India discussed the recognition of cohabitation as a fundamental right for same-sex couples, which would entitle them to benefits without being equated to marriage.

.Promotes equality:- that legalizing it would promote equality and inclusivity in society as denial of same-sex marriage perpetuates discrimination against the LGBTQ+ community, which is already marginalized and faces social and legal challenges. Legalizing same-sex marriage would provide equal rights and protections to all individuals, regardless of their sexual orientation, and would help in creating a more equitable society.

. Promotes secularism and democracy :- It is consistent with the principles of secularism and democracy, which India is founded on as the Indian constitution guarantees equality and freedom to all citizens, regardless of their sexual orientation, and legalizing same-sex marriage is a necessary step towards fulfilling this promise of the constitution.

.Recognizes Marriage as a basic Right of all:- The demand for marriage equality comes from less economically privileged people who need legal protection. Claiming that it's a matter for urban elites is deceptive. E.g. The story of Leela and Urmila, two policewomen who were suspended and locked up for getting married in 1987, shows the discrimination faced by LGBTQIA+ people in society.The Extraordinary Marriage Act ought to be reached out to incorporate eccentric Indians by utilizing sexually impartial language like "mate" rather than "spouse" or "wife". This would allow them the option to wed without requesting exceptional privileges.

Promotes absorption of same-sex couples in society:- The CJI has accentuated the need to absorb same-sex couples into society instead of shunning them. The decriminalization of Area 377 of the IPC has perceived the presence of same-sex connections. Government ought to resolve the down to earth issues looked by same-sex couples, for example, joint financial balances and qualification to annuity and tip.

.Indian Culture and Worth Framework:- In socially rich India, where normal practices and commitments employ huge impact, the acknowledgment of same-sex connections actually represents a test, even after lawful acknowledgment.It conflicts with the conventional qualities and convictions of the Indian culture. In any case, the acknowledgment of same-sex marriage adds to the variety of connections that exist in the public arena.

.Promotes Human Respect:- In Navtej Singh Johar versus Association of India, the High Court conceded same-sex couples the opportunity to have a stately confidential existence.

The issue of same-sex marriage in India is perplexing and includes different religious, cultural and legal viewpoints. The religious and cultural viewpoints are profoundly imbued in Indian culture and are in many cases referred to as a reason for restricting same-sex marriage.

Religious Stand OF Same Sex Marriage- a large number of the significant religions in India, including Hinduism, Islam, and Christianity, believe homosexuality to be a transgression/ sin. These religions view marriage as a joining between a man and a woman, and same-sex marriage isn't perceived.

Hinduism-There is sufficient Hindu writing accessible that says a lot about the stand of Hinduism on homosexuality, and as an expansion on same sex marriage. Homosexuality has an long history in India. Antiquity texts like Rig Veda which dates back around 1500 BC and sculptures and remnants portray sexual acts between women as disclosures of a female reality where sexuality depended on pleasure and fertility . The portrayal of homosexual acts in the Kamasutra, sculptures of the temple at Khajuraho, the character of 'Sikhandi' in Mahabharata, confirmations of sodomy in the Tantric rituals are a few verifiable confirmations of same-sexrelationships. Nonetheless, these experiences began losing their importance with the coming of Vedic Brahmanism and, later on, of British Imperialism. The Manusmriti gives harsh punishment to females having sexual relations with a girl, demonstrating the existance of such relations during the period. Be that as it may, both sexual frameworks coincided, notwithstanding variances in relative restraint and freedom, until English Expansionism when the annihilation of pictures of homosexual expression and sexual articulation overall turned out to be more efficient and unmitigated.

Muslim-Islamic Shari'ah laws is extracted from both the Qur'an and Muhammad's Sunnah. Homosexuality under this law isn't just a wrongdoing, yet a culpable wrongdoing against God.In the instance of homosexuality, the way things are managed varies between the four mainline schools of Sunni law today, however what they all concur upon is that homosexuality genuinely deserve a serious penalty.Muhammad himself had expressed, "if you find anyone doing as as lot,s people did, kill the one who does it and the one to whom it is done". He even ventured to such an extreme as to condemn the "appearance" of homosexuality, when he reviled feminine men and masculine women and requested his devotees to "Turn them out of your homes." This decision on homosexual was normally taken on by his later successors . Indeed, even by moderate Muslims homosexuality is viewed as something contemptible and unsuitable.

Christianity-There has been an extraordinary discussion happening in the Christian world in regards to the place of homosexuality. One line censures the thought in general, while the other line says homosexual people ought to be acknowledged so they can track down a higher bringing in God and impact their methodologies. The split in thought has occured after modern Western countries have begun legalising homosexuality. Nonetheless, traditionally, homosexuality has been condemned by Christianity.

Generally, while the Indian government and judiciary have made a few strides towards perceiving and safeguarding LGBTQ+ rights , there is still quite far to go towards accomplishing full balance and acknowledgment for the community. The legitimate acknowledgment of same-sex marriage and thorough anti discrimination laws are as yet forthcoming, and there is a requirement for additional promotion and mindfulness raising endeavors to guarantee that the rights of the LGBTQ+ people group are completely safeguarded.Looking towards the future, there is hope that India will keep on gaining ground towards more noteworthy LGBTQ+ privileges. There have been late certain turns of events, for example, the consideration of gender identity in the nation's enumeration and the choice by a few state legislatures to give transgender people work standards and reservation benefits. The Indian government is additionally considering to legitimizing same-sex marriage later on, especially considering the developing worldwide pattern towards marriage fairness. The new legalization of same-sex marriage in adjoining nations like Nepal and Taiwan could come down on India to take action accordingly. However, it is critical to take note of that there is still resistance to LGBTQ+ rights in India, especially from conservative religious group. Any endeavors to push for more noteworthy legal recognition and protection of LGBTQ+ rights could confront resistance from these groups, prompting possible lawful and political fights. Generally, the fate of LGBTQ+ rights in India stays questionable. While there are positive turns of events and potential for progress, there are additionally difficulties and deterrents that should be survived. LGBTQ+ activists and allies should keep supporting for their privileges and pushing for change, while likewise attempting to bring issues to light and advance more noteworthy acknowledgment and grasping in the public eye in general.

Conclusion:-

The time has come to recognize that there exists a community within us who adjust to an alternate sexual preference as like that heterosexual and that sexual preference is just a single part of their existence. They are as human as some other heterosexual person. This ought to be standardized, and disgrace ought to be killed. There should be freedom to one's decision of sexual accomplices, it is an individual preference to choose their partner irrespective of gender. A statute rule can be very viable not just in achieving a sense of Uniformity in legal assurance in relation to social, economic and cultural privileges but, it will clearly give a roadmap ee to guarantee equity and ensure justice . The legitimization of same-sex marriage requires a deliberate exertion from all partners, including the LGBTQIA+ people group, the public authority, common society, and religious leaders. By cooperating, we can make a more comprehensive society where everybody has the option to cherish and wed whomever they desire, no matter what their orientation.

What could be the Way Forward?

Education:- educating the majority about the distinction among Orientation and sexuality would acquire positive change social perspectives towards same-sex individual/couples. India has taken a monster jump towards innovation, acknowledgment and correspondence, and presently the need of great importance is to keep up with uniformity under the watchful eye of the law of every single sexual direction and personalities.

Bring issues to light:- The reason for mindfulness crusades is to advance equity and acknowledgment of every sexual direction and grow popular assessment on the LGBTQIA+ people group.

Legal changes:- changes in the special marriage Act to permit same-sex couples to lawfully wed and partake in similar privileges and advantages as other gender couples. In the interim bring the agreement like arrangement so the homosexual can enjoy similar rights like heteros.

Exchange and commitment:- Taking part in a discourse with religious leaders and communities can assist with overcoming any barrier between customary convictions and present day mentalities towards same-sex relationships.

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