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LEGAL STATUS OF SAME SEX – MARRIAGES IN INDIA

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Abstract: The legal position of same-sex marriage in India is a complicated and developing topic that is examined in this essay. Even though same-sex marriage is still prohibited in India, homosexuality was decriminalized there in 2018. Nonetheless, the Supreme Court has acknowledged the rights of same-sex couples in several domains, such as property and inheritance. Taking into account international legal precedents, societal views, and constitutional principles, the article explores the arguments for and against legalizing same-sex marriage in India. Additionally, it examines the possible effects on Indian society and the legal system of legalizing same-sex marriage. Legal system.

INTRODUCTION

India, a country rich in a variety of cultural and religious customs, has been dealing with the topic of same-sex marriage for many years. Even though the country has progressed in LGBTQ+ rights, the legal standing of same-sex relationships is still a debatable and changing issue. This article will examine the present legal situation regarding same-sex marriage in India, looking at important lawsuits, public opinions, and the continuing discussion about this essential human right. The path to gaining legal recognition for same-sex marriage in India has been filled with obstacles and achievements. In 2018, the Supreme Court of India made a historic ruling, legalizing same-sex sexual relations and advancing equality. Nevertheless, the court did not directly discuss the topic of same-sex marriage, leaving room for different interpretations. This uncertainty has resulted in continuing legal disputes and conversations in society. Legal debates over same-sex marriage in India involve discussing the constitutional rationale for acknowledging same-sex partnerships and exploring the connection between individual freedoms, equality, and religious rights. Furthermore, it is important to take into account how the legalization of same-sex marriage could affect Indian society, including its effects on family law, inheritance rights, and social norms.

A HISTORICAL OVERVIEW OF SAME-SEX MARRIAGE IN INDIA

Same-sex relationships in India have a complicated history entwined with ancient customs, colonial oppression, and contemporary advocacy efforts. Even though same-sex marriage is not officially acknowledged in India, there exists a long and intricate history of same-sex relationships and cultural acceptance dating back many centuries. The Vedas, Upanishads, and Mahabharata, ancient Indian texts, mention same-sex relationships, portraying them as a common aspect of life. It is believed that historical figures such as Emperor Ashoka and the poet Kalidasa were involved in homosexual relationships. These initial instances indicate a greater level of tolerance and acceptance of same-sex relationships in ancient India.

Nevertheless, this acceptance started to decrease in the British colonial era. Laws introduced by the British made same-sex sexual conduct illegal, greatly impacting the societal acceptance of LGBTQ+ people. These laws were employed to hinder indigenous customs and practices that deviated from British cultural standards.

In spite of the legal constraints, same-sex partnerships persisted in Indian culture, often hidden or within specific groups. These connections were commonly viewed as a natural aspect of everyday life, especially in rural regions with more flexible traditional gender norms. In the past few years, LGBTQ+ advocates in India have been leading the charge for equal rights and acknowledgment. Their hard work resulted in important legal wins, such as the legalization of same-sex sexual activity in 2018. Even though this was a significant achievement, the fight for complete legal acknowledgment of same-sex marriage is ongoing.

The present status of same-sex marriage in India is still unclear. Despite recent progress, the Parliament will probably have the final say on the legality of same-sex marriage. While India deals with its history and current issues, the topic of same-sex marriage remains a complicated and continuous discussion.

THE PERSONAL LAWS AND SAME-SEX MARRIAGE IN INDIA

1. HINDU LAW

Hindu law in India, a significant personal law, has historically been founded on relationships between a man and a woman. Despite efforts to broaden the interpretation of Hindu law, the acceptance of same-sex marriage within this legal framework

continues to be a complicated and controversial topic. Certain academics suggest that the Indian Constitution's values of equality and non-discrimination could be utilized to interpret Hindu law in a manner that allows for the recognition of same-sex marriage. On the other hand, some argue that the longstanding belief of marriage being between a man and a woman is firmly established in Hindu scriptures and traditions.

2. CHRISTIAN PERSONAL LAW

The Indian Christian Marriage Act, 1872, is the main legislation that regulates Christian personal law in India. Even though this Act does not specifically mention same-sex marriage, it does allow for the recording of marriages involving individuals from diverse religious backgrounds. Some contend that this clause may encompass same-sex couples, yet the legal consequences of such an understanding are still uncertain.

3. MUSLIM PERSONAL LAW

In India, Muslim personal law is based on Islamic law, which historically acknowledges marriage as only permissible between a man and a woman. Limited conversations have taken place in the Muslim community about accepting same-sex marriage, with the current legal views still focused on heterosexual marriage.

THE SPECIAL MARRIAGE ACT AND SAME-SEX MARRIAGE IN INDIA

The Special Marriage Act of 1954 allows for the registration of marriages between individuals from diverse religions or castes. Although not directly discussing same-sex marriage, the topic has sparked controversies and legal issues regarding the acknowledgment of same-sex relationships in India.

Requests have been submitted to the Supreme Court of India asking for the acknowledgment of same-sex marriage under the Special Marriage Act. These pleas have contested the constitutionality of laws that show bias against homosexual partners.

Navtej Singh Johar v. Union of India (2018): Although the main focus of this case was on decriminalizing same-sex sexual relations, it also brought up inquiries regarding the legal recognition of same-sex marriage in India. The court recognized the necessity for additional understanding of this matter.

Other petitions seeking recognition of same-sex marriage under the Special Marriage Act have also been presented to the Supreme Court. The results of these cases will greatly impact the legal recognition of same-sex partnerships in India.

LEGAL FACTORS EFFECTING SAME SEX MARRIAGE IN INDIA

1. CONSTITUTIONAL PROVISIONS:

Fundamental Rights: The Indian Constitution protects various basic rights such as equality (Article 14), personal freedom (Article 21), and anti-discrimination (Article 15). Supporters of same-sex marriage contend that laws discriminating against same-sex couples are in breach of these rights.

Judicial Interpretations: The Supreme Court has had a vital function in interpreting and implementing these constitutional provisions to address different matters. In the case of *Navtej Singh Johar v. Union of India* (2018), the court legalized same-sex sexual relations, affirming the importance of privacy and dignity for everyone.

2. PERSONAL LAWS:

Religious Texts: The personal laws in India are based on religious scriptures, including Hindu, Muslim, and Christian laws. These writings commonly describe marriage as a partnership between a man and a woman, which makes it challenging to include same-sex relationships.

Uniform Civil Code (UCC): The lack of a Uniform Civil Code, aiming to standardize laws for all citizens regardless of religion, has led to discrepancies in the legal system regarding marriage. Introducing a UCC may offer a fairer and more encompassing way to acknowledge same-sex marriage.

3. SOCIETAL ATTITUDES

Shifting Public Opinion: In India, public opinion on same-sex marriage has been changing, as civil society groups, legal professionals, and some members of the public are showing more support. Nevertheless, there is still strong resistance, especially from religious and conservative factions.

Media Representation: The media is essential in forming public views and discussions on same-sex marriage. Positive portrayal in the media can aid in confronting stereotypes and fostering increased acceptance.

4. INTERNATIONAL PRESSURE:

Global Trends: The global momentum for same-sex marriage recognition is increasing, as many countries are implementing laws to safeguard the rights of same-sex couples.

Human Rights Standards: The United Nations and other global human rights groups are urging India to acknowledge same-sex marriage and safeguard LGBTQ+ rights.

5. LEGAL CHALLENGES AND PETITIONS:

Supreme Court Cases: Several requests have been submitted to the Supreme Court in order to receive acknowledgement of same-sex marriage. The result of these cases has the potential to establish precedents and impact the legal environment.

Judicial Review: The Supreme Court can examine laws and rules and invalidate them if they are deemed to go against the constitution. This offers a way to contest laws that discriminate against same-sex couples.

6. POLITICAL LANDSCAPE:

Government Stance: The government's position on same-sex marriage can have a major impact on both the legislative process and public conversation. A more liberal government may advocate for laws recognizing same-sex marriage, while a more conservative government may oppose these changes.

Political Pressure: Influence on the government's stance on this matter can be exerted by different stakeholders such as LGBTQ+ organizations, political parties, and civil society groups.

7. ECONOMIC IMPLICATIONS:

Tourism and Investment: The recognition of same-sex marriage could have positive economic implications, attracting tourists and foreign investment.

Workplace Equality: It could also have implications for workplace equality, as recognizing same-sex marriage can help to create a more inclusive and welcoming environment for LGBTQ+ employees.

8. CULTURAL AND RELIGIOUS INFLUENCES:

Traditional Values: Religious and cultural traditions in India often reinforce heterosexual norms, posing challenges to the acceptance of same-sex unions.

Evolving Interpretations: However, there is also a growing awareness and acceptance of LGBTQ+ rights within some religious and cultural communities.

LEGISLATIVE DEVELOPMENTS TOWARDS THE SAME-SEX MARRIAGE IN INDIA

Over time, individuals began to resist unfair laws like Section 377 of the Indian Penal Code, which criminalized homosexual acts. Due to various events, society has gradually started to welcome and support the LGBTQ community. Nonetheless, numerous obstacles remain in creating a truly equal and fair society for LGBTQ individuals.

When it comes to human and civil rights, many advanced countries have embraced same-sex marriage. For many years, individuals of third genders have faced discrimination based on their gender. They have worked tirelessly to secure legal recognition of their rights. Equal legal protection for gay partnerships is now necessary, just like it is for heterosexual couples. The right to marry is considered a fundamental human right.

National Legal Services Authority v. Union of India & Ors. AIR 2014 SC 1863: The initial effort to officially acknowledge their gender and the fundamental rights that all individuals are entitled to regardless of gender. Section 377 of the Indian Penal Code criminalized consensual same-sex relationships, labeling them as "unnatural offences." This traditional rule was introduced in India during British rule as a direct result of Victorian ethics. On September 6, 2018, the Indian Supreme Court unanimously reversed the decision to criminalize same-sex relationships between consenting adults in "Section 377 of the Indian Penal Code.

Navtej Singh Johar v. Union of India & Ors. AIR 2018 SC 4321: This ruling put an end to the prejudice they faced from both the government and society, forcing them to live in disgrace for a long time. However, the happy event marked the beginning of a complex and multifaceted matter: the legalization of gay marriage. As we celebrate the significant achievement of legalizing same-sex relationships, we must also acknowledge the challenges hindering the achievement of inclusion and equality for everyone.

Shafin Jahan v. Asokan K.M. AIR 2018 SC 1933: The Court affirmed an adult woman's right to embrace Islam and wed a Muslim man without regard for her family's disapproval.

This instance is a testament to the importance of individual freedom and independence, potentially bolstering the case for equal marriage rights.

Supriyo Chakraborty v Union of India W.P.(C)NO.1011/2022: In the ruling, the Supreme Court denied legal acceptance of same-sex marriages in India. The court emphasized that the decision is up to the lawmakers to make. However, every judge on the panel unanimously decided that the Union of India would form a committee to assess the rights and benefits of individuals in same-sex partnerships that are not recognized as marriages. The court ruled unanimously that gay couples have the right to live together without fear of violence or interference, but did not give any orders to officially recognize these relationships as marriages. Millions of LGBTQ people in India were hoping for a positive outcome, but the decision was a major setback for their aspirations. Many activists are upset after the court rejected the idea of granting full marriage rights to same-sex couples, despite it being seen as a possible groundbreaking advancement for LGBTQ rights in the country. However, there remains optimism for the advancement of same-sex couples in India with the potential for future improvements.

CONCLUSION

The complexity and evolution of the legal status of same-sex marriage in India continue to be a significant issue. Although progress has been made, such as decriminalizing same-sex sexual activity and acknowledging same-sex couples as "family units," the legal status of same-sex marriage is still ambiguous.

Recognizing same-sex marriage in India faces major obstacles, including traditional religious definitions of marriage as between a man and a woman and the lack of a Uniform Civil Code. Nevertheless, there is an increasing push for legal acknowledgment, fueled by pressures from within the country and from the international community.

The LGBTQ+ rights in India have been significantly furthered by the Supreme Court of India. The rulings of the Court in cases like Navtej Singh Johar v. Union of India and National Legal Services Authority v. Union of India have greatly broadened the rights of homosexual partners. Despite the uncertainty surrounding the pending petitions challenging the government's stance on same-sex marriages, there is a growing belief that the Court will ultimately decide in favor of recognizing them. This ruling would have significant effects, impacting not just LGBTQ+

people but also how equality and human rights are viewed in India.

In summary, the legal recognition of same-sex marriage in India is still evolving. Despite the obstacles, the increasing support for acknowledgment and the possibility of legal wins indicate that a more fair and comprehensive future for LGBTQ+ people in India is achievable.

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