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# **RECOGNITION OF FOREIGN SAME-SEX MARRIAGES IN INDIA: CONFLICT OF LAWS, PUBLIC POLICY, AND CONSTITUTIONAL MORALITY**

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## **Abstract**

The recognition of foreign same-sex marriages in India raises complex legal questions involving private international law, constitutional principles, and evolving societal values. While several countries legally recognize same-sex marriages, India currently does not provide legal recognition for such unions. When couples legally married abroad enter India, courts and authorities must determine whether such marriages should be recognized for purposes such as immigration, inheritance, or taxation.

This issue brings together three major legal considerations: conflict of laws, public policy, and constitutional morality. Conflict of laws determines which country's legal rules should apply in cross-border situations. Public policy allows courts to refuse recognition of foreign laws that contradict fundamental values of the forum state. Constitutional morality, emerging from recent constitutional jurisprudence, emphasizes the protection of dignity, equality, and personal liberty.

This paper examines how these doctrines interact in determining whether India should recognize foreign same-sex marriages. It analyzes constitutional developments such as the decriminalization of homosexuality and explores possible legal approaches for Indian courts and policymakers.

**Key words:** Recognition of Foreign same sex Marriages, Private International Law, Conflict of Laws, Public Policy Doctrine, Constitutional Morality, LGBTQ+ Rights.

## Introduction

The concept of marriage has traditionally been understood in India as a union between a man and a woman. However, legal developments across the world have significantly expanded this understanding. Countries such as the United States, Canada, and several European nations recognize marriages between persons of the same sex.

When Indian citizens or residents marry in such jurisdictions and return to India, legal uncertainty arises regarding the recognition of those marriages. Indian statutes governing marriage, such as the **Special Marriage Act 1954 and Hindu Marriage Act 1955**, implicitly assume heterosexual unions.

At the same time, constitutional developments have transformed the legal landscape regarding sexual orientation. The Supreme Court in **Navtej Singh Johar v. Union of India**<sup>1</sup> declared that consensual same-sex relations are protected under fundamental rights. This decision marked a significant step toward recognizing the dignity and equality of LGBTQ+ persons.

Despite this progress, India has not yet legally recognized same-sex marriages. The question becomes particularly complicated when such marriages are performed abroad in jurisdictions where they are valid. In these cases, the issue becomes one of private international law, commonly referred to as conflict of laws.

## Concept of Same-Sex Marriage

Same-sex marriage refers to a legally recognized marital union between two individuals of the same gender. This concept is based on the principle that marriage should be available to all consenting adults regardless of sexual orientation.

Historically, many legal systems restricted marriage to heterosexual couples based on religious, cultural, or social norms. However, changing attitudes toward sexual orientation and human rights have led several countries to legalize same-sex marriage.

A landmark global development occurred when the Supreme Court of the United States decided

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<sup>1</sup> **Navtej Singh Johar vs Union Of India Ministry Of Law And ...** on 6 September, 2018 , <https://indiankanoon.org/doc/168671544/>

[Obergefell v. Hodges](#),<sup>2</sup> holding that the Constitution guarantees the right to same-sex marriage. Similarly, countries like Canada, Germany, and the United Kingdom have recognized such unions through legislation or judicial decisions.

These developments reflect a broader recognition that marriage is not merely a social institution but also a legal status that provides significant rights and benefits, including inheritance, taxation benefits, healthcare decision-making, and immigration privileges.

For same-sex couples, denial of marriage recognition can result in legal disadvantages and discrimination. As globalization increases cross-border mobility, the issue of recognizing foreign same-sex marriages becomes increasingly relevant for countries that do not yet permit such marriages domestically.

### **Development of LGBTQ+ Rights in India**

The legal status of LGBTQ+ rights in India has evolved significantly over the past two decades. Homosexuality was criminalized under [Section 377 of the Indian Penal Code](#),<sup>3</sup> which penalized “carnal intercourse against the order of nature.”

The judgment in [Naz Foundation v. Government of NCT of Delhi](#)<sup>4</sup> was mainly in favor of the petitioner, Naz Foundation, and the LGBTQ+ community. The Delhi High Court held that the application of Section 377 of the Indian Penal Code to consensual sexual acts between adults in private was unconstitutional.

In its judgment, the court agreed with the arguments made by the Naz Foundation that Section 377 violated several fundamental rights guaranteed under the Constitution of India. The judges observed that criminalizing consensual same-sex relationships unfairly targeted a specific group of people and denied them equality and dignity. Because of this, the court decided that the law, when applied to consenting adults in private, was inconsistent with constitutional principles.

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<sup>2</sup> <https://supreme.justia.com/cases/federal/us/576/644/>

<sup>3</sup> Section 377 of the Indian Penal Code was a law that punished “unnatural” sexual acts, meaning sexual activities considered against the order of nature, [Section 377 in The Indian Penal Code, 1860](#)

<sup>4</sup> [Naz Foundation v. Government of NCT of Delhi](#), <https://indiankanoon.org/doc/100472805/>

The court emphasized that every individual has the right to live with dignity, privacy, and personal freedom. By treating same-sex relationships as criminal acts, Section 377 created discrimination and social stigma against people based on their sexual orientation.<sup>5</sup> The judges explained that the Constitution protects all citizens equally, including sexual minorities. Therefore, laws that single out and punish individuals simply because of their identity or personal relationships cannot be justified in a democratic society.

As a result, the Delhi High Court ruled that Section 377 would no longer apply to consensual sexual relations between adults in private. However, the court clarified that the law would still remain valid in situations involving non-consensual acts, sexual offences against minors, or bestiality.

Through this judgment, the court effectively granted relief to the Naz Foundation and supported the rights of LGBTQ+ individuals by recognizing that their relationships should not be treated as crimes. The decision marked an important step toward protecting equality, dignity, and personal liberty under the Constitution.

[suresh kumar koushal v. naz foundation \(2013\)](#)

### **Facts of the Case**

Naz Foundation (India) Trust is a non-governmental organization based in New Delhi that has been working in the field of HIV/AIDS awareness and sexual health since 1994. The organization filed a writ petition before the Delhi High Court challenging the constitutional validity of Section 377 of the Indian Penal Code.

Section 377 criminalized sexual acts described as “against the order of nature.” Because of this provision, consensual sexual relations between adults of the same sex—and certain non-vaginal sexual acts even between heterosexual couples—could be treated as criminal offences.

The petitioner argued that this provision violated several fundamental rights guaranteed under the Constitution of India, specifically Article 14 of the Constitution of India (right to equality), Article 15 of the Constitution of India (prohibition of discrimination), Article 19 of the Constitution of India (freedom of expression), and Article 21 of the Constitution of India (right

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<sup>5</sup> <https://ijlrs.com/legal-recognition-to-same-sex-marriages-solemnised-abroad/>

to life and personal liberty). They requested that consensual same-sex relations between adults in private should not fall within the scope of criminal law.

On July 2, 2009, the Delhi High Court delivered a landmark judgment stating that Section 377 violated constitutional guarantees such as privacy, dignity, and equality. The court ruled that criminalizing consensual same-sex relations between adults was unconstitutional.

However this decision was later challenged before the Supreme Court of India in the case of Suresh Kumar Koushal v. Naz Foundation. The Supreme Court reversed the High Court's judgment and held that the Delhi High Court had erred in reading down Section 377 to exclude consensual homosexual acts.

### **Issues**

1. Whether Section 377 violates the fundamental rights provided under Part III of the Constitution and therefore whether it is constitutionally valid.
2. Whether Section 377, to the extent that it criminalizes consensual sexual relations between two adults of the same sex in private, infringes the right to life and personal liberty guaranteed under Article 21.

### **Arguments and Analysis**

The Naz Foundation case emphasized the constitutional vision of building an inclusive and tolerant society. The respondents argued that Section 377 was influenced by traditional Judeo-Christian moral values and was being used to justify discrimination against sexual minorities, including the LGBT community. They further claimed that the law negatively affected public health efforts and allowed misuse by law enforcement authorities against homosexual individuals.

The respondents also argued that criminalizing consensual same-sex relations and certain non-procreative sexual acts between adults violated Articles 14, 15, and 21 of the Constitution.

On the other hand, the petitioners contended that Section 377 did not specifically target any group or gender. According to them, the provision applied equally to everyone and therefore did not violate the principles of equality or non-discrimination.

The Supreme Court accepted this reasoning. Justice G. S. Singhvi stated that Section 377 was a pre-constitutional law and had remained in force since independence. He observed that if the provision truly conflicted with constitutional rights, Parliament would have already taken steps to amend or repeal it.

The Court also rejected the approach taken by the Delhi High Court in reading down the provision. It explained that the doctrine of severability could not be applied here because removing certain parts of the section would undermine the entire provision. The Court noted that Section 377 was also used to prosecute offences such as paedophilia and sexual abuse of minors.

As a result, the Supreme Court concluded that Section 377 did not suffer from constitutional defects and that any decision to repeal or amend the law should be taken by the legislature.

### **Article 21 and the Right to Privacy**

Article 21 of the Constitution guarantees the right to life and personal liberty. This right has been interpreted broadly by courts to include dignity, autonomy, and privacy. The Delhi High Court emphasized that private and consensual sexual relationships between adults fall within the sphere of personal autonomy protected by Article 21. The court referred to international principles such as the Yogyakarta Principles, which recognize sexual orientation as an essential aspect of human identity.

The court also cited the landmark decision in [6Maneka Gandhi v. Union of India](#), where the Supreme Court held that the term “personal liberty” has a very wide meaning and includes many aspects of an individual’s freedom. Based on this interpretation, the High Court held that Section 377 interfered with the dignity and privacy of individuals by criminalizing their sexual orientation. According to the court, the law denied homosexual individuals the right to live with dignity and full personhood under Article 21.

The High Court further observed that the distinction made by Section 377 between procreative and non-procreative sexual acts did not serve any compelling state interest and therefore unjustifiably restricted personal liberty.

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<sup>6</sup> Maneka Gandhi vs union of india , <https://blog.ipleaders.in/maneka-gandhi-v-union-of-india/>

## Judgement

Section 377 has often been misused against members of the gay community and has contributed to discrimination and harassment. The debate also highlights the difference between popular morality and constitutional morality. While popular opinions may change over time, constitutional morality is based on the values of equality, dignity, and freedom embedded in the Constitution.

Therefore, any law restricting personal autonomy and dignity must be justified by a strong state interest and must conform to constitutional principles rather than social prejudice.<sup>7</sup>

## Conflict of Laws in International Marriage

Conflict of laws, also known as private international law,<sup>8</sup> deals with situations where legal disputes involve more than one jurisdiction. In matters of marriage, courts must determine which country's law governs the validity of a marital relationship.

Two major principles are commonly applied in determining the validity of marriages across borders:

**Lex Loci Celebrationis**,<sup>9</sup> This principle states that a marriage is valid if it is valid under the law of the place where it was celebrated. Many legal systems follow this rule because it promotes certainty and stability in international marriages.

For example, if two individuals marry in Canada where same-sex marriage is legal, their marriage would generally be considered valid under Canadian law.

## Lex Domicilii

Another principle considers the law of the domicile of the parties. Under this approach, a marriage may not be recognized if it violates the personal law of the country where the individuals reside.

In India, courts sometimes apply personal laws based on religion, which complicates the

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<sup>7</sup> <https://indiankanoon.org/doc/58730926/>

<sup>8</sup> [Stellina Jolly, Ritika Vohra](#) *Journal of the Indian Law Institute*, Vol. 59, No. 3 (JULY - SEPTEMBER 2017), Conflict of laws, also known as private international law, <https://www.jstor.org/stable/26826609>

<sup>9</sup> S and S Law Firm, <https://mdulawpapers.in/unit-3-private-international-law/>, This principle states that a marriage is valid if it is valid under the law of the place where it was celebrated.

recognition of marriages performed abroad.

### **Public Policy Exception**

Even when a foreign marriage is valid under the law of the place where it was celebrated, a country may refuse to recognize it if it violates its public policy.

Public policy is a legal doctrine that allows courts to reject foreign laws or judgments that contradict fundamental moral, social, or legal principles of the forum state.

Indian courts have invoked public policy in various contexts to prevent enforcement of foreign laws that are considered incompatible with Indian values.

However, the concept of public policy is not static. As constitutional values evolve, courts may reinterpret what constitutes public policy. For example, principles of equality and dignity may influence the interpretation of public policy in cases involving LGBTQ+ rights.

### **Constitutional Morality and Marriage Equality**

The concept of constitutional morality plays an important role in modern Indian constitutional law. It refers to adherence to the core values of the Constitution, including liberty, equality, dignity, and justice.<sup>10</sup>

The Supreme Court emphasized constitutional morality in several landmark cases such as:

**[Navtej Singh Johar v. Union of India](#)**<sup>11</sup>

On 6 September 2018, a five-judge Constitution Bench of the Supreme Court of India unanimously held that Section 377 of the Indian Penal Code is unconstitutional to the extent that it criminalizes consensual sexual relations between adults of the same sex.

The Court ruled that criminalizing consensual same-sex relations violates fundamental rights guaranteed under the Constitution.

The judges held that Section 377 violated: Article 14 Equality before law, Article 15

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<sup>10</sup> Ms. DEEPAKSHI SHARMA, Dr. RAVINDERJEET KAUR , <https://www.ijfmr.com/research-paper.php?id=59401>

<sup>11</sup> [Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018, https://indiankanoon.org/doc/168671544/](https://indiankanoon.org/doc/168671544/)

Prohibition of discrimination, Article 19 Freedom of expression, Article 21 Right to life and personal liberty. The Court stated that sexual orientation is a natural and inherent aspect of human identity, and individuals have the right to express their identity without fear of punishment.

The judgment emphasized that constitutional morality must prevail over social morality. Even if a section of society disapproves of homosexuality, the Constitution protects the dignity and rights of LGBTQ+ persons.

The Court clarified that Section 377 will still apply to: non-consensual sexual acts sexual acts involving minors bestiality. Thus, the judgment decriminalized homosexuality in India and recognized the dignity, equality, and freedom of LGBTQ+ individuals.

### **Recognition of Foreign Marriages under Indian Law**

Foreign same-sex marriages currently have **no clear legal recognition in India**, mainly because existing marriage laws assume marriage between a man and a woman. One important statute is the Foreign Marriage Act, 1969, which regulates marriages performed outside India when at least one of the parties is an Indian citizen. **Section 4** of this Act lays down the conditions for a valid foreign marriage, stating that the marriage must be between a **man and a woman**, the man must be **21 years old**, the woman **18 years old**, neither party should have a living spouse, both must be capable of giving valid consent, and they must not fall within prohibited degrees of relationship. <sup>12</sup>**Section 5** requires the couple to give **notice of intended marriage** to a Marriage Officer at an Indian embassy or consulate, while **Section 6** provides for the **publication of this notice** so that objections can be raised. Under **Section 7**, any person can object to the marriage within a specified period, and the Marriage Officer must inquire into the objection. <sup>13</sup>After the marriage ceremony, **Section 13** provides that a **marriage certificate** will be issued, which serves as legal proof of the marriage. Because the Act uses gender-specific terms such as “male” and “female,” it does not explicitly recognize same-sex marriages performed abroad.<sup>14</sup>

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<sup>12</sup> Section 4 of Foreign Marriage Act, 1969, Conditions relating to solemnization of foreign marriages, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00029\\_196933\\_1517807324405&sectionId=15799&sectionno=4&orderno=4](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00029_196933_1517807324405&sectionId=15799&sectionno=4&orderno=4)

<sup>13</sup> Section 5 of Foreign Marriage Act 1969 , Notice of intended marriage, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00029\\_196933\\_1517807324405&sectionId=15799&sectionno=4&orderno=4](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00029_196933_1517807324405&sectionId=15799&sectionno=4&orderno=4)

<sup>14</sup> Section 13 of Foreign Marriage Act 1969, [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00029\\_196933\\_1517807324405&sectionId=15799&sectionno=4&orderno=4](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00029_196933_1517807324405&sectionId=15799&sectionno=4&orderno=4)

Special Marriage Act, 1954, which governs civil marriages in India, also assumes heterosexual marriage. [Section 4](#) of this Act sets out the conditions for marriage, including the age requirement (21 for the male and 18 for the female), monogamy, mental capacity, and prohibition of certain close relationships. [Section 5](#) requires couples to give **30 days' notice** of their intention to marry to the Marriage Officer. [Section 12](#) provides that the marriage must be solemnized in the presence of the Marriage Officer and three witnesses, and [Section 13](#) states that once the marriage certificate is signed and entered in the register, the marriage becomes legally valid. Because the Act uses the terms “husband” and “wife,” it has been interpreted as applying only to opposite-sex couples.

When a same-sex couple legally marries in another country and seeks recognition in India, authorities and courts must rely on principles of private international law and constitutional interpretation. Courts generally examine whether the marriage is valid in the country where it was celebrated, whether recognizing it would violate Indian public policy, and whether recognition would conflict with existing statutes. They may also consider fundamental rights such as equality and personal liberty under the Constitution of India. However, because Indian legislation has not yet been amended to include same-sex marriages, foreign same-sex marriages remain legally uncertain in India and their recognition depends largely on judicial interpretation and evolving constitutional principles.

### **Comparative Legal Approaches in Other Jurisdictions**

In the United Kingdom, the legal recognition of same-sex marriages developed gradually through legislative reforms. Initially, same-sex couples who married abroad were not treated as legally married under domestic law. Instead, their relationships were recognized as **civil partnerships**, mainly under the Civil Partnership Act 2004, which granted certain legal rights but did not provide the full status of marriage. A major change occurred with the enactment of the Marriage (Same Sex Couples) Act 2013. Under [Section 1](#) of this Act, marriage between same-sex couples was legally recognized in England and Wales. [Section 9](#) provides for the conversion of existing civil partnerships into marriages if the couple wishes to do so. After this legislation came into force, same-sex marriages performed in other countries could be recognized as valid marriages in the United Kingdom, provided they were legally performed according to the law of the country where the marriage took place.

In the United States, recognition of same-sex marriage was primarily achieved through

constitutional interpretation by the Supreme Court in <sup>15</sup>[Obergefell v. Hodges](#). In this landmark decision, the Court held that the fundamental right to marry is protected by the Fourteenth Amendment of the United States Constitution, which guarantees equality and due process of law. The Court ruled that states cannot deny marriage licenses to same-sex couples or refuse to recognize marriages lawfully performed in other states. As a result, all states in the United States must both allow same-sex marriages and recognize those conducted elsewhere, ensuring equal marital rights for same-sex couples across the country.

In Canada, same-sex marriage was legalized nationwide through the Civil Marriage Act 2005. <sup>16</sup>[Section 2](#) of this Act defines marriage as the “lawful union of two persons,” removing any gender-specific requirement. This gender-neutral definition ensures that marriage is available equally to both same-sex and opposite-sex couples. Because of this legal framework, Canada also recognizes foreign same-sex marriages if they are valid under the law of the place where they were celebrated.

### **Public Policy Considerations in India**

Public policy is an important concept in law, particularly in matters involving private international law and recognition of foreign legal relationships. In simple terms, public policy refers to the fundamental principles, values, and standards that form the basis of a country’s legal system. Courts use the doctrine of public policy to determine whether certain laws, judgments, or legal relationships from other countries should be accepted or rejected within their jurisdiction. If a foreign law or relationship is considered contrary to the essential moral, legal, or social principles of the country, courts may refuse to recognize it.

In the context of marriage, public policy plays a crucial role when individuals marry in one country and seek recognition of that marriage in another. Generally, the law follows the principle that a marriage valid in the country where it was celebrated should also be considered valid elsewhere. This principle supports international stability and respect for foreign legal systems. However, this recognition is not absolute. A country may refuse recognition if the marriage violates its public policy or fundamental legal norms. Therefore, the doctrine acts as an exception to the general rule of recognizing foreign marriages.

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<sup>15</sup> Obergefell v. Hodges, 576 U.S. 644 (2015) ,<https://supreme.justia.com/cases/federal/us/576/644/>

<sup>16</sup> Section 2 of Civil Marriage act 2005 , [https://laws-lois.justice.gc.ca/eng/annualstatutes/2005\\_33/page-1.html](https://laws-lois.justice.gc.ca/eng/annualstatutes/2005_33/page-1.html)

In India, public policy has traditionally been influenced by cultural traditions, religious beliefs, and social values. Marriage in Indian society is not only a legal relationship but also an important social institution connected to family structure, religion, and customs. Many personal laws governing marriage in India, such as the Hindu Marriage Act 1955 and the Special Marriage Act 1954, are based on the assumption that marriage is a union between a man and a woman. Because of this legal framework, Indian law has historically recognized only heterosexual marriages.

Due to this traditional understanding of marriage, the recognition of foreign same-sex marriages has often been viewed as inconsistent with Indian public policy. When same-sex couples legally marry in countries where such marriages are permitted and later come to India, may gradually evolve to reflect a more inclusive understanding of relationships. legal authorities face uncertainty regarding their marital status. Since Indian statutes governing marriage do not explicitly recognize same-sex marriages, such unions may not receive the same legal status in India as they do in the country where they were performed. As a result, courts may hesitate to recognize these marriages on the ground that they conflict with domestic marriage laws.

However, the doctrine of public policy is not static. It evolves over time in response to social change, judicial interpretation, and constitutional developments. What may have once been considered unacceptable under public policy can later become accepted as society's understanding of rights and freedoms progresses. Courts therefore play a crucial role in interpreting public policy in a manner that reflects contemporary constitutional values rather than outdated social norms.

In recent years, significant developments in Indian constitutional law have influenced the understanding of public policy, especially in relation to LGBTQ+ rights. One of the most important decisions in this area is the judgment of the Supreme Court in *Navtej Singh Johar v. Union of India*. In this landmark case, the Court declared that criminalizing consensual same-sex relations between adults was unconstitutional. The Court held that such criminalization violated fundamental rights guaranteed by the Constitution, including equality, freedom of expression, and the right to life and personal liberty.

The judgment was significant because it recognized that sexual orientation is an essential aspect

of an individual's identity and dignity. The Court emphasized that LGBTQ+ individuals are entitled to the same constitutional protections as all other citizens. By affirming these rights, the Court took an important step toward eliminating discrimination based on sexual orientation and promoting inclusiveness in society.

This decision has important implications for the interpretation of public policy. If the Constitution protects the dignity, autonomy, and equality of LGBTQ+ individuals, then public policy should ideally reflect these values. Denying recognition to relationships involving same-sex couples may appear inconsistent with the constitutional principles established by the Supreme Court. Therefore, some scholars and legal experts argue that the concept of public policy should be reconsidered in light of modern constitutional values.

Another important constitutional principle relevant to this discussion is constitutional morality. Constitutional morality refers to adherence to the fundamental values and ideals enshrined in the Constitution, such as liberty, equality, and dignity. The Supreme Court has repeatedly emphasized that constitutional morality should guide the interpretation of laws and rights, even when societal attitudes may be conservative or resistant to change. This principle ensures that the rights of minority groups are protected against discrimination or prejudice.

When applied to the issue of foreign same-sex marriages, constitutional morality raises an important question. If the Constitution recognizes the dignity and equality of LGBTQ+ individuals, should the state continue to deny recognition to marriages that are legally valid in other countries? Some argue that refusing recognition may undermine the constitutional commitment to equality and personal liberty. Others maintain that since existing marriage laws in India do not yet recognize same-sex unions, courts must follow the statutory framework until legislative changes are made.

Apart from constitutional considerations, practical legal issues also arise when foreign same-sex marriages are not recognized in India. Marriage provides a wide range of legal rights and protections, including inheritance rights, property ownership, medical decision-making authority, and immigration benefits. When a same-sex couple legally married abroad enters India, the absence of recognition may create serious legal difficulties. For example, one partner may not be able to claim inheritance rights or make medical decisions for the other, even though they are legally married in another country. This situation can lead to uncertainty and may

affect the legal security of the couple.

The growing globalization of society has increased cross-border mobility, meaning that people frequently move between countries for work, education, or personal reasons. As a result, legal systems increasingly encounter situations involving marriages performed abroad. In such circumstances, the doctrine of public policy must balance respect for foreign legal systems with the need to maintain consistency with domestic laws and constitutional principles.

In India, the debate over recognition of foreign same-sex marriages highlights the tension between traditional legal frameworks and evolving constitutional values. While existing marriage laws are based on a heterosexual model of marriage, recent judicial decisions have emphasized equality, dignity, and personal autonomy. These developments suggest that public policy.<sup>17</sup>

### **Constitutional Morality and Individual Rights**

Constitutional morality is an important principle in constitutional law that guides how laws and rights should be interpreted and applied within a democratic system. It refers to the idea that the values and principles laid down in the Constitution must be respected and followed by all institutions of the state, including the legislature, the executive, and the judiciary. These values generally include equality, liberty, dignity, justice, and respect for individual freedom. Constitutional morality ensures that the rights guaranteed by the Constitution are protected even when social traditions or majority opinions may oppose them.

In a diverse society like India, the concept of constitutional morality plays a crucial role in safeguarding the rights of individuals and minority groups. Indian society is influenced by various cultural, religious, and social practices that sometimes differ from constitutional ideals. In such situations, constitutional morality requires that decisions be guided by constitutional principles rather than by social prejudices or traditional norms. This means that the protection of fundamental rights must take priority over popular morality or societal disapproval.

Individual rights are central to the Indian Constitution. Fundamental rights provided under Part III of the Constitution protect the dignity, freedom, and equality of all citizens. These rights

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<sup>17</sup> <https://www.ijlra.com/details/legalization-of-same-sex-marriage-intersection-between-law-and-morality-by-tabassum-parveen>

include the right to equality before the law, freedom of expression, protection of life and personal liberty, and freedom from discrimination. The purpose of these rights is to ensure that every person can live with dignity and make personal choices without unnecessary interference from the state.

One of the most significant developments in recent constitutional jurisprudence was the recognition of the right to privacy as a fundamental right in Justice K.S. Puttaswamy v. Union of India. In this landmark judgment, the Supreme Court held that privacy is an essential aspect of personal liberty and dignity. The Court explained that individuals must have the freedom to make decisions about their personal lives, including matters related to identity, relationships, and personal beliefs. This judgment expanded the understanding of individual rights and emphasized that personal autonomy is a core constitutional value.

The principle of constitutional morality became even more significant in the case of Navtej Singh Johar v. Union of India. In this case, the Supreme Court struck down the criminalization of consensual same-sex relations between adults. The Court held that laws which discriminate against individuals based on their sexual orientation violate the fundamental rights guaranteed by the Constitution. The judges emphasized that constitutional morality must prevail over social morality when there is a conflict between the two.

The Court also recognized that sexual orientation is an inherent and natural aspect of human identity. Therefore, LGBTQ+ individuals are entitled to the same rights, dignity, and respect as any other citizens. By affirming these principles, the Court acknowledged that constitutional protections extend to all individuals regardless of their identity or lifestyle. This judgment represented an important step toward ensuring equality and eliminating discrimination.

Constitutional morality also strengthens the idea that the Constitution protects the rights of minorities. In a democratic society, decisions are often influenced by the views of the majority. However, the Constitution ensures that minority groups are not deprived of their rights simply because their views or identities differ from those of the majority. Courts play an essential role in protecting these rights by interpreting laws in a manner consistent with constitutional values. Another important aspect of constitutional morality is the protection of human dignity. The Constitution recognizes that every individual deserves respect and the freedom to live according to their personal choices. Dignity is closely connected with autonomy, which refers

to the ability of individuals to make decisions about their own lives. When laws or policies interfere with these choices without reasonable justification, they may violate the constitutional guarantee of personal liberty.

In the context of relationships and family life, constitutional morality supports the idea that individuals should have the freedom to choose their partners and form relationships based on mutual consent. Although marriage laws in India have traditionally been based on heterosexual relationships, constitutional developments suggest that the legal system must gradually adapt to protect the rights and dignity of all individuals. Courts increasingly recognize that personal relationships are an important part of individual identity and should not be restricted by outdated social norms.

The principle of constitutional morality also encourages progressive interpretation of laws. Instead of strictly relying on traditional practices, courts examine whether existing laws are consistent with the Constitution's commitment to equality and justice. When laws conflict with these principles, courts may reinterpret them or declare them unconstitutional. This approach ensures that the Constitution remains a living document capable of responding to changing social conditions.<sup>18</sup>

### **Same-Sex Marriage Petitions before the Supreme Court**

The issue of same-sex marriage in India became a major constitutional debate when several petitions were filed before the Supreme Court seeking legal recognition for marriages between same-sex couples. These petitions were filed by individuals, LGBTQ+ activists, and couples who argued that the denial of marriage rights violated their fundamental rights guaranteed under the Constitution of India. The petitioners requested the Court to interpret existing marriage laws in a gender-neutral manner so that same-sex couples could legally marry and enjoy the same rights as heterosexual couples.

The petitions mainly challenged provisions of different marriage laws such as the Special Marriage Act 1954, which currently uses terms like "husband" and "wife." The petitioners argued that these gender-specific terms exclude same-sex couples and therefore discriminate

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<sup>18</sup> Sejal Sri Mukkavilli J , Recognition of Foreign Same-Sex Marriages in India: The Public Policy Exception to the Choice of Law, 1. \_\_\_\_\_, <https://www.ijlra.com/post/recognition-of-foreign-same-sex-marriages-in-india-the-public-policy-exception-to-the-choice-of-law>

against them based on their sexual orientation. They claimed that such exclusion violates constitutional guarantees such as Article 14 (Right to Equality), Article 15 (Prohibition of discrimination), Article 19 (Freedom of expression), and Article 21 (Right to life and personal liberty).

The arguments of the petitioners were strongly influenced by earlier landmark judgments of the Supreme Court. In of [Navtej Singh Johar v. Union India](#), the Court had already decriminalized consensual same-sex relations and recognized that sexual orientation is a natural part of human identity. The petitioners argued that if LGBTQ+ individuals are entitled to dignity and equality under the Constitution, they should also have the right to marry the partner of their choice.

One of the most important cases in this group of petitions was **Supriyo v. Union of India**. In this case, the petitioners requested the Supreme Court to recognize same-sex marriage either by reading the provisions of the Special Marriage Act in a gender-neutral manner or by declaring that the Constitution protects the right of all individuals to marry regardless of gender. The case was heard by a five-judge Constitution Bench of the Supreme Court because it involved significant questions relating to fundamental rights and constitutional interpretation. During the hearings, the petitioners argued that marriage is an important legal and social institution that provides several rights and benefits, including inheritance rights, medical decision-making authority, adoption rights, and access to social welfare schemes. They argued that denying these rights to same-sex couples creates inequality and discrimination. According to them, the Constitution protects the freedom of individuals to choose their life partners and form families based on mutual consent.

The Government of India opposed these petitions and argued that the issue of same-sex marriage involves complex social and cultural considerations. The government stated that marriage in Indian law has traditionally been understood as a union between a man and a woman, and any change to this concept should be made by the legislature rather than the judiciary. It argued that Parliament is the appropriate authority to examine the social implications of such reforms and decide whether changes should be introduced in existing marriage laws.

In its final judgment, the Supreme Court recognized the importance of protecting the rights and

dignity of LGBTQ+ individuals. However, the Court held that the legal recognition of same-sex marriage should be decided by the legislature and not by judicial interpretation alone. While the Court did not legalize same-sex marriage, it emphasized that LGBTQ+ persons have the right to form relationships and live together without discrimination.

The Court also directed the government to examine ways to ensure that LGBTQ+ individuals are not denied basic rights and benefits in areas such as social welfare and protection from discrimination. This decision shows that the debate over marriage equality in India is still evolving and may continue to develop in the future through legislative reforms or further judicial interpretation.

### Conclusion

The non-recognition of same-sex marriages in India creates several legal and practical difficulties for couples whose marriages are valid in other jurisdictions. As globalization increases and people frequently move across borders, situations arise where couples legally married in one country seek recognition or legal relief in another. In the Indian context, the absence of a clear legal framework regarding same-sex marriage recognition leads to uncertainty and hardship for such couples.

Broadly, three categories of cases may arise in relation to same-sex marriages connected with India. The first category involves dissolution of marriage. In such cases, the couple may have been legally married in a foreign country where same-sex marriage is permitted, but later move to India and wish to legally end their marriage. Since India does not currently recognize same-sex marriages under its domestic marriage laws, courts face difficulty in deciding whether they can grant divorce or dissolution. This creates a problematic situation where a marriage valid in one country cannot easily be dissolved in another, leaving the parties without an effective legal remedy.

The second category concerns legal incidents of marriage. Even if a couple does not seek dissolution, they may approach Indian authorities to claim certain rights that arise from marriage. These rights could include inheritance, spousal benefits, medical decision-making, immigration status, tax benefits, or other legal privileges normally granted to married couples. When the legal system refuses to recognize the marital status of such couples, they are effectively denied these rights, despite their marriage being valid under the laws of another

country.

The third category relates to full recognition of marriage. In these situations, foreign same-sex couples seek recognition of their marriage in India for all purposes, including rights, responsibilities, and legal protections associated with marriage. This is the most complex scenario because it requires Indian authorities to determine whether a marriage valid abroad should be accepted within the Indian legal system.

One of the key challenges in addressing these issues is the public policy exception in private international law. Courts may refuse to recognize a foreign law or judgment if it is contrary to the public policy of the forum country. However, in the Indian context, the content of public policy regarding same-sex marriages is not clearly defined. While traditional cultural attitudes may influence perceptions of marriage, constitutional developments and judicial decisions have significantly transformed the legal understanding of sexual orientation and personal liberty.

A major turning point in India was the decision of the Supreme Court in the *Navtej Singh Johar v. Union of India* (2018), which decriminalized consensual homosexual relationships by reading down Section 377 of the Indian Penal Code. This judgment emphasized dignity, equality, and individual autonomy as fundamental constitutional values. Following this decision, the judiciary has increasingly adopted a progressive approach toward the protection of LGBTQ+ rights.

Because of such constitutional developments, foreign same-sex couples may reasonably expect Indian courts to treat their marriages with fairness and respect. Even though Indian law does not currently provide explicit statutory recognition of same-sex marriages, the judiciary has demonstrated a willingness to protect personal freedoms and equality. This creates a possibility that courts may recognize certain aspects of such marriages, especially when doing so does not directly conflict with fundamental legal principles.

In private international law, the public policy exception is generally interpreted narrowly. This means that courts should refuse recognition of foreign laws only when they violate the most fundamental principles of justice or morality in the forum country. Therefore, it may be possible for Indian courts to recognize foreign same-sex marriages under the principle of reasonable classification, even if such marriages are not yet recognized under domestic

marriage laws.

A useful comparative example can be found in Canadian private international law, which provides a more nuanced understanding of public policy. Canadian jurisprudence distinguishes between two concepts: *ordre public interne* (internal public policy) and *ordre public international* (international public policy). Internal public policy refers to the mandatory rules and principles governing domestic law. However, not every foreign law that conflicts with domestic rules automatically violates international public policy.

According to the Canadian approach, a foreign law should only be rejected if it violates fundamental principles of justice or universally accepted values, rather than merely differing from domestic law. In other words, a foreign rule that conflicts with internal policy may still be recognized if it does not contradict the core principles of fairness, human rights, and international obligations.

Applying this reasoning to India, the country's internal legal framework regarding same-sex marriage is still evolving. While domestic law does not yet formally recognize such marriages, it also does not clearly establish that recognition of foreign same-sex marriages would violate fundamental constitutional values. On the contrary, constitutional principles such as dignity, equality, and freedom of choice may support recognition in appropriate circumstances.

International human rights norms also provide important guidance. Universal Declaration of Human Rights (UDHR), particularly Article 16, recognizes the right of adults to marry and form a family without discrimination. The provision emphasizes equality of rights in marriage, during marriage, and at its dissolution. It also encourages states to eliminate discriminatory customs and ensure freedom in choosing a spouse.

When interpreted in light of these international principles, India's evolving constitutional values may support a more inclusive approach toward recognition of foreign same-sex marriages. Even if domestic law has not yet formally legalized such unions, courts may still recognize them for limited purposes, especially when doing so protects fundamental rights and avoids injustice.<sup>19</sup>

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