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# Same-Sex Marriage in India and Private International Law

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## ABSTRACT

*“It is true that each nation has its own tradition which in the field of family law, governs inter-personal ties. Nevertheless, in order to discourage platform shopping and thereby prevent limping relationships, there is a need for the unification and codification of codes of conflict of laws pertaining to matrimonial matters. The rule of law and gender equity provisions, on the one hand, and the need to uphold the universal human rights of parties to the marriage, on the other, both include internationally agreed principles to comply with inter-personal and inter-national conflicts.”<sup>2</sup>*

*“In this article, I try to provide an outline of the laws of private international law relating to same-sex couples (marriages and partnerships) in various countries in order to analyze whether there is a consensus between the countries involved, what the issues resulting from the absence of consensus are and how they can better be handled.”*

*“If one discusses the present position of the rule, it becomes obvious that a few similar points stand out after this development, although major variations remain. Whereas the prospect of registering partnerships other than marriage has been established by a vast number of nations, not all have done so. Some nations expressed aversion to the proposal; others showed strong resistance, often even absolute denial. “The diversity is apparent among the countries that have developed ‘partnerships’ and other new ways of relationships, with some countries providing a similar copy of a marriage, while others have opted for a less desirable regime. Finally, a couple of countries have opened up the prospect of homogenous couples getting together.”<sup>3</sup>*

## I. INTRODUCTION

Societies are evolving permanently all over the world. Many people's lifestyles vary greatly from those of past generations. This still has implications with regard to family law in many

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<sup>2</sup> Tandon, Usha, Validity of Marriage Under International Private Law with Special Reference to 1978 Hague Marriage Convention: Towards Harmonization and Unification of the Rules of International Private Law Relating to Marriage (September 23, 2013). I JCLC (2013) 32-47 ISSN: 2321-4716, <http://dx.doi.org/10.2139/ssrn.2821514>

<sup>3</sup> *Ibid*

nations. Fresh facts and conditions are faced with old standard legislation and are thus under threat to be changed by the courts or legislatures.

“The responses of the family laws of different jurisdictions to the latest changes in our cultures are also dramatically different. In response to the growing number of people living together permanently in a same-sex relationship, some nations have established special cohabitation and registry laws, others have formed a legal institution known as a registered partnership that establishes a new civil status, and a number of countries have also created a same-sex marriage institution. No new law in this region has been adopted by other jurisdictions yet. Nevertheless, the implementation of legal status or at least new laws on the formalisation of same-sex relations is being debated in many jurisdictions. On the other hand, in order to promote the formalisation of same-sex relations, other countries are unwilling to amend their family code.”<sup>4</sup>

“Owing to the ever-increasing international migration of people, emerging legal possibilities and their implications are not only met by the authorities of countries where new laws have entered into effect, but also by the authorities of other jurisdictions. These officials might, on the one hand, be asked to address the desirability of adopting patterns that might be found in those countries' family law. On the other hand, and this is a direct result of people's foreign migration, they have to consider to what extent they recognize the legal implications of partnerships between people formed under other countries' same-sex marriage, registered partnership, or some other form of registry or cohabitation rule.”<sup>5</sup>

In all countries of the world, however, the current structures and laws represent a threat to private international law. Moreover, the jurisdictions which have adopted new legal institutions and rules must adapt their rules on disputes, their rules on authority, and their rules on the acceptance of international institutions and rules which are related but not equal. Many of the existing private foreign law principles tend to be insufficiently versatile for modern institutions and rules to be implemented.

“The response of the private international laws of various jurisdictions to new establishments such as same-sex marriage, registered unions, and other forms of registration or enforcement of same-sex cohabitation is at the heart of the national studies on the private international aspects of homosexual couples. Since the laws of private international law for same-sex spouses are likely to be affected by the general attitude of jurisdictions towards homosexual

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<sup>4</sup> Gerard-Rene De Groot, *Private International Law Aspects Relating to Homosexual Couples*, Electronic Journal of Comparative Law, vol. 11.3 (December 2007), <http://www.ejcl.org>

<sup>5</sup> Linda Silberman, *Same-Sex Marriage: Refining the Conflict of Laws Analysis*, University of Pennsylvania Law Review, Jun., 2005, Vol. 153, No. 6.

couples, in particular by the possibilities that jurisdictions give homosexuals to formalize their relationship legally by, for example, marriage, registered union, or another kind of partnership.”<sup>6</sup>

“Since most of the national papers deal with the reactions of private international law to same-sex weddings and registered unions, the key issues in this Article will be private international law issues related to such relationships. There will be no consideration of the aspects of private international law of cohabitation relationships signed between same-sex partners or of the legal implications of casual cohabitation.”<sup>7</sup>

“Since this is not simply a matter of substantive law, but one that provokes the author, he has often taken into account what can be considered tactical factors in a passionate discussion that involves the personal lives of many. The intense resistance that a vocal segment of Indian society has to the LGBT community's ambitions cannot be easily resolved. In India, where conservative and revivalist ideas have evolved together with rapid modernization, this resistance, albeit misplaced, will be powerful in the name of tradition, culture, and religion and will serve as an impediment to liberal legislation.”<sup>8</sup>

#### **(A) Research Objectives**

- To study the International laws on same-sex marriages
- To study the implication of Private International Laws on Homosexual Marriages
- To understand the dissolution procedure of same-sex marriages
- To study the clashing rules/laws of different jurisdiction with reference to same-sex marriages

#### **(B) Research Methodology**

##### **Research Design:**

In view of the objectives of the study listed above, an exploratory research design has been adopted. Exploratory research is one, which largely interprets the already available information, and it lays particular emphasis on analysis and interpretation of the existing and available information, and it makes use of secondary data.

##### **Sources of data:**

The study is based on secondary data. The data has been collected from various other reports

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<sup>6</sup> Martin George, *Private International Law Aspects of Homosexual Couples: The Netherlands Report*, Vol. 11.1, EJCL, May 2007

<sup>7</sup> Sunil Khilnani, *The Idea of India*, pp. 180 (2004)

<sup>8</sup> Nayantra Ravichandran, *Legal Recognition of Same-sex Relationships in India*, Manupatra,

like magazines, journals, published books, and official websites. These are also referred to for the present study. This research paper examined many international and national and research articles, studies, journals, working papers, books, policy documents, local and international newspapers, and seminars edited publications relating to “Homosexual Marriage and Private International Law”. This study investigates and brings out the growth of the same. A major part of the research is precedents and case laws based.

### **Tools of analysis:**

The data collected for the study is analysed logically and meaningfully to arrive at meaningful conclusions.

### **(C) Literature Review**

#### **1. Cross-Border Same-Sex Relationships - Private International Law Aspects by Patrick R. Wautelet**

In this article, the author aims to offer an outline of the laws of private international law relating to same-sex couples (marriages and partnerships) in Europe, in order to analyze whether there is a consensus among the countries involved, what the problems resulting from the lack of consensus are, and how they can better be resolved.

#### **2. Same-Sex Marriage in Canadian Private International Law by Jan Jakob Bornheim:**

The goal of this paper is three-fold. First, it aims to examine in Canadian Private International Law the current treatment of same-sex marriages by internationally domiciled partners. Second, on the one hand, it criticizes the reaction of the government and the change of the Civil Marriage Act and the Divorce Act (Bill C-323) as ineffective and unprincipled, and overreaching on the other. Third, it serves as a response to recent contributions on this topic by Jean Gabriel Castel, Matthew Castel, and Brenda Cossman.

#### **3. Same-Sex Marriage: Refining The Conflict Of Laws Analysis By Linda Silberman:**

This article presents a normative study of conflict of law problems in a manner that it feels best represents the interests and ideals of our federal government, providing genuine respect to the judgment on the desirability of allowing same-sex marriages taken in a relevant culture.

#### **4. “Validity of Marriage Under International Private Law with Special Reference to 1978 Hague Marriage Convention: Towards Harmonization and Unification**

## **of the Rules of International Private Law Relating to Marriage by Usha Tandon”<sup>9</sup>**

This paper aims to examine the Hague Conference, recognized as the Convention on the Celebration and Recognition of the Legitimacy of Marriages, which was concluded in The Hague on 14 March 1978, aiming to harmonize the numerous marriage rules.

## **II. SAME-SEX MARRIAGES AND LEGISLATIVE JOURNEY**

“In the fight against social and cultural violence against homosexuals, the 'LGBT' (gay, bisexual and transgendered) group has been long and arduous. In most nations, either by regulation or by courts overturning those rules, the original goal of decriminalizing private and voluntary same-sex acts has been accomplished, while seventy-six countries, mainly in Africa and West Asia, do maintain such laws.” India rejoined these countries on 11 December 2013 when the Supreme Court in *Koushal*<sup>10</sup> confirmed the statutory validity of Section 377 of the Indian Penal Code, an imperial hangover criminalizing “*carnal intercourse against the order of nature*.”<sup>11</sup>

Here’s a timeline of the battle against section 377 in India, which began over 20 years ago:

- **November-December 1991:** “The AIDS Bhedbhav Virodhi Andolan (ABVA), a group combating bigotry against those afflicted by HIV or AIDS, publishes a paper documenting the experiences of gay people in India. The 70-page study exposes the disturbing degree of blackmail, extortion, and abuse faced by gay people, especially by the police.”<sup>12</sup>
- **May 1994:** “Outrage erupts after Kiran Bedi, inspector general of Delhi's Tihar prison, refuses to supply inmates with contraceptives (pdf), alleging that homosexuality will be promoted, in addition to acknowledging that inmates participate in it. In response, ABVA submits a written petition to the High Court of Delhi seeking the grant of free contraceptives and the recognition of section 377 as unconstitutional. The petition was finally rejected in 2001, prompting long-running attempts to rally support.”<sup>13</sup>
- **December 2001:** “The Naz Foundation, an NGO for sexual wellbeing working with gay men, files a Delhi High Court Public Interest Litigation (PIL) opposing the

<sup>9</sup> <https://ssrn.com/abstract=2821514> or <http://dx.doi.org/10.2139/ssrn.2821514>

<sup>10</sup> *Suresh Kaushal v. Naz Foundation*, (2014) 1 SCC 1

<sup>11</sup> Sec. 377, Indian Penal Code, 1860 (*now Repealed*)

<sup>12</sup> <https://qz.com/india/1379620/section-377-a-timeline-of-indias-battle-for-gay-rights/>

<sup>13</sup> M. Rehman, *Kiran Bedi transferred from Tihar*, India Today, 1995, <https://qz.com/india/1379620/section-377-a-timeline-of-indias-battle-for-gay-rights/>

constitutionality of section 377 and pressing for homosexuality to be legalized.”<sup>14</sup>

- **September 2004:** The Delhi High Court dismisses the appeal, arguing that there is no cause for action and that the court can not investigate solely academic concerns. A petition for review submitted by the Naz Foundation was also rejected a few months later.
- **February 2006:** “Following the submission of a special leave petition for the case by the Naz Foundation, the Supreme Court revived it before the High Court of Delhi, citing the fact that it was a matter of public concern. Voices Against 377, a group of NGOs, supports the motion in the following months, while India's home affairs ministry files a petition against the decriminalization of homosexuality.”<sup>15</sup>
- **July 2009:** “A Delhi high court bench consisting of Chief Justice Ajit Prakash Shah and Justice S Muralidhar agrees to strike down section 377 in a historic judgment, arguing that it violates the basic rights to life, democracy, and equality as enshrined in the Indian Constitution. But opponents, including Suresh Kumar Koushal, an astrologer based in Delhi, contest the judgment of the Delhi High Court in the Supreme Court.”<sup>16</sup>
- **December 2013:** <sup>17</sup>After the supreme court overturns the Delhi high court's decision, the LGBTQ group suffers a major blow, saying section 377 “*does not suffer from the vice of unconstitutionality and the declaration made by the high court's division bench is legally unsustainable.*”
- **June 2016:** Navtej Singh Johar, an award-winning Bharatanatyam dancer, and four other high-profile Indians, including chef Ritu Dalmia and hotelier Aman Nath, file a written petition with the Supreme Court opposing section 377.
- **August 2017:** A nine-judge supreme court bench hearing pleas against India's Aadhaar biometric software unanimously rule that a constitutional right is privacy. The court also says in its judgment, “Sexual identity is an important privacy characteristic. Discrimination on the grounds of sexual identity against an individual is profoundly insulting to the individual's integrity and self-worth, raising the expectations of those protesting against section 377.”<sup>18</sup>
- **September 2018:** “The supreme court decides in a majority decision to scrap section 377, which is described by Chief Justice Misra as “*irrational, indefensible and manifestly*

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<sup>14</sup> *Supra Note 7*

<sup>15</sup> Naz Foundation v. NCT Delhi, 2006

<sup>16</sup> 2009) 160 DLT 277

<sup>17</sup> *Supra Note 5*

<sup>18</sup> Navtej Singh Johar v. Union of India W. P. (Crl.) No. 76 of 2016 D. No. 14961/2016

*arbitrary*," marking a victorious end to a long battle for justice."<sup>19</sup>

### **(A) Registered Partnership in Varied Countries**

Denmark was the first country to adopt the establishment of a registered partnership. Sweden followed the Danish case. This nation has given same-sex couples the option of registering their union since 1 January 1995<sup>20</sup>. "In certain cases, the legal ramifications of a registered partnership are the same as those of a heterosexual union. The Registered Partnership Act<sup>21</sup> is relatively brief and repeatedly relates to current marriage laws, but also its own substantive regulations are identical to those relating to marriage. Initially, there were some crucial variations, but they were eventually abolished: in 2003, registered partners were entitled to jointly accept embryos, and in 2005, female, registered partners were equated with married couples for medical assistance under the Insemination Act<sup>22</sup> and the In-vitro Fertilization Act."<sup>23</sup>

"The Netherlands followed the Danish and Swedish models and opened the option of entering into a registered partnership for same-sex and opposite-sex relationships on 1 January 1998."<sup>24</sup>

*"The availability of a registered partnership for opposite-sex couples is a significant difference in the Scandinavian countries' regulations."* The legal implications of a registered partnership and marriage are exactly the same. "Registered partners, however, are excluded from adopting a child from abroad, and their partner does not automatically become a legal parent when a child is born to a woman in a registered partnership."<sup>25</sup> In comparison, there is an important distinction in the termination of such a relationship.

## **III. SCOPE OF INTERNATIONAL APPLICATION OF LAWS**

The territorial extent of implementation of the laws in question must be defined in those jurisdictions where same-sex marriage is permissible or where a marriage-like registered partnership or some other form of registry of same-sex relations with substantive legal implications has been adopted. "In other syllables: which persons are allowed, in compliance

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<sup>19</sup> *Ibid*

<sup>20</sup> Denmark introduced the institution of a registered partnership by the Act of 7 June 1989, which entered into force on 1 October 1989.

<sup>21</sup> Lagen om registrerat partnerskap (Registered Partnership Act) 1994:1117

<sup>22</sup> Act 1984:1140

<sup>23</sup> *Supra Note 3*

<sup>24</sup> Tandon, Usha, *Validity of Marriage Under International Private Law with Special Reference to 1978 Hague Marriage Convention: Towards Harmonization and Unification of the Rules of International Private Law Relating to Marriage* (September 23, 2013). I JCLC (2013) 32-47 ISSN: 2321-4716, <https://ssrn.com/abstract=2821514> or <http://dx.doi.org/10.2139/ssrn.2821514>

<sup>25</sup> *Ibid*



with the new laws, to conclude certain same-sex partnerships or to register their union or to formalize their relationship? What laws refer to the matter of whether the parties concerned agree with the substantive conditions for marriage, the conclusion of a registered union, or the official formalization of their same-sex relationship? In addition, do the parties concerned require an acceptable relation in the context of nationality, domicile or (habitual) residency with the jurisdiction involved?”<sup>26</sup>

The Swedish study (by Bogdan) points out that “in view of the fact that most legal systems do not actually have any substantive rules relating to registered partnerships, it is very difficult to apply conflict rules which are identical to the standard conflict of law rules relating to marriages in relation to such partnerships, as those rules also relate to non-existent substantive rules in foreign countries. In addition, it can be expected that several foreign countries would fail to accept registered alliances and give them (full effect. This includes the development of special rules of private foreign law (conflict rules and jurisdiction rules) which must take account of the distinct, potentially aggressive reactions that registered partnerships may experience abroad.”<sup>27</sup>

“The Belgian and Swedish studies reveal that the right to enter into a same-sex union or a registered partnership can be regulated in two separate ways by *ratione personae*. First of all, where the dispute laws relating to the substantive conditions relate to the applicability of foreign law in particular to the *lex personalis* (i.e., *lex nationalis* or *lex domicilii*) of the parties concerned, a number of people may not be allowed to enter into a marriage or registered partnership of the same sex on the basis that foreign law does not often provide such a prospect. Secondly, a jurisdiction which offers the possibility of same-sex marriage can enforce additional conditions for nationality, domicile or residency in order to prevent “tourism for marriage or registration” and the limping legal relationships that could result from it.”<sup>28</sup>

In order to decide whether persons can enter into, or otherwise formalize, same-sex marriage or registered partnerships, dispute rules may be applied, which are as far as possible identical to the conflict rules which are applied to determine whether persons can enter into conventional marriage. “For example, in those countries which are parties to the *1978 Hague Convention* on the Celebration and Acknowledgment of the Validity of Marriages, it is possible to extend Article 3 of that Convention by comparison. In order to address the

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<sup>26</sup> *Supra* Note 1

<sup>27</sup> Martin George, *Private International Law Aspects of Homosexual Couples: The Netherlands Report*, Vol. 11.1, EJCL, May 2007

<sup>28</sup> *Supra* Note 1

question of whether the parties concerned comply with the substantive criteria, Article 3(1), which refers to the *lex loci celebrationis* already includes certain elements that ensure that an acceptable relationship with the *locus celebrationis* exists (at least one party must have the nationality of that country or its habitual residence there).”<sup>29</sup>

It is appropriate now. “Additional steps to stop same-sex marriage tourism or tourism with registration are superfluous. Many nations have adopted same-sex weddings or registered unions in the last few years. This fact greatly increases the probability that these partnerships are accepted internationally, thus decreasing tourism for marriage or registration.”<sup>30</sup> Consequently, there is no need to be highly careful.

#### IV. RELIGIOUS STANDING OF SAME-SEX MARRIAGES IN INDIA

##### (A) Hinduism

There is ample Hindu literature available that speaks volumes about Hinduism's stance on homosexuality and as an extension of same-sex marriages. “Homosexuality in India has an old past. Ancient texts such as Rig-Veda, dating back to around 1500 BC, and paintings and vestiges portray female sexual activities as discoveries in a feminine world where pleasure and reproduction were focused on sexuality. There is some historical evidence of same-sex marriages in the portrayal of homosexual acts in the Kamasutra, sculptures of the temple at Khajuraho, the character of 'Sikhandi' in Mahabharata, evidence of sodomy in the Tantric rituals. However, with the emergence of Vedic Brahmanism and, later on, British Colonization, these encounters began to lose their meaning.”<sup>31</sup>

For women having sexual relations with a girl, the Manu-smriti offers harsh punishments, proving the existence of such relations during the time. However, through variations in relative control and equality, all sexual systems coexisted until British Colonization became more systemic and overt in the destruction of representations of homosexual identity and sexual expression in general.

##### (B) Muslims

“Islamic Shari'ah law is derived from both the Qur'an and the Sunnah of Muhammad. In the case of homosexuality, how it is treated varies between the four main schools of Sunni jurisprudence today, but what they all agree on is that homosexuality is deserving of a severe

<sup>29</sup> *Supra Note 1*

<sup>30</sup> Cote-White-care and others v. Department of Public Health, N.E.2d , 2006 WL 786227 (Mass.)

<sup>31</sup> AnuradhaParasar, *Homosexuality In India- The Invisible Conflict*, <http://www.delhihighcourt.nic.in/library/articles/legal%20education/Homosexuality%20in%20India%20-%20The%20invisible%20conflict.pdf>

penalty. In the case of homosexuality, how it is handled differs between the four main schools of Sunni jurisprudence today, but what they all agree on is that homosexuality is worthy of a severe penalty.”<sup>32</sup> Muhammad himself said, “*If you find anyone doing as Lot's people did, kill the one who does it, and on and on.*” Homosexuality is considered even by moderate Muslims as something that is vile and inappropriate.”<sup>33</sup>

### (C) Christianity

There has been great controversy over the role of homosexuality in the Christian community. “The notion as a whole is criticized on one side, while the other line argues that homosexuals must be embraced so that they can fulfill a greater calling in God and reform their ways. The divergence of opinion emerged after the advent of the prohibition of homosexuality by industrialized Western countries. Homosexuality has, however, historically been rejected by Christianity.”<sup>34</sup>

## V. DISSOLUTION OF SAME-SEX MARRIAGES

It is very attractive to address some countries with regard to the laws of the jurisdiction that can be used to terminate all same-sex marriages and registered partnerships, which are, in theory, the same rules of jurisdiction. “This strategy also essentially anticipates, for the Member States of the European Union, that the European Court of Justice would conclude that at least the breakup of same-sex marriages falls beyond the limits of the Brussels Ibis law. But one still needs to remember that, since they do not accept same-sex partnerships, international courts will fail to comply with such a breakup. The formation of a forum *necessitatis* is therefore important, as the study by Curry-Sumner points out.”<sup>35</sup> The courts of the place where same-sex marriage has been contracted (forum *loci registrationis*) may have authority if no judge recognizes jurisdiction in order to comply with a divorce application. The same refers to *Mutatis mutandis* for the dissolution of a marriage.

“If a spouse or married partner seeking to terminate their union or registered partnership is to be encouraged, it may be convenient to give the courts of that country an additional jurisdiction rather than a residual jurisdiction alone. In practice, the recognition of international rulings related to the termination of same-sex marriages and registered unions may also be subject to the same laws as those for the recognition of divorces relating to heterosexual marriages. The conflict rules that specify the law applicable to divorce should

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<sup>32</sup> Abhayusu, *Issues And Challenges Of Same Sex Marriages In India*, 2017, IPleaders, <https://blog.ipleaders.in/issues-and-challenges-of-same-sex-marriages-in-india/>

<sup>33</sup> *Supra* Note 31

<sup>34</sup> *Supra* Note 26

<sup>35</sup> *Supra* Note 21

not be equivalent to the conflict rules on divorce relating to conventional partnerships, but should at least allow a preference of law in favor of *lex loci celebrationis* and *lex loci registrationis*, accordingly.”<sup>36</sup>

A foreign divorce or separation may be accepted if:

- a competent authority has received foreign divorce/dissolution;
- if it has been received as a result of a unilateral appeal, the additional condition for approval is an effective judicial procedure;
- However, even though one of the first two conditions is not satisfied, the divorce/dissolution may only be accepted if the other side has either explicitly or indirectly consented to the results of the proceedings. Additionally, a foreign judgment
- 4) must, therefore, not be contrary to or contrary to the public.
- 5) should agree with the prior ruling.

“Curry-Sumner raises the fascinating issue of how to determine whether a foreign authority has the competence to deal with the termination of a registered partnership. He insists that this is to be judged on the basis of common norms' and not on the basis of the laws of the authority of the issuing country or of the law of the Indian subcontinent.”<sup>37</sup>

If the international jurisdiction takes jurisdiction over the foreign jurisdiction, *Quid iuris*: the foundation of an unconditional forum? “Such an unconditional forum *necessitatis* is not an internationally recognized presumption of authority and will therefore not be recognized in normal circumstances. However, as such authority is still recognized in certain nations, Curry-Sumner believes that it would be somewhat hypocritical, on this basis, to fail to accept international dissolution.”<sup>38</sup>

## VI. CONCLUSION AND RECOMMENDATIONS

In the field of family law, the implementation of marriage-like structures such as registered partnerships and civil unions since 1979 the opening of civil marriage to same-sex couples since 2001 are very notable changes. They express a new approach towards same-sex marriages in a large number of jurisdictions. In grappling with these new institutions and the

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<sup>36</sup> *Supra Note 1*

<sup>37</sup> The national report of the Netherlands, which refers to I. Curry-Sumner, All's well that ends registered? The substantive and private international law aspects of non-marital registered relationships in Europe 441-444 (2005).

<sup>38</sup> *Supra Note 1*

modernized notion of "marriage," they also represent a threat to private international law all over the world.

"The national reports provide us with an impressive list of international private law issues pertaining to same-sex relationships, registered partnerships, civil unions, and other forms of same-sex relationship registry. Questions relating to the establishment of same-sex marriage, a registered partnership, or other forms of the registry are discussed, but also questions related to the termination of these partnerships, the issues related to the requirements for acceptance of these relationships formed abroad, and the possible implications of recognition, last but definitely not least. Questions pertaining to future legal consequences, in particular, are incredibly difficult to address since the spectrum of effects can be very broad."<sup>39</sup>

It is important to create a standardized solution to these issues of private international law, at least with regard to those states that are prepared to accept overseas same-sex weddings, registered unions, and other types of formalization of same-sex relationships at any stage. Checking the national papers on certain communities that have adopted same-sex weddings, licensed partnerships, or other aspects of homosexual relationship formalization, an overwhelming number of options can be observed at this point in time.

"It is interesting that on the other hand, it can be found that some jurisdictions also hold the opinion that same-sex weddings, legal unions and other forms of formalizing same-sex marriages are in dispute with their country's international public order in all cases, except when their authority is faced only as an incidental concern with these institutions, i.e., it is unclear if such a complete rejection, in an increasing number of other countries"<sup>40</sup>, of legal changes in the field of family law is realistic and equitable to the legitimate interests of the parties and third parties concerned.

**Now According to the Indian Context:** The international human rights legislation notes that it is impossible to use social values, tradition, custom or community to prohibit an individual from asserting his fundamental and constitutional rights. If we were to follow the rationale offered to everyone by cultural beliefs, public policies, and social ideals used to limit the freedom of an individual, so in our country, there would have been no democratic laws implemented. Sati, dowry, child marriage, and infanticides are traditions arising from traditional belief, but the government has also taken measures to discourage them. Based on the entire controversy on the same-sex marriage aspect, which should or should not be legalized. This is more like a question on religion than a political one. It is simply a way to

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<sup>39</sup> *Supra* Note 13

<sup>40</sup> *Supra* Note 31

find pleasure, a way to seek sexual happiness or lust. Homosexuality is not a crime. Apart from the blind bigotry, there is simply no excuse to prohibit two gay persons from going through a civil ceremony that will grant them rights and protection which heterosexual unions enjoy.

The unsettled character is another striking characteristic of the law today. Multiple queries. While there has been a notable evolution, with many national lawmakers follow clear conflict of law provisions for same-sex marriages, although many problems remain unanswered. Any of these questions apply to the nature of foreign instruments' use. Others are concerned with the complicated characterization process. If one succeeds in deciding which legislation applies, problems will also occur when it occurs that the relationship at hand is not accepted by the law deemed relevant. All in all, it is a wonder that no other case law has emerged from so many issues.

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