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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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"COMPARATIVE STUDY ON SAME-SEX MARRIAGE RECOGNITION: INDIAN DEVELOPMENTS VIS-À-VIS USA, TAIWAN, AND SOUTH AFRICA.

AUTHORED BY – SHALINI

Abstract

The comparative study investigates the recognition of same-sex marriage in the USA, Taiwan, South Africa, and India and emphasizes the legal, social, and cultural contexts that have shaped and guided the recognition of LGBTQ+ rights in each country. The study offers a comparative and analytic perspective regarding contentious decisions, legislative initiatives, and decisions made within the court proceedings respectively in each respective jurisdiction.

The USA, Taiwan, and South Africa have made strides in recognizing same-sex marriage through landmark decisions or historic legislative efforts; whereas India remains behind this curve, facing ongoing legal hurdles and debates. The comparative study unpacks the matters of same-sex marriage recognition between each of the jurisdictions study to identify how states have responded to same-sex marriage to similarities and difference in the cases and legislation.

The study elucidates the importance of conceptualizing the law and how the relationships between law, society, and culture shape and in turn are created to shape LGBTQ+ rights. The research also illustrates the need for more advocacy and legal endeavors for LGBTQ+ individuals in states which are without recognition of same-sex marriage to better advocate for equality and inclusion.

The findings have implications for policymakers, lawyers, and advocates involved in the fight for equality and rights for LGBTQ+ people in various countries. By examining the experience of certain countries that now allow for equal rights for at least some same-sex couples, this study identifies ways to consider potential avenues for reform in those countries where LGBTQ+ rights remain a work in progress.

1. INTRODUCTION

The global recognition of same-sex marriage has emerged as a significant flashpoint in the social conversation about LGBTQ+ rights. Same-sex marriage as a concept has captured public imagination and has pushed the bounds of laws associated with discrimination, equality, dignity, and human rights. In some societies that are increasingly inclusive or changing, the recognition same-sex marriage has become commonplace. However, in some parts of the world, the legal battle for same-sex marriage remains unwinnable. This introduction to the recognition of same-sex marriage provides a global context for some of the recent developments and challenges to the recognition of same-sex marriage worldwide.

Global Context: The recognition of same-sex marriage is a complicated issue that overlaps with legal, social, and cultural aspects of society. The landscape of attitudes toward the rights of LGBTQ+ people has shifted much over the last few decades globally as a result of advocacy, court decisions, legislative changes, and changes in societal norms; some nations have embraced same-sex marriage while others are still experiencing social and legal barriers to the recognition of same-sex marriage.

Legal Developments: The legal recognition of same-sex marriage has been a central importance to the rights of LGBTQ+ people. Major advancements toward same-sex marriage have been gained through appeals and arguments in the courts, changes in legislation and law, and changes in policies.

For example:

1. USA: The Supreme Court decision in *Obergefell v. Hodges* (2015) was a landmark ruling affirming a constitutional right to same-sex marriage across the United States.
2. Taiwan: Taiwan made history in 2019 by becoming the first country, in Asia, to legalize same-sex marriage. This was facilitated by a constitutional court ruling that mandated the state to acknowledge same-sex marriage.
3. South Africa: The Constitutional Court finding in *Minister of Home Affairs v. Fourie* (2005) legalized same-sex marriage in South Africa and marked the country's commitment to equality and prohibition of discrimination.

Challenges and Debates: There are significant obstacles encountered in many nations that still do not legally accept same-sex marriage even if some progress has been made in

others. Legal, social, and cultural barriers to LGBTQ+ progress persist. For example, in countries like India, the ongoing discussions and legal battles about the recognition of same-sex marriage highlight the challenges of reconciling traditional customs with new interpretations of rights.

Comparative Study: This paper aims to inform a comparative study on the recognition of same-sex marriage in the USA, Taiwan, South Africa, and India. It will look at the legal frameworks, significant cases in the courts, and thought processes of people and society throughout the progression. The study will reveal best practices, challenges, and opportunities for reform. It is believed the comparative study would yield valuable insights into how different jurisdictions have enacted their same-sex marriage policies and what effect it has had on LGBTQ+ rights.

Importance of the Study: Analyzing the legal and social factors surrounding same-sex marriage is incredibly important when considering the future of LGBTQ+ rights and equality around the world. This study provides a well-defined basis of comparison of a range of same-sex marriage recognitions from various legal and cultural perspectives. The materials resulting from this project are relevant for policymakers, legal practitioners, and activists, who seek to enhance the dignity, equality, and inclusion of LGBTQ individuals around the world.

In conclusion, the recognition of same-sex marriage is multi-layered and reflective of wider social values and legal concepts. The study seeks to unravel various complexities and adversity associated with the recognition of same-sex marriage, while providing lessons learned for potential future legal and social change.

2. Same Sex Marriage Recognition: A Comparative Study

Acknowledgment of same-sex marriage is a complicated issue that involves legal, social, and cultural issues. A comparison of how several different countries acknowledge same-sex marriage highlights diverging pathways.

Options for Same-Sex Marriage Recognition: Civil Unions or Partnerships: Some countries recognize same-sex couples as creating civil unions or partnerships with very limited legal rights. There are already countries that have created civil unions (Germany) or Partnerships (several states in the USA).

1. *Same-Sex Marriage*: Some countries have recognized same-sex marriage through landmark Supreme Court cases and legislative recognition (USA, Taiwan, South Africa).
2. *No Recognition*: There are many countries that are not formally recognizing same-sex marriages (India) yet continue to have legal challenges and social-cultural dialogue.

Comparative Analysis

1. *USA*: The 2015 decision of *Obergefell v. Hodges* by the Supreme Court established the constitutional right to marry for same-sex couples throughout the United States.
2. *Taiwan*: Taiwan legalized same-sex marriage in 2019 when the Constitutional Court of Taiwan ruled in favor of the legal recognition of same-sex marriage.
3. *South Africa*: The Constitutional Court decided, in *Minister of Home Affairs v. Fourie* (2005), that same-sex marriage had to be legalized.
4. *India*: Personal laws that are based on religious statutes do not provide for same-sex unions. The Supreme Court of India has not yet ruled regarding marriage rights of same-sex couples. The Supreme Court made some judgments that laid the foundation for LGBTQIA+ marriage rights of same-sex couples, such as *Arun Kumar vs The Inspector General of Registration and Ors.*

Challenges and Debates

1. *Social and Cultural Barriers*: Many countries are faced with similar social and cultural challenges to recognize same-sex marriage, which stem from cultural and traditional beliefs.
2. *Legal Operating Framework*: Legal consideration will provide challenging process for the recognition of same-sex marriage as legal status. Legal issues regarding adoption, inheritance, and tax benefits, are complex and faced with many facets.
3. *Human Rights*: The United Nations has encouraged countries in fulfilment of international human rights commitments to combat hatred and oppression directed at LGBTQ+ individuals.

Future Steps

1. *Advocacy and Awareness*: Ongoing advocacy and awareness will continue to be critical in advancing LGBTQ+ rights and the recognition of same-sex marriage.
2. *Legal Reform*: Changing existing laws and policies will help to provide equal rights

and benefits to partners in same-sex marriages.

3. *International Collaboration*: Collaborative efforts among countries, international organizations, etc. will help to advance the recognition of operationally inclusive, multicultural, and LGBTQ+ rights in the world.

3. Comparative Analysis of Same-Sex Marriage Recognition

Legal Frameworks

COUNTRY	YEAR OF RECOGNITION	LEGAL FRAMEWORKS
USA	2015	Supreme Court ruling in Obergefell vs. Hodgas
Toiwan	2019	Constitutional court rulling
South Africa	2006	ConstItutl onal court rullmg m, Vlinister of Home Affairs v. 'F"ouri
India	-	No legal recognition

An Overview: The comparison also provides an analysis of the legal recognition of same-sex marriage in four countries: the USA, Taiwan, South Africa, and India. In terms of social attitudes toward same-sex marriage, we see:

Social Attitudes

1. *USA*: Mostly Acceptance, Some Opposition*
2. *Taiwan*: Growing support for LGBT, growing LGBT community*
3. *South Africa*: Some support, some opposition (maybe a mixed attitude? cannot characterize) (check note below for more information)*
4. *India*: Mix of acceptance and support, but complex, the population is becoming increasingly supportive of LGBTQ rights. However, there is sufficient opposition, (note some opposition is higher while other sections of society levels are lower).

The comparison illustrates that countries have different approaches to legal recognition of same-sex marriage. Some countries have been more adaptive to recognizing same-sex marriage. Countries that fear recognition do face opposition; however, they need to begin engaging the debate and societal issues that shape what LGBTQ+ rights should look like. The

value of the comparative analysis is to help us assess the intricate relationship between law, society, and culture in creating LGBTQ+ rights.

Case: Supriyo @ Supriya Chakraborty & Anr. v Union of India. On October 17, 2023, the bench, led by Chief Justice D.Y. Chandrachud, ruled against the right of same-sex couples to marry.

On October 17, 2023, the Supreme Court of India, presided over by Chief Justice D.Y. Chandrachud, issued a ruling in the Supriyo @ Supriya Chakraborty & Anr. v. Union of India case. A synopsis of the decision is provided below:

Key Findings:

1. The judges all concurred that there is no fundamental right to marry and that Parliament has the power to pass laws pertaining to marriage.
2. By a majority vote of 3:2, the court ruled that same-sex marriages are not recognized under the Special Marriage Act of 1954.

Justification:

1. The court emphasized that while it had previously recognized the right to choose a spouse, the right to marry is a statutory right that requires approval from the legislature.
2. The judges made a distinction between selecting a spouse and getting married, claiming that the latter is governed by state law.
3. They pointed out that the state provides marriage-related benefits like adoption and inheritance rights, which are not innate to marriage.
4. The courts made a distinction between selecting a spouse and being married, claiming that the latter is governed by state law.
5. They pointed out that the state provides marriage-related privileges like adoption and inheritance rights, which are not innate to marriage.

Consequences:

Future legal challenges or legislative attempts to recognize same-sex weddings may still be possible despite the ruling.

- The court's ruling emphasizes how complicated LGBTQ+ rights are in India, where laws and public perceptions are always changing.

Dissenting Opinions: Chief Justice D.Y. Chandrachud and Justice S.K. Kaul issued minority opinions, with Chief Justice Chandrachud underlining the importance for recognizing LGBT relationships and allowing them equal rights.

Chart - Same-Sex sex marriage recognition by Country

Country	Year of Recognition	Recognizes same - sex marriages
USA	2015	Yes
Taiwan	2019	Yes
South Africa	2006	Yes
India	-	No

Chart: Public Opinion on Same-Sex Marriage

COUNTRY	% support	% oppose
USA	63%	37%
Taiwan	60%	40%
South Africa	42%	58%
India	30%	70%

4. Conclusion

The study compares the legalization of same-sex marriage in the United States, Taiwan, South Africa, and India, highlighting the disparities in policies and results across these nations. While some nations have made great strides toward legalizing same-sex unions, others still encounter obstacles and hostility. The study emphasizes how crucial it is to comprehend how society, law, and culture interact to shape LGBTQ+ rights.

Primary Takeaways:

Progress: By way of historic court rulings or legislative modifications, nations such as the United States, Taiwan, and South Africa have acknowledged same-sex marriage.

The recognition of same-sex marriage in India and other nations is still fraught with social, cultural, and legal issues.

The significance of advocacy cannot be overstated. It is essential to the advancement of LGBTQ+ rights and the acceptance of same-sex marriage.

The study highlights the necessity of ongoing efforts.

5. Bibliography

Books -

Dr. Arneet Kaur, Megha Chawla ' Same Sex Marriages in India: A Judicial Perspectives ' 'Afr.J.Biomed. Res.Vol.27 (4s) (December 2024); 13296 - 13300 Research Article

Websites -

Information and Technology Act, 2000, available at; Source: ScienceDirect.com
<https://share.google/pFPji3d9up1158isp>

Information and Technology Act, 2000, available at; Source: Indian Kanoon
<https://share.google/ZBfxZneCgXg8WehO5>

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¹ Dr. Arneet Kaur, Megha Chawla ' Same Sex Marriages in India: A Judicial Perspectives ' 'Afr.J.Biomed. Res. Vol.27 (4s) (December 2024); 13296 - 13300 Research Article
Information and Technology Act, 2000, available at; Source: ScienceDirect.com
<https://share.google/pFPji3d9up1158isp>
Information and Technology Act, 2000, available at; Source: Indian Kanoon
<https://share.google/ZBfxZneCgXg8WehO5>