

A STUDY ON THE LEGAL RECOGNITION OF SAME SEX MARRIAGE

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Abstract

Homosexual individuals in India confront lawful and social troubles not experienced by non-LGBT people. Sexual action between individuals of a similar sex is illicit and same-sex couples legitimately can't wed or acquire a common association. Starting at 2018, be that as it may, the Supreme Court is good to go to rethink whether to sanction same-sex sexual action and a draft Uniform Civil Code, if endorsed in its present shape, would authorize same-sex marriage in India. LGBT rights in India (orthographic projection).Region controlled by India appeared in dull green; asserted yet uncontrolled areas appeared in light green. Same-sex sexual action lawful status Decriminalized in 2009; Decriminalized in 2013.Illicit under Section 377 of the Indian Penal Code. Punishment: Up to life detainment with a fine.Most LGBT individuals in India stay in the wardrobe, in dread of separation from families, who consider homosexuality to be shameful.Since 2014, "hijras" in India, have been permitted to change their sex without sex reassignment surgery, and have an established appropriate to enroll themselves under a third sexual orientation. Moreover, a few states secure hijras through lodging programs, welfare benefits, annuity plans, free surgeries in government healing facilities and others programs intended to help them. There are roughly 4.8 million hijras.Same-sex relational unions are not lawfully perceived in India nor are

same-sex couples offered constrained rights, for example, a common association or a local organization.

Key words

Homosexual, same-sex marriage, legal recognition, personal laws, decriminalise, sexual act

Introduction

It is unarguable that the underlying spotlight must be on decriminalising con-erotic sexual acts. Yet, this in itself won't end the segregation looked by people who are occupied with long haul submitted associations with others of their own sex. It would require lawful acknowledgment of long haul same-sex associations, comparable to hetero relational unions. is target of looking for equality with heterosexual connections itself might be evaluated in light of the fact that heterosexual relational unions and family connections are instilled with the outdated estimations of male centric society. In the event that a family is viewed as a microcosm of society, one can't look for to accomplish radical changes in the public eye while looking for acknowledgment into its traditional family standards. It is relevant to watch that same-sex relational unions are not unlawful in India. While Section 377 of the Indian Penal Code criminalizes sexual acts between people of a similar sex, [Boswell](#) it is conceivable to contend that same-sex relational unions are not equivalent to the execution of such acts.²⁹ Nonetheless the marriage laws in India don't unequivocally allow same-sex relational unions, and, truth be told, reflect a solid hetero inclination and utilize terms proposing just a hetero association. Various people states that same sex marriage should be legalised ,Despite the fact that these prohibitions have been shown scientifically to be artifacts of social and political context, they are still cited by such “defenders of marriage” as [\(James 2003\)](#). Even well-educated Americans are often startled to learn that the government dismissed more homosexuals than communists at the height of the McCarthy era. It's likely you were startled to learn that there was a legal ban on plays with lesbian or gay characters” [\(Chauncey 2004\)](#). They adopted the slogan “Gay is Good,” modeled on “Black is Beautiful,” along with many of the same political strategies such as marches and demonstrations [\(Dobson 2004\)](#). “By 1971, therefore, the framework for a gay-liberal case for same-sex marriage was in place” [\(Eskridge 2006\)](#). “The APA had stopped calling homosexuals

mentally ill in 1973; but in 1986, the Supreme Court effectively announced that they could still be called criminals”([spedale 2004](#)). Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, fidelity, and family” ([Bonauto 2005](#)). The aim of the study is

- To observe about the legal recognition given to same sex marriage Under various Acts
- To prevent the human STD disease transfer
- To protect the culture and heritage

Hypothesis

- The Supreme Court has not given important with reference to recognition for same sex marriage in India.
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Methods and Materials

This paper is an outcome of analytical analysis form secondary data. The secondary data includes books, research journals, research articles , international publications from various websites which gave importance to same sex marriage. This research is based on doctrinal method.

Observation

Same sex marriage under personal law

In India, relational unions and weddings have a solid religious and social significance and also social significance. Marriage is thought to be a sacrament and the religious functions are a fundamental piece of the marriage. This maybe clarifies the numerous cases of lesbian relational unions, including performance of religious services, trade of festoons in sanctuaries or semi le-lady companionship contracts (maitri karar) in a few revealed cases. [Ruth Vanita](#) For example, in 1988, two policewomen wedded each other in a Hindu service. ough their marriage couldn't be enlisted and they were suspended from their employments, their marriage was acknowledged and bolstered by their families and commu-nity.It is intriguing

that the various announced lesbian relational unions have been to a great extent between residential community, bring down white collar class, non-English talking ladies who are not associated with the LGBT movement.

In this milieu, the most palatable course would be the acknowledgment of same-sex relational unions under Indian individual marriage laws. In India, Christians, Muslims and Hindus have different laws in connection to marriage, progression and so forth e Hindu Marriage Act that represents Hindus, Sikhs, Jains and Buddhists expresses that a marriage might be solemnised between any two Hindus. [Arvind Narrain](#) additionally specifically gives that the groom ought to have accomplished the age of twenty one and the lady of the hour eighteen. The Christian Marriage Act gives that the age of the man should be twenty one and the age of the lady eighteen. Since Muslim relational unions are not administered by a statute, there is no statutory definition of 'marriage', however they are regularly thought to be an agreement with the end goal of procreation. All Indian individual laws seem to visualize marriage as just a hetero association.

Acknowledgment of same-sex relational unions under Hindu individual laws can be acquired by any of the accompanying methodologies:

- (I) translating the current law to allow same-sex relational unions,
- (ii) deciphering that the LGBT community constitutes a different group, the traditions of which allow same-sex relational unions,
- (iii) perusing down the Hindu Marriage Act, 1956 ('Act') to permit same-sex connections, on the ground that it would somehow or another be rendered illegal, or
- (iv) altering the Act to allow same-sex connections.

Since the Act is sexually unbiased aside from in the utilization of the terms lady of the hour and husband, it is conceivable to contend that same-sex couples can get their relational unions solemnized under the Act gave one of them is portrayed as the lady of the hour and alternate as the prepare. This approach has been attempted by lesbian couples, where one accomplice introduced herself as the lady of the hour and alternate as the lady of the hour groom. It [Flynn, Tom.2004](#) is di clique to help this contention by the standards of statutory translation, since it strains the expressions of the statutes and is in opposition to the basic comprehension of the terms lady of the hour and prep. e elucidation additionally tries to homogenize same-sex associations with customary types of marriage. When connections

between hetero life partners are being re-designed to make them more equivalent, this elucidation will strengthen customary severe sex generalizations that sexual orientations are naturally different, that two people in a marriage have pre-set parts and that even same-sex couples need to acknowledge traditional parts with a specific end goal to get married.

Brahmin development, they are not joined by a want to achieve specific changes in Hindu wedding functions. [Eskridge, William N. Jr. 2000](#) The third approach is request perusing down of the arrangements in the enactment overseeing Hindu and Christian marriage laws by the judiciary with the goal that same-sex relational unions are perceived, on the ground that a perusing of these laws as disallowing such relational unions, would render the applicable professional dreams illegal by segregating based on sexual introduction.

Same Sex marriage under Special Marriage Act

A choice which should not to raise religious temper is to look for a correction to the Special Marriage Act, 1954 ('SMA') to allow same-sex relational unions. [Boston Globe 2007](#) The SMA is a common enactment that encourages relational unions between individuals of different religions or the individuals who don't wish to be bound by their own laws. Rather than a religious function, a Marriage Officer registers the marriage. In its current shape, the SMA appears to apply to hetero couples, since it gives that the male ought to have achieved the time of twenty-one years and the female the age of eighteen years. But it isn't different religion to suit same-sex relational unions inside the system of SMA. [Somak Ghoshal](#). It would just be important to alter Section 4(c) with the goal that it peruses that a gathering, if male, ought to have accomplished the age of twenty-one years and if female, ought to have achieved the age of eighteen years and to include a specific arrangement that same-sex relational unions are allowed. Regardless, regardless of whether individual laws are altered to perceive same-sex relational unions, the SMA would need to be corrected to accord a similar acknowledgment to connections between people having a place with different religions.

While a change is unmistakably the best administrative alternative, it is one that may be different religion after the current development of a BJP government. [Corvino, John. 2005](#) While the Congress and the CPI(M) both included decriminalization in their proclamations for the Lok Sabha decisions, the BJP was clear in its help of the judgment – a gathering pioneer remarking that homosexuality is an unnatural demonstration that can't be supported. More as of late, the [Rashtriya Swayamsevak Sangh](#), the BJP's ideological parent, has expressed that

while they are against lauding gay conduct, it is far from being obviously true whether it ought to be criminalised.

While the adjustment being referred to is anything but difficult to draft and can't be said to meddle with religious flexibilities, it will undoubtedly produce vocal restriction.[Herrick, James. 2004](#) The correction to the SMA would be like the laws allowing same-sex relational unions authorized in different nations. Today, sixteen nations have instituted such laws beginning from the Netherlands in 2000 to England and Wales in 2013.⁶⁵ Similarly, thirteen states in the USA have passed laws allowing same-sex relational unions. In any case, there are a few hostile to same-sex institutions also.

Reading Down on Special Marriage Act

The Final choice is to look for a legal decision that the SMA must be perused as allowing same-sex relational unions on the ground that else it would be oppressive against same-sex couples and subsequently unlawful. ere are a few global points of reference in help of this suggestion. ere State Supreme Courts in the United States, those of Massachusetts, Connecticut and Iowa have held that a marriage law that did not allow same-sex couples to wed was illegal. [B.N. Sampath](#), Each of the three courts summoned both due process and equivalent security conditions and indicated out that the privilege wed is an individual freedom right that likewise includes a uniformity segment. A gathering of individuals can't be prevented the privilege from claiming marriage allowed to others, without an extremely solid justifi cation, which, the court held, did not exist.

The lion's share perspective of the US Supreme Court in striking down DOMA did not hold that same-sex relational unions were a sacred right. It generally construct its choices with respect to the Constitutional structure that gives the States specialist over the de nition of marriage.[Caramagno](#) In any case, as pointed out by Justice Scalia in the disagreeing judgment, the dominant part see prepares for a case that same-sex relational unions are a protected right. In the event that DOMA illegally looted same-sex couples of "personhood and respect" in states that allow ted the training, he stated, citing from the dominant part sentiment, courts may nd that laws in hostile to gay-marriage states likewise should fall. Undoubtedly, after the Supreme Court choice, a Superior Court of New Jersey held that the state government was damaging New Jersey's Constitution by denying government benefits to same-sex couples by not permitting them marry.

The Constitutional Court of South Africa has held that marriage laws that did not allow same-sex relational unions were violative of Section 9(3) of the Constitution, which states: "the state may not unjustifiably segregate specifically or by implication against anybody on at least one grounds, including race, sex, sex, pregnancy, conjugal status, ethnic or social root, shading, sexual introduction, age, incapacity, religion, still, small voice, conviction, culture, dialect and birth". Nonetheless, even a large number of the individuals who bolster the above legitimate and constitutional standards and acknowledge the above strategic thinking, would think about whether Courts ought to be drawn closer instead of equitably chose bodies [Forrest](#). In any case, as Martha Nussbaum has brought up, it is sensible that courts have a legitimate part to play in this disruptive zone, defending minorities who are in danger in the majoritarian political process. The cavalier perceptions of the Court with respect to a 'miniscule minority' is strange of Indian courts and Koushal is a variation in such manner. It must be recalled that even the transient decriminalisation of gay acts came fairly late to India and was not accomplished by authoritative activity but rather by the legal playing out its obligation of maintaining protected rights.

Conclusion

Numerous states have authorized common associations since 2000. There is an immense measure of contrasts in a marriage and common association. A same-sex couple in a common association is prevented the all from claiming the rights that accompany marriage. The verbal confrontation over same-sex marriage will everlastingly seethe until the point when it progresses toward becoming authorized. Same-sex connections have been a piece of history since the antiquated circumstances. Same-sex marriage ought to be sanctioned so couples will have the privilege to settle on choices with respect to their accomplices wellbeing and therapeutic treatment and also enabling them to receive each other's kids. Planning the bill a specific way will empower to chapel to remain uninvolved, since religious reasons are the most widely recognized explanation behind individuals being against same-sex marriage. Legitimizing same-sex relational unions will make equity for all individuals in a relationship and annihilation the bad form among same-sex couples.

Conflict of interest

I chose this topic legal recognition of same sex marriage because it is one of the most debated topic in our country. This made me choose this topic to more about the legal recognition available to same sex marriage.

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