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Post-Legalization Challenges: Navigating Difficulties in Accessing Same-Sex Marriage for Couples in the Wake of Inevitable Legalization

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ABSTRACT

Following the Supreme Court's decision, which declared the right to marry not a fundamental right, the potential legalization of same-sex marriage faces various complexities. Parliament plays a pivotal role in legal reforms, requiring consideration of diverse legal frameworks. An analysis of the global same-sex marriage situation comparing countries where same-sex religious marriage is lawful but nevertheless difficult to access as is the situation in the UK and various other challenges faced by same-sex couples in the US in terms of healthcare, criminal justice, immigration even after the legalization of same-sex marriage. This ongoing journey toward inclusivity, urging legislators to actively address legalization challenges with thoughtful consideration has a long way to go.

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Introduction

The term "homosexuality" made its first printed appearance in 1871 [1]. However, even before this terminology emerged, depictions of homosexual practices in Hindu scriptures and Temple art were present [2]. This challenges the notion that the acceptance of homosexuality in India is a Western concept. It delves into the historical context of India, shedding light on the fact that the criminalization of homosexuality is a legacy of British colonial rule. In the contemporary 21st-century landscape, embracing a progressive stance seems the fitting approach. Nevertheless, the careful consideration of legalising same-sex marriage in the Indian context is essential, taking into account its implications for diverse legal frameworks (family law, taxation, health-care law, probate, torts, government benefits, immigration, criminal law, labour law, and real-estate) particularly its influence on the sphere of children's education [3].

The Path Forward: After Marriage Equality Plea

The Hon'ble Supreme Court, in its ruling, ascertained that the fundamental right to marry does not extend to queer individuals [4]. This verdict has cast a challenging and uncertain path for the prospective legalization of same-sex marriage. The majority opinion raised the contention that the Supreme Court was not the appropriate forum, with Justice Bhatt stating why the Supreme Court cannot issue directions as previously issued in. CJI Chandrachud held⁹ substituting, adding or deleting words in sec 4 of and many more, hence violating the Doctrine of separation of powers [5-11].

Parliament's Role in Comprehensive Legal Reforms

The subsequent stride following the decriminalization of homosexuality¹² entails the legalisation of same-sex marriage,

a transition not confined only to the people who marry but also affects the public at large, particularly talking about the various changes that have to be brought in legislation. Along with meticulously crafted educational curriculum tailored to the needs of children taking into account the recent changes. The government and the judiciary have already taken small steps in this direction by adding same-sex parents, and single parents into the educational curriculum along with recognising the undeniable right of a person to engage in a union.¹³ It is the bigger step that the parliament has to take by either amending the Special Marriage Act to include same-sex marriage or coming up with new legislation along with all the affected legislation [12,13].

Challenges in Global Same-Sex Marriage Trends

Across the globe, international jurisprudence unveils a remarkable trend, numerous nations have embraced the legalization of same-sex marriage through parliamentary enactments or landmark court decisions [14]. India will follow a similar pattern by legalizing same-sex marriage after conducting comprehensive analyses through committees, discussions, and debates having the aim to gain a better understanding of how these changes may impact the Indian context, taking into account the dynamic Indian culture.

As Observed, the implementation of same-sex marriage laws in various countries did not adversely affect marriage, divorce, or abortion rates [15]. On the positive side, it is estimated that countries legalising same-sex marriage can anticipate an increase in annual federal income taxes but there are always two sides to every coin, and it's hard to prove that laws allowing same-sex marriage don't harm family values [16,17].

Following the legalization of same-sex marriage in the United Kingdom, a theocratic nation, couples seeking a religious ceremony faced notable hurdles [18]. A limited number of religious organizations and few places of worship allowed same-sex marriage. Although legally permissible, same-sex religious marriage remained challenging to attain [19].

The Indian government can consider a state-to-state approach to legalising same-sex marriage, similar to the United States before the Supreme Court's on nationwide marriage equality. Despite legalization, LGBTQ individuals in both countries face discrimination, with some officials using religious freedom arguments to deny government services [20-22]. In healthcare, challenges persist with India lacking coverage for same-sex partners under group health insurance policies. While private insurers have introduced more inclusive policies, with approximately 15% of India's population living in poverty along with 3% identifying as LGBTQ community necessitates a targeted government scheme [23-25]. The LGBTQ community in rural areas encounters more challenges than in urban areas, highlighting the necessity for tailored interventions to address disparities in legal and healthcare access.

Conclusion

Same-sex marriage shall inevitably attain legal recognition, although post *Supriyo* it is clear the judiciary cannot interfere in policy decisions of the parliament in this particular matter [26]. This long journey towards a more inclusive society will have a lengthy span. It is the duty of the legislators who are charged with representing the public and converting their demands into policy, but the legislators who generally are so woke about the rights of other minorities tend to ignore the LGBTQ+ minority by not committing to the cause of same-sex marriage or adoption by same-sex couples. But the concept of recognition of same-sex marriage is to be carefully evaluated such that it does not harm the religious and moral values of various groups in the dynamic and culturally dense population of India and anticipating and preparing for challenges faced by same-sex couples post-legalization remains a distant goal until the actual legalization of same-sex marriage.

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- Christianity is formally recognized as the established religion in the United Kingdom, with the Church of England occupying a central role. The Queen appoints the Archbishop of Canterbury, and senior bishops from the Church hold seats in the House of Lords. Furthermore, a distinguished member of the clergy is tasked with officiating the coronation ceremony for the reigning Queen.
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- Supra note 4.

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