RECOGNITION OF FOREIGN SAME-SEX MARRIAGE IN INDIA

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ABSTRACT

Indian courts generally apply traditional conflict-of-laws principles that originate from the First Restatement on Marriage and English common law when determining the validity of marriages.[1] In India, judicial decisions have largely depended on these English legal principles to resolve questions relating to which law should govern a marriage. At the same time, there is limited case law dealing with the recognition of marriages performed abroad, even in relation to heterosexual couples. These legal rules are also built on heteronormative assumptions. For instance, traditional domicile rules treat the wife's domicile as automatically following that of her husband. When a marriage as a same-sex marriage is not permitted under Indian domestic law, courts may rely on the doctrine of public policy to refuse recognition of that marriage, even if it was legally valid in the country where it was celebrated. At present, Indian statutes do not explicitly or implicitly recognize same-sex marriages.

However, the Indian Constitution, often described as transformative in nature, promotes principles of equality, dignity, and non-discrimination. This creates a tension between constitutional ideals and the existing legal framework. Consequently, an important question arises: should public policy be understood based on current statutory laws that do not recognize same-sex marriages, or should it be shaped by constitutional values that support equality

This paper argues that the public policy exception should be interpreted in a manner that allows for the recognition of same-sex marriages performed abroad. It suggests that the judiciary's evolving understanding of marriage equality should be regarded as a form of "new public policy." By adopting this approach and applying the public policy doctrine more narrowly, Indian courts could recognize foreign same-sex marriages that are valid under the law of the place where they were celebrated.[2]

[1] Sejalsri Mukkavilli J, Recognition of Foreign Same-Sex Marriages in India: The Public Policy Exception to the Choice of Law, https://www.ijllr.com/post/recognition-of-foreign-same-sex-marriages-in-india-the-public-policy-exception-to-the-choice-of-law

Key words: Same-sex marriage, Recognition Public, Policy doctrine Conflict of laws Private international law, Recognition of foreign marriages, Constitutional morality, Marriage equality

Introduction

The Supreme Court of India has, over many years, delivered several important judgments to protect relationships that society often disapproves of. The Court has protected the rights of inter-caste couples, inter-faith couples, and even interracial couples. The Constitution of India guarantees equality and protection to every citizen. In a diverse and secular country like India, minorities often face social pressure and discrimination. Therefore, the Constitution ensures that they receive protection from violence and unfair treatment by orthodox social forces.

In 2016, Navtej Singh Johar,[3] a dancer belonging to the LGBTQ community, filed a writ petition in the Supreme Court. He argued that the right to sexuality, the right to choose a sexual partner, and the right to express one's sexual identity should be recognized as fundamental rights under Article 21 of the Constitution, which guarantees the right to life and personal liberty.

Section 377 of the Indian Penal Code[4] criminalized "carnal intercourse against the order of nature." However, in 2018, the Supreme Court delivered a Historic judgment in the Navtej Singh Johar case and struck down this colonial-era provision to the extent that it criminalized consensual same-sex relations.

This judgment allows same-gender couples to live together without fear, their marriages are still not legally recognized in India. Even though the Constitution promises equality, true equality is yet to be achieved when it comes to marriage rights for same-sex couples. After the decriminalization of homosexuality in India, the LGBTQ community has taken an important step forward by demanding the right to marry. However, the existing marriage laws in India recognize only heterosexual marriages between a man and a woman. Because of this, same-sex couples are denied many legal, social, and financial benefits that married couples usually receive from the state and society.

[3] 2018 INSC 790
[4] https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=434

Recently, three petitions were filed before the Delhi High Court seeking legal recognition of same-sex marriages. In response, the Central Government stated that although same-gender relationships are no longer considered criminal, including such unions within the framework of personal laws is a complex issue. Traditional personal laws in India are largely based on long-standing religious customs and rituals. These customs generally recognize marriage only as a union between a biological man and a biological woman, and therefore they do not accept marriages between persons of the same gender.

Many countries across the world have already recognized and legalized same-sex marriages. Denmark was the first country to take this step, and later countries like the United Kingdom and the United States of America also legalized such unions. Although India has decriminalized homosexuality, it still refuses to legally recognize same-sex marriages, often citing the need to protect the sanctity of marriage.

Historical Development of LGBTQ Rights in India

The legal recognition of LGBTQ rights in India has evolved gradually over time. During the British colonial period, the Indian Penal Code introduced Section 377. This provision criminalized certain sexual acts described as "against the order of nature." Although the law did not explicitly mention homosexuality, it was widely used to criminalize consensual same-sex relationships. For many years, this law created fear and discrimination for members of the LGBTQ community. Individuals who identified as homosexual often faced social stigma, harassment, and legal punishment. Activists and human rights organizations began challenging the constitutionality of Section 377.

One of the earliest major legal challenges was brought by the Naz Foundation, a non-governmental organization working on HIV prevention and LGBTQ rights. In 2009, the Delhi High Court delivered a historic judgment in Naz Foundation v. Government of NCT of Delhi.[5] The Court held that criminalizing consensual sexual relations between adults violated fundamental rights such as equality, dignity, and privacy.

However, this judgment was later challenged before the Supreme Court of India. In the case of Suresh Kumar Koushal v. Naz Foundation,[6] the Supreme Court reversed the Delhi High

[5] Naz Foundation v. Government of NCT of Delhi (2009) 160 DLT 277
[6] Suresh Kumar Koushal & Another v. Naz Foundation & Others (2014) 1 SCC 1

Court's decision and upheld the constitutional validity of Section 377. The Court stated that the issue should be addressed by Parliament rather than the judiciary.

This decision received widespread criticism from human rights organizations and members of the LGBTQ community. Many activists argued that the judgment failed to recognize the constitutional rights of LGBTQ individuals.

The legal position changed significantly in 2018 when the Supreme Court delivered a landmark judgment in Navtej Singh Johar v. Union of India. In this case, a group of petitioners challenged the constitutional validity of Section 377 once again.

The Supreme Court held that criminalizing consensual same-sex relationships between adults violated fundamental rights guaranteed under the Constitution. The Court emphasized that sexual orientation is an essential aspect of individual identity and that LGBTQ individuals deserve equal protection under the law.

The judgment recognized that dignity, privacy, and equality are fundamental values of the Constitution. The Court also acknowledged the historical discrimination faced by the LGBTQ community and stated that constitutional morality must prevail over social prejudice.

This decision marked an important milestone in the recognition of LGBTQ rights in India. However, the judgment addressed only the issue of criminalization and did not grant legal recognition to same-sex marriages.

Constitutional Analysis of Marriage Equality

The Constitution of India guarantees several fundamental rights that protect the dignity and freedom of individuals. Among these rights, Articles 14, 15, and 21 play an important role in discussions relating to LGBTQ rights and marriage equality.

Article 14 guarantees equality before the law and equal protection of the laws to all persons. This means that every individual should be treated equally by the legal system. Article 15 prohibits discrimination on certain grounds, including religion, race, caste, sex, or place of birth. [7]Although sexual orientation is not explicitly mentioned, many legal scholars argue that

[7] Article 14, 15, 21 of Indian Constitution
https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/aor_notice_circular/13.pdf

discrimination based on sexual orientation can be interpreted as discrimination based on sex.

Article 21 protects the right to life and personal liberty. Over time, the Supreme Court has interpreted this article broadly to include several aspects of personal autonomy, such as the right to privacy, dignity, and freedom to make personal choices.

In the case of Navtej Singh Johar v. Union of India, the Supreme Court emphasized that sexual orientation is an essential part of an individual's identity. The Court held that criminalizing consensual same-sex relationships violated constitutional values of dignity and equality.[8]

Although the judgment decriminalized same-sex relationships, it did not directly address the issue of same-sex marriage. However, the reasoning of the Court suggested that LGBTQ individuals are entitled to the same constitutional protections as other citizens.

Many scholars believe that if the Constitution guarantees equality and dignity to all individuals, then denying marriage rights to same-sex couples may contradict these principles.

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[8] Navtej Singh johar VS Union of India,, https://desikaanoon.in/wp-content/uploads/2024/11/Navtej_Singh_Johar_vs_Union_Of_India_Ministry_Of_Law_And_on_6_September_2018.pdf

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Recognition of Foreign Marriages in Private International Law

In private international law, countries often recognize marriages that are legally valid in the place where they were performed. This principle is known as lex loci celebrationis[9], which means the law of the place where the marriage ceremony takes place. According to this rule, if a marriage is legally valid in the country where it was conducted, it is generally recognized by other countries as well.

However, this principle is not absolute. Many countries refuse to recognize foreign marriages if they conflict with their domestic public policy. Public policy refers to the fundamental legal and moral principles followed by a country. If a foreign marriage violates these principles, the country may deny recognition to that marriage.

In India, marriage laws traditionally recognize marriage as a relationship between a man and a woman. Because of this interpretation, marriages between persons of the same gender are not recognized under most existing laws. Therefore, when an Indian same-sex couple marries in another country where such marriages are legal, their union may not be recognized when they return to India.

This situation creates legal uncertainty. Even though the couple is legally married abroad, Indian authorities may treat them as unmarried individuals. This affects several legal rights such as inheritance, taxation benefits, medical decision-making, property ownership, and

[9] Loxi celebration, – The principle that the validity of a marriage is determined by the law of the place where the marriage is celebrated. See generally Dicey, Morris & Collins on the Conflict of Laws, 15th ed., Sweet & Maxwell,

adoption rights.

International Human Rights Perspective

International human rights law has played an important role in promoting equality and protection for LGBTQ individuals. Several international treaties and declarations emphasize the importance of dignity, equality, and freedom from discrimination.

The Universal Declaration of Human Rights (UDHR) states that all individuals are born free and equal in dignity and rights. It also recognizes the right to marry and to form a family. Although the declaration does not explicitly mention same-sex marriage, many human rights advocates argue that the principle of equality supports the recognition of such unions.

Similarly, the International Covenant on Civil and Political Rights (ICCPR) protects the right to privacy and equality before the law. These provisions have been interpreted by human rights organizations to support the rights of LGBTQ individuals.[10]

Another important document is the Yogyakarta Principles,[11] which explain how international human rights law applies to issues relating to sexual orientation and gender identity. These principles emphasize that all individuals have the right to recognition before the law and freedom from discrimination.

Although international law does not automatically change domestic laws, it often influences national courts and legislatures. In several countries, courts have relied on international human rights principles when recognizing same-sex marriages.

Comparative Legal Developments in Other Countries

Several countries have already legalized same-sex marriage and provide full legal recognition to LGBTQ couples. Studying these developments helps understand how legal systems can adapt to changing social realities. Canada was one of the first countries to recognize same-sex marriage nationwide in 2005.[12] The Canadian government amended its marriage laws to define

[10] Universal Declaration of Human Rights (UDHR),https://www.un.org/en/about-us/universal-declaration-of-human-rights
[11] Yogyakarta Principle, https://yogyakartaprinciples.org/principles-en/
[12] Civil Marriage Act (S.C 2005.c.33),https://laws.justice.gc.ca/eng/acts/C-31.5/

marriage as a union between two persons rather than a union between a man and a woman.

United States Supreme Court 26 June 2015 576 U.S. 644 (2015)[13] The Court ruled that the Fourteenth Amendment requires all states to allow same-sex couples to marry and to recognize same-sex marriages performed in other states. Justia Law

Justice Anthony Kennedy wrote the majority opinion, stating that the right to marry is a fundamental liberty protected by the Constitution, and denying this right to same-sex couples violates both Due Process and Equal Protection principles.

Legal Challenges for Foreign Same-Sex Couples in India

When same-sex couples legally marry abroad and return to India, they often face several legal challenges due to the lack of recognition of their marriage. One major challenge relates to inheritance and property rights. Married couples typically enjoy certain legal protections regarding property ownership and inheritance. However, if a same-sex marriage is not recognized, the surviving partner may not receive these rights.[14]

Another challenge involves medical decision-making. In many situations, spouses have the legal authority to make medical decisions for their partners. Without legal recognition of their marriage, same-sex partners may not have this authority.

There are also challenges related to immigration and spousal benefits. In countries where same-sex marriage is recognized, spouses may receive immigration privileges or social benefits. However, these rights may not be available when the couple resides in India.

These legal challenges highlight the importance of addressing the issue of recognition of foreign same-sex marriages in the Indian legal system.

Hindu Marriage Act, 1955

Section 5 of the Hindu Marriage Act, 1955[15] lays down the essential conditions for a valid

[13] United States Supreme Court 26 June 2015 576 U.S. 644 (2015) https://en.wikisource.org/wiki/File:Obergefell_v._Hodges.pdf

[14] Maneesh Kumar Nigam , https://law4u.in/top-answer/3331/are-same-sex-marriages-conducted-abroad-recognized-in-india?utm_source=chatgpt.com

[15] Section 5(3) of Hindu Marriage Act 1955,The bridegroom has completed the age of twenty one years and the bride, the age of eighteen years at the time of marriage, Section 5 in The Hindu Marriage Act, 1955

Hindu marriage. Although clause (1) is written in gender-neutral terms, clause (3) specifies the minimum age for marriage and uses the terms "bridegroom" and "bride." The use of these words indicates that the legislature originally intended marriage to take place between a male and a female, reflecting a heterosexual framework. Therefore, expanding these terms to include same-sex couples may not be justified through ordinary statutory interpretation.

However, the Madras High Court in Arunkumar v Inspector General of Registration interpreted the term "bride" more broadly. The Court held that the word "bride" in Section 5 of the Hindu Marriage Act should include transgender women and intersex persons who identify themselves as women. The Court relied on the principles laid down in National Legal Services Authority v Union of India (NALSA case), where the Supreme Court recognised gender identity as part of personal autonomy and dignity under the Constitution.

Following the NALSA judgment, the Madras High Court observed that the meaning of the word "bride" should not be treated as fixed or rigid. Instead, it must be interpreted in the context of the evolving legal framework that recognises self-identified gender identity under Article 21 and prohibits discrimination based on sex under Article 15. Accordingly, the Court allowed the inclusion of trans women within the meaning of "bride".

Nevertheless, this interpretation does not extend to same-sex marriages. Allowing two persons of the same sex to identify themselves as bride and bridegroom would contradict the legislative intent of the Act. Several provisions in the Act clearly reflect a heterosexual understanding of marriage. For example, Section 13(2) provides special grounds for divorce specifically available to the wife, indicating the assumption of a male-female marital relationship. Similarly, provisions relating to maintenance and alimony use gender-specific language, further confirming that the Act was designed for heterosexual marriages.

Another important aspect is the concept of consummation of marriage. Under the Act, a marriage may be annulled if it has not been consummated due to the impotence of one of the parties. Consummation is traditionally understood as heterosexual sexual intercourse, which further shows that the Act presumes marriage between a man and a woman.

Indian Christian Marriage Act, 1872

Under Section 60 of the Indian Christian Marriage Act, 1872, the law states that the man

intending to marry must be at least 21 years old, and the woman must be at least 18 years old.[16] The use of the words "man" and "woman" clearly indicates that the legislation envisages marriage as a union between a male and a female, similar to the framework followed in Hindu law.

Parsi Marriage and Divorce Act, 1936

Section 3 of the Parsi Marriage and Divorce Act, 1936 also prescribes the minimum marriageable age. It states that the male must be at least 21 years old and the female must be at least 18 years old. [17]Like the other personal laws, the language of this provision clearly reflects a heterosexual concept of marriage.

Special Marriage Act, 1954

The Special Marriage Act, 1954 provides a civil form of marriage for individuals who wish to marry without being governed by the personal laws of their religion or caste. It allows people of different religions or castes to marry while continuing to retain their religious identity. However, the Act also prescribes conditions similar to those found in the Hindu Marriage Act, including the minimum age requirement for male and female parties, thereby implying that marriage under this law is also intended to be between a man and a woman.

Foregin Marriage Act 1969

Section 23 of the Foreign Marriage Act, 1969[18] states that the Central Government has the authority to declare that marriages performed under the laws of certain foreign countries will be treated as valid by courts in India. However, this recognition is not automatic. The word "may" indicates that the government has discretionary power to decide whether such marriages should be recognized.

For recognition to occur, the Central Government must be satisfied that the marriage laws of

[16] Section 60 (1) of Indian Christian Marriage Act, the man intending to marry must be at least 21 years old, and the woman must be at least 18 years old,Christainn Marriage Act, 1872.pdf https://share.google/dj2PospN7LLM8NgDU

[17] Section 3(1) (c) of the Parsi Marriage and Divorce Act, 1936, the male must be at least 21 years old and the female must be at least 18 years old, https://www.indiacode.nic.in/bitstream/123456789/2476/1/a1936_____3.pdf

[18] Foreign Marriage Act 1969, https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_50766d00ec5f4839a25dc45ef3093ec9.pdf

the foreign country contain provisions similar to those found in the Foreign Marriage Act, 1969. If this condition is fulfilled, the government can issue a notification in the Official Gazette stating that marriages performed under the laws of that country will be recognized as valid in India.

The recognition of such marriages is also subject to Section 4 of the Act, which sets out the conditions required for solemnizing a foreign marriage. According to Section 4, the Act applies only when at least one of the parties is an Indian citizen. The provision also refers specifically to a "bride" and a "bridegroom" while mentioning the legal age for marriage, which indicates that the law is framed with heterosexual marriages in mind.

Section 4 also requires that a foreign marriage must satisfy the basic conditions laid down in the Act before it can be recognized. As a result, several implications arise. First, the Act does not apply when both individuals are foreign nationals. Second, it does not extend to same-sex marriages. Third, even if a marriage is valid under the laws of a foreign country, it will not be recognized in India unless it complies with the provisions of the Act. Therefore, a same-sex marriage involving an Indian citizen that is legally performed in a country where such marriages are permitted would still not be recognized in India.

Although Section 27 suggests that a marriage that is valid under foreign law should not be denied recognition in India, the Mrs. Gracy v. P. A. Maithri[19] decision of the Kerala High Court adopted a narrower interpretation.[20] The court held that even when a marriage is performed abroad according to the relevant foreign law, it must still strictly comply with the procedural requirements provided in Section 17 of the Act. The judgment also highlighted that Section 27 should be interpreted carefully in light of the purpose of the legislation and that it applies only in situations where at least one party to the marriage is an Indian citizen.

Since there is no clear legislative framework in India specifically addressing the recognition of foreign marriages involving same-sex couples, their status largely depends on conflict of laws principles governing the validity of marriages. In many countries, courts generally recognize marriages that are valid under the law of the place where they were celebrated or based on the parties' domicile. However, courts may refuse recognition if such marriages conflict with the country's public policy. As a result, courts may rely on this public policy exception to decline

[19] AIR 2005 KER 314
[20]Gracy vs Mathiri on 16 June, 2005,https://www.casemine.com/judgement/in/56094ff6e4b0149711284b5b

recognition of foreign same-sex marriages even when those marriages are valid under the law of the country where they were performed.[21]

Judicial Approach in India (2023 Marriage Equality Case)

The most significant judicial development regarding marriage equality in India occurred in Supriyo v. Union of India. This case was heard by a five-judge Constitution Bench of the Supreme Court, which delivered its judgment on 17 October 2023. The petitions were filed by several LGBTQ couples seeking legal recognition of same-sex marriages under existing Indian marriage laws, particularly the Special Marriage Act 1954.

The petitioners argued that the exclusion of same-sex couples from marriage laws violated fundamental rights guaranteed under Articles 14, 15, 19, and 21 of the Constitution, including equality before law, non-discrimination, freedom of expression, and the right to life and personal liberty. They contended that marriage is a fundamental aspect of personal autonomy and dignity and therefore should be available to all individuals regardless of sexual orientation.

However, the Supreme Court delivered a 3:2 majority decision declining to legalize same-sex marriage. The Court held that the Constitution does not explicitly recognize a fundamental right to marry, and therefore it could not mandate the legalization of same-sex marriage through judicial interpretation. Instead, the Court stated that the authority to recognize such marriages lies with Parliament, which has the legislative power to enact or amend laws governing marriage.

The majority also refused to interpret the Special Marriage Act in a gender-neutral manner because doing so would effectively rewrite the legislation, which falls within the domain of the legislature rather than the judiciary. The Court emphasized the principle of separation of powers, stating that courts should not create new legal frameworks that require detailed policy decisions.

Despite rejecting marriage equality, the Court recognized the constitutional rights and dignity of LGBTQ individuals. The judges acknowledged that same-sex relationships deserve respect and protection under the Constitution. They also accepted the government's proposal to form a high-level committee to examine discrimination faced by queer couples and to explore limited

[21]Supriyo @ Supriya Chakraborty v. Union of India, 2023 SCC OnLine SC 1348.

legal benefits such as joint bank accounts, medical decision-making rights, and recognition as

The judgment therefore reflects a balanced but cautious judicial approach. While the Court refused to create a right to same-sex marriage, it reaffirmed earlier decisions protecting LGBTQ rights, such as Navtej Singh Johar v. Union of India, which decriminalized consensual same-sex relations.

Overall, the 2023 decision represents an important stage in India's evolving jurisprudence on LGBTQ rights. Although it stopped short of granting marriage equality, it recognized the legitimacy and dignity of queer relationships and highlighted the need for legislative reform.

Marriage Equality and Private International Law: Recognition of Foreign Same-Sex Marriages in India

Marriage equality refers to the principle that all individuals should have the same legal right to marry regardless of their sexual orientation. In many parts of the world, laws have been reformed to allow same-sex couples to marry and receive the same legal rights and protections as heterosexual couples. However, complications arise when a marriage that is legally recognized in one country needs to be acknowledged in another country where such marriages are not permitted. This situation is addressed through Private International Law, which governs legal matters involving more than one jurisdiction.

Private international law determines which country's laws should apply when individuals from different nations are involved in a legal relationship. It also deals with whether a legal status created in one country, such as marriage, should be accepted in another country.[22] For example, if a same-sex couple marries in a country where such marriages are legally valid and later moves to India, the question arises whether Indian law will recognize that marriage.

In India, most marriage laws are based on traditional definitions that consider marriage as a union between a man and a woman. Because of this understanding, marriages between same-sex partners that take place abroad do not currently receive clear legal recognition under Indian law. This issue became an important constitutional question during the Supreme Court case

[22]RAKSHITA DATA, Marriage Equality and Private International Law: Recognition of Foreign Same-Sex Marriages in India,https://www.ijlmh.com/wp-content/uploads/Same-Sex-Marriage-in-India-and-Private-International-Law.pdf

Supriyo v. Union of India, where petitioners sought legal recognition of same-sex marriages.

During the proceedings, the petitioners argued that denying marriage rights to same-sex couples violates fundamental rights guaranteed by the Constitution, including equality, dignity, and personal liberty. However, the Supreme Court held that the authority to recognize or legalize same-sex marriages lies primarily with the legislature. The Court therefore declined to extend marriage rights through judicial interpretation, emphasizing that Parliament must decide whether existing marriage laws should be amended.

Even though marriage equality was not recognized, Indian constitutional law has gradually expanded protection for LGBTQ individuals. In Navtej Singh Johar v. Union of India, the Supreme Court decriminalized consensual same-sex relationships and affirmed that individuals have the right to live with dignity and freedom regardless of sexual orientation. This judgment marked a significant step toward protecting the rights of LGBTQ persons in India.

Perspective of private international law, the recognition of foreign same-sex marriages remains an unresolved legal issue. Generally, many legal systems follow the principle that a marriage valid in the country where it was performed should be recognized elsewhere unless it strongly conflicts with the public policy of the recognizing state

The Legal Status of Foreign Same-Sex Marriages in India: Constitutional and Human Rights Perspectives

Foreign same-sex marriages refer to marriages between two people of the same gender that are legally performed in countries where such marriages are recognized. Many countries such as Canada, United States, Netherlands and United Kingdom legally permit same-sex marriages.[23] However, the legal recognition of such marriages in India remains uncertain because Indian marriage laws traditionally recognize marriage only between a man and a woman.

A major development occurred in the landmark judgment of Navtej Singh Johar v. Union of India, where the Supreme Court of India decriminalized consensual same-sex relations by striking down parts of Section 377 of the Indian Penal Code. This decision recognized the dignity, equality, and privacy of LGBTQ+ individuals under the Constitution. Although this

[23]kajal, Assistant Professor in Law, CT Group of Institutions, Shahpur Jalandhar, Punjab (India) , https://ijirl.com/wp-content/uploads/2025/03/LEGAL-STATUS-OF-SAME-SEX-MARRIAGE-IN-INDIA-A-COMPARATIVE-ANALYSIS-WITH-GLOBAL-PERSPECTIVES.pdf

judgment removed criminal penalties, it did not grant legal recognition to same-sex marriages.

In 2023, the Supreme Court examined petitions seeking recognition of same-sex marriages under the Special Marriage Act, 1954 in the case of Supriyo v. Union of India. The Court held that the power to legally recognize same-sex marriages lies with the legislature rather than the judiciary. Therefore, as of now, India does not legally recognize same-sex marriages, including those performed abroad.

constitutional perspective, many scholars argue that denying recognition to foreign same-sex marriages may violate fundamental rights guaranteed under the Constitution of India. Article 14 ensures equality before law, Article 15 prohibits discrimination, Article 19 protects freedom of expression and identity, and Article 21 guarantees the right to life and personal liberty, which includes the right to dignity and privacy. Supporters of recognition argue that these rights should extend to same-sex couples who are legally married in other countries.

International principles emphasize equality and non-discrimination regardless of sexual orientation. Global human rights frameworks encourage states to respect the dignity and family rights of LGBTQ+ individuals. When India does not recognize foreign same-sex marriages, couples may face difficulties related to inheritance, medical decision-making, adoption, taxation, and immigration.

Detailed Legal Analysis

1. Fundamental Right to Marry

One of the main arguments presented by the petitioners was that the right to marry should be considered a fundamental right derived from Article 21 of the Constitution. They relied on earlier judgments recognizing personal autonomy and privacy as essential aspects of individual liberty. However, the majority of the Supreme Court rejected this argument. The Court held that although marriage is socially significant, it is not automatically a fundamental right unless it is specifically recognized by law. Therefore, the Court concluded that the Constitution does not guarantee a universal right to marry irrespective of statutory provisions.

2. Interpretation of the Special Marriage Act

Terms such as “husband” and “wife” would include same-sex couples. The Court refused to

adopt such an interpretation. According to the majority opinion, the Special Marriage Act was enacted to provide a legal framework for inter-faith and inter-caste marriages between heterosexual couples. Changing the structure of the law to include same-sex couples would fundamentally alter the legislative intent of the statute.

Therefore, the Court held that only Parliament has the authority to amend the Act or introduce new legislation recognizing same-sex marriages.

3. Recognition of LGBTQ Relationships

Although the Court rejected marriage equality, it emphasized that LGBTQ individuals enjoy the same constitutional rights as other citizens. The judgment reaffirmed that discrimination based on sexual orientation is inconsistent with constitutional principles of equality and dignity.

Some judges in the minority opinion supported the recognition of civil unions for same-sex couples, arguing that such recognition would provide legal protection without altering existing marriage laws. However, the majority declined to adopt this approach, stating that even civil union frameworks require legislative action.

The judgment thus reflects a limited but progressive recognition of LGBTQ rights, emphasizing constitutional protection while leaving institutional reform to lawmakers.

Future Prospects of Same-Sex Marriage Law in India

The Supreme Court declined to legalize same-sex marriage in 2023, the decision does not close the possibility of future reforms. Several developments indicate that the legal landscape may continue to evolve. First, the Court clearly stated that Parliament has the authority to recognize same-sex marriage through legislation. This means that if the legislature chooses to enact a law supporting marriage equality, it would be constitutionally valid.

Second, the formation of a government committee to examine rights of queer couples may lead to incremental legal reforms. Even if marriage equality is not immediately recognized, the government could introduce laws granting certain rights related to inheritance, medical decision-making, or social security.

Third, judicial interpretation may continue to expand protections for LGBTQ individuals in

other areas such as employment, housing, and family recognition. Courts have already begun recognizing non-traditional family structures and the autonomy of individuals in choosing their partners. Finally, social attitudes in India are gradually evolving. Increased awareness, activism, and public discourse surrounding LGBTQ rights may encourage policymakers to reconsider the issue in the future. Therefore, while the 2023 judgment did not grant marriage equality, it has opened a broader conversation about legal recognition of diverse relationships in India.

Conclusion

Many countries have already allowed same-sex couples to marry and give them the same rights as other married couples. However, Indian law still mainly recognizes marriage as a relationship between a man and a woman. Because of this, same-sex marriages that take place in other countries are not clearly recognized in India. In recent years, Indian courts have taken steps to protect the rights and dignity of LGBTQ people. In Navtej Singh Johar v. Union of India, the Supreme Court said that consensual same-sex relationships are not a crime and that every person has the right to live with dignity and freedom. Later, in Supriyo v. Union of India, the Court discussed the issue of same-sex marriage. The Court recognized the rights of LGBTQ individuals but stated that the decision to legalize same-sex marriage should be made by Parliament.

This means that the future of recognizing foreign same-sex marriages in India depends mainly on changes in the law made by the government. As society becomes more aware of equality and human rights, there may be more discussions about giving legal recognition to such marriages the law in India does not currently recognize foreign same-sex marriages, but the conversation about equality and legal protection is still continuing and may lead to changes in the future.

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