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Between Liberty and Tradition: Legal Recognition of Same-Sex Marriage in India

Author name – Manishka Sinha

The past few years have seen the most remarkable developments in the LGBTQ+ rights in India, the most notable of which being the historic decriminalization of consensual same-sex relationships in *Navtej Singh vs. Union of India* (2018). However, in spite of these constitutional successes, the legal status of same-sex marriage is still not an established fact. It currently exists in a gray area between constitutional morality, legislative intent, socio-cultural values and the lived experiences of LGBTQ+ nationally. **Constitutional Framework and Fundamental Rights**

The Constitution of the UAE provides a constitutional framework and basic rights based on the universal rules of governance established by the United Nations in 1969. The UAE has a constitutional framework and basic rights, which is founded on the general rules of governance set by the United Nations in 1969.

In the Indian Constitution, there are a number of fundamental rights, which form the foundation of the arguments that support the extension of marriage equality. Article 14 ensures equality under the law and it does not permit the State to make unreasonable discrimination. Article 15 outright prohibits discrimination based on sex as well, though, by judicial interpretation, applies to sexual orientation as well. Expression and association are among the freedoms that are protected by article 19. Lastly, Article 21 provides the right to life and personal liberty, which the courts have seen to include dignity, autonomy and choice of intimacy in the case of intimate relationships.

According to the supporters of same sex marriage, the non-rewarding of legal status is a violation of these rights. They argue that freedom of choice of a life partner is a personal issue of individual liberty, dignity, and autonomy that is safeguarded by Article 21. Besides, the denial of marriages to same-sex couples and granting them to heterosexual couples is discriminatory in the face of the equality provisions of Article 14 and the anti-discrimination requirement of Article 15.

LGBTQ + activists and lawyers have petitioned constitutional provisions to have the right to marriage recognized in petitions presented to the Supreme Court of India. The petitioners continue to assert that sexual orientation is the fundamental personal identity and autonomy characteristic, and the refusal to marry on this basis contravenes the key freedoms. This view is also supported through the allusion to other doctrines of the constitution including the Article 32 that grants citizens right to address the Supreme Court in order to enforce the fundamental rights. (Reddit[1])

Supriyo Chakraborty Case: Judicial Pushback.

And even with the above constitutional reasons, the Supreme Court of India had made a historic and controversial verdict in *Supriyo Chakraborty and Anr v. Union of India* (2023). In a 3:2 majority, the Court refused to give legal status to a same-sex marriage and maintained that the

laws about matrimony were under the jurisdiction of the legislature and not the court. The court of justice rationale was in the fact the Constitution did not specifically provide a right to marry as a basic right; therefore, the initiation or development of any legislation is left at the discretion of Parliament and not the judiciary. ([The Economic Times][2])

Chief Justice D.Y. Chandrachud, though admitting the necessity to abolish the discrimination of LGBTQ + individuals, stated that, as a Court, it could not establish laws and could interpret those already in force. He emphasized on the marriage law being complex and not to be determined by the ruling of the court. The ruling restated the fact that legalization of same-sex unions should be an initiative of the legislative arm of government. ([The Guardian][3])

India Current legal status At present, the State does not regulate the sector, yet regulation is underway.< |human| >Current legal status in India At the current time, the State does not regulate the sector, but the regulation is being developed.

Currently, there is no Indian law that is specifically aiming to recognize same-sex marriage or civil unions. According to the Hindu marriages Act, the Special marriage act, and other personal laws, the institution of marriage is that between a biological man and woman. Therefore, same-sex couples are deprived of the benefits of marriage that are usually enjoyed by way of legal rights such as inheritance, adoption, joint taxation, pension, or even medical decisions made by the spouse. ([Naya Legal][4])

Management of Indian courts though lacking in this statute has affirmed the right of consenting adults to cohabit though not married. The Supreme Court ruled that adults have a constitutional right to cohabit with a partner of choice, and law enforcement should not intrude into the relationship of consenting adults. A number of High Courts have also enhanced this right and affirmed that live-in relationships between same-sex couples can not be limited solely on moral grounds. ([Wikipedia][5])

In some areas of India, particular petitions that involve the rights were not finalized yet. As an illustration, a same-sex couple took the Bombay High Court to court over the discriminatory meaning of spouse in the income tax act to get the tax exemption that is only offered to married couples. Even though the court did not give the applicant immediate relief, the case highlights the current legal controversies arising regarding inequitable treatment of same-sex couples under the current laws. ([The Times of India][6])

Lawmaking Efforts and Political Stuttering.

Reform efforts by parliament on marriage laws in India have been quite minimal. The Special Marriage (Amendment) Bill, proposed as a private-member-bill in 2022, aimed to amend the Special Marriage Act in line with the introduction of same-sex couples and suggested genderneutral terms and right equality. The bill, however, did not make it to its enactment. (Wikipedia)[7]

Political reluctance still remains a major obstacle to legal recognition. Most law makers avoid leading campaigns of same sex marriage because of the backlash they are expected to receive with the conservative quarters of the society. The political position on the law of marriage is significantly informed by traditional family values and religious considerations, thus paralyzing the process of legislation. (Naya Legal)[4]

Social Resistance and Realities.

In addition to constitutional and legal discussions, social attitudes are central to the formulation of the discussion on same-sex marriage. Even though urbanization and young population are becoming more accepting of LGBTQ + rights, large parts of Indian society are conservative when it comes to family and marriage. Conventionally constructed cultures view marriage as a holy concept that belongs to a man and a woman, which is entangled with procreation and descent. Religious organizations and leaders of the community have become a source of resistance, and these norms are further ingrained. (The Times of India)[8]

LGBTQ + individuals continue to face social stigma and discrimination, which limits their everyday life, employment opportunities, constructs familial rejection, and violence. Where homosexual behaviour has been decriminalised, the larger acceptance and perception is still unequal in some areas, particularly in the countryside and communities with traditions. Additionally, the lack of marriage equality helps maintain a status of legal and social second-class citizenship of queer people. (The Times of India)[8]

Comparative Global Perspectives.

The West has dominated the weaving of legal acknowledgments of same sex unions all over the world with a host of democracies such as the United States, Canada and most of the European states having ensured marriage equality by entrenching constitutional rights of equal protection and effective anti-discriminatory provisions. Conversely, in Asia the phenomenon is geographically light; there are a few legislatures, among them the bright example of Taiwan, that officially approved such unions. The resultant riftage attests to the fact that the present state of

India is extremely inconsistent with the global trends towards marriage equality, a conflict that is irrevocably connected with the conservative cultural imperatives of this country, as well as the specifics of its legislation (The Economic Times).

Conclusion

The debate on the formal legalisation of same-sex marriage in India represents the substantive opposition of the idealistic principles written in the Constitution, ideals of equality, freedom and honor, to the socio-cultural frameworks that still inform jurisprudence. The constitutional text changes status of all citizenry equally, but statutory mechanisms that have existed until today have not provided marital privilege to same sex couples. The lack of legislation on this part by the judiciary invalidates the Parliamentary prerogative of legislation, which is a body that has so far shown a measured hesitation to take action. Meanwhile, LGBTQ+ activists continue their struggle to achieve not only ceremonial recognition and acceptance but also actual similarity of rights and protections that are currently available only to heterosexual couples.

Further progress in this area will not depend only on the legislative reformation but also on the corresponding evolution of the social tolerance of non-heterogeneous family structure. It is such a synthesis of constitutional promise and lived reality that only in such a way will the nation be able to make the egalitarian edicts it proclaims in its laws and texts become the subject of real equity to all members of the nation, regardless of their sexual orientation.

References and Endnotes

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