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Complications the Legislation might Encounter if LGBTQ Marriages are Legalised

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ABSTRACT

LGBT is an initialism that stands for "lesbian, gay, bisexual, and transgender" It may refer to anyone who is non-heterosexual or non-cisgender, instead of exclusively to people who are lesbian, gay, bisexual, or transgender. A popular variant, LGBTQ, adds the letter Q for those who identify as queer or are questioning their sexual or gender identity. Another popular variation, LGBTQ+, adds a plus sign in order to represent other identities not included in LGBT. Many further variations of the acronym exist, LGBTQIA+ (adding intersex, and asexual/aromantic), and 2SLGBTQ+ (adding two-spirit).

Legal equality and human rights, social acceptance and inclusivity, family and relationship dynamics, impact on institutions, economic and healthcare implications, global perspectives, legal precedent, public policy and advocacy are a few of the reasons why the topic of potential legislative complications is crucial. For laws to be comprehensive, equitable, and inclusive, supporting equal rights and societal harmony, it is essential to examine the challenges legislation may face when legalizing LGBTQ marriages. And also ensuring that the legislation respects human rights, and anticipates and addresses any challenges that may arise during its implementation. It also helps society progress toward greater inclusivity and equality for all its members

People have a lot of questions when it comes to the effects of legalizing LGBTQ marriages on social attitudes and acceptance, as well as how these changes will influence the LGBTQ community and society as a whole. And inquiries based on religious beliefs, such as How do religious beliefs affect public opinion and policy-making? What are the religious opinions on marriages for LGBTQ people that are legal? As Well As issues concerning family and adoption, healthcare and benefits, international implications, Moreover, with regard to the difficulties in implementing policy.

This article mainly focuses on the opinion that: What are the changes that can be made to the existing legal framework to accommodate legalized LGBTQ marriages? and the struggles the legislation may face.

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I. INTRODUCTION

Marriages has always been considered holy whether sacrament or contract. In the upcoming world a marriage between a man and a women is being replaced by the individuals irrespective of gender. Compared to earlier India, members of the LGBTQ community are now much more recognized. Although they are granted several significant rights, such as the ability to proclaim their sexual orientation, but the right to get married has not yet been legalized.

For the legalization of LGBTQ marriages, there are still numerous outstanding actions and trials. There is currently no national law in India that governs same-sex unions; instead, the protection for LGBTQ individuals has only been recognized by subordinate courts, but not by the parliament or government of India. From revising age-old statutes to addressing deeply rooted societal prejudices, the process of legalizing LGBTQ marriages is more than just signing a bill into law. It involves a comprehensive reassessment of existing legal frameworks, cultural norms, and individual beliefs.

The Indian legal system does not recognize same-sex marriages, and marriage is defined by the country's laws as a union between a man and a woman. A significant victory for LGBTQ+ rights in the nation came in 2018 when the Supreme Court of India invalidated Section 377 of the Indian Penal Code, which criminalized homosexuality. However, the liberalization of homosexuality did not result in the legalization of same-sex marriages.

II. WHAT CHANGES CAN BE MADE TO THE EXISTING LEGAL FRAMEWORK TO ACCOMMODATE LEGALIZED LGBTQ MARRIAGES?

Legalizing LGBTQ marriages often requires significant changes to the existing legal framework to ensure equal rights and protections for LGBTQ couples. Here are some of the specific changes that can be made:

1) Marriage Laws and Definitions:

- **Gender-Neutral Language:** Amend marriage laws to use gender-neutral terms, for example: replacing "husband and wife" with terms like "spouses" or "partners."
- **Definition of Marriage:** Revise legal definitions of marriage that can explicitly include same-sex couples, ensuring they also have the same legal rights and responsibilities as opposite-sex couples.

2) Family and Adoption Laws:

- **Adoption Rights:** Granting same-sex couples equal adoption rights, allowing them to

adopt children jointly and ensuring legal recognition as parents.

3) Inheritance and Property Laws:

- **Property Division:** Establish clear guidelines for the division of property and assets in the event of divorce or separation for same-sex couples.

4) Employment and Benefits:

- **Anti-Discrimination Protections:** Legislation can enact or strengthen anti-discrimination laws to protect LGBTQ individuals from discrimination based on their marital status in employment, housing, and public services.
- **Employee Benefits:** Ensuring that employee benefits, such as health insurance and pension plans, are extended to same-sex spouses on the same terms as opposite-sex spouses.

5) Healthcare and Medical Decisions:

- **Medical Decision-Making:** Grant same-sex spouses the legal authority to make medical decisions on behalf of their partners, especially in cases of incapacitation.
- **Hospital Visitation:** Ensure hospital visitation rights for same-sex spouses, allowing them the same access as opposite-sex spouses.

6) Domestic Violence:

Domestic Violence Laws: Extend domestic violence protections to same-sex couples, providing legal remedies and support services for victims.

7) Public Records and Documentation:

- **Marriage Certificates:** Modify marriage certificates to accommodate same-sex couples and ensure they are issued without discrimination.

These are some changes that are essential to creating a legal framework that fully recognizes and supports LGBTQ marriages, and ensuring equality and fairness under the law.

III. HURDLES THAT LEGISLATION MIGHT FACE IF LGBTQ+ MARRIAGES ARE LEGALIZED

Several obstacles or challenges may arise while enacting laws to legalize LGBTQ+ marriages, although it's important to note that these hurdles should be addressed in the spirit of equality and social progress. Here are some potential challenges that might arise during the process of legalizing same-sex marriages:

SOCIAL OPPOSITION:

India's cultural landscape is extremely diversified, with deeply ingrained traditional and moral norms that don't comply with same-sex unions, which resulted in the opposition of LGBTQ marriages.

LEGAL OPPOSITION:

New laws on constitutional grounds might be challenged arguing that legalizing LGBTQ Marriages goes against the spirit of India's Constitution. Religious leaders or organizations who oppose LGBTQ marriage on grounds of religion may pursue legal action to defend their practices and beliefs.

Although many states have anti-discrimination laws, it can be difficult to successfully enforce them in order to protect LGBTQ individuals and couples. Ensuring that legal protections are comprehensive and actively enforced is an ongoing struggle.

Lawmakers need to carefully navigate these changes to ensure consistency and fairness within the legal system.

Challenges in Policy Formation:

Balancing Religious Freedom: In order to protect the legal rights of LGBTQ individuals and couples, policymakers must find a balance between religious freedom and LGBTQ rights, making sure that neither parties is pressured to compromise their views.

Addressing Public Opinion: Public opinion on LGBTQ issues can vary widely. Policymakers may face challenges in navigating divergent societal views and ensuring that legislation represents the broader interests of the population while protecting minority rights.

Ensuring Comprehensive Legislation: Crafting comprehensive legislation that covers all aspects of LGBTQ marriages, including adoption, inheritance, and healthcare rights, requires meticulous attention to detail. Ambiguities or gaps in the law can lead to legal disputes and implementation challenges

FAMILY PRESSURE:

In India, family holds great significance and the family unit plays a vital role. Families of LGBTQ couples frequently put a great deal of pressure on their members because they may be against LGBTQ marriages, find it difficult to accept non-traditional partnerships, and worry about societal stigma and criticism from the community.

Political opposition:

By using conservative viewpoints to further their electoral agendas, certain political parties or leaders may adopt a stance hostile to LGBTQ rights.

Family Law Complications:

In order to accommodate same-sex couples, family law may need to be significantly revised. This is particularly the case in areas pertaining to divorce, child custody, adoption, and spousal support. Parental rights determination can be very complicated, especially for non-biological parents.

Gender Identity Issues:

Legalization should be inclusive of diverse gender identities within the LGBTQ community. Gender identity recognition in legal systems and gender markers on marriage certificates and identification documents might cause complications.

Legalizing LGBTQ marriages in India faces several challenges due to the country's legal, cultural, and societal context. The Supreme Court declined to legalise same-sex marriage, placing it upon the Parliament and State governments to decide if non-heterosexual unions can be legally recognised.

Homosexuality was decriminalized in India in 2018 when Section 377 of the Indian Penal Code was partially struck down by the Supreme Court. However, the legalization of same-sex marriages in India continues to be a complex issue due to the following reasons:

1. **Colonial-Era Laws:** India inherited its legal system from the British colonial era, including laws that were conservative and reflected the moral values of that time. Section 377, which criminalized homosexuality, was a part of these laws. Although it has been partially decriminalized, societal attitudes influenced by colonial-era values persist, making it difficult to push for more progressive laws.
2. **Limited Legal Precedents:** India lacks legal precedents or established frameworks for same-sex marriages. Creating new legislation or amending existing laws requires significant legal groundwork and political will, both of which can be hard to mobilize given the existing challenges.
3. **Lack of Comprehensive LGBTQ+ Rights Legislation:** While the decriminalization of homosexuality was a significant step forward, India lacks comprehensive LGBTQ+ rights legislation that includes protections against discrimination in various sectors, recognition of same-sex partnerships, and equal rights within marriage

Despite these challenges, India has seen significant progress in LGBTQ rights, including the

decriminalization of homosexuality in the Navtej Singh Johar v. Union of India case. The path toward legalizing same-sex marriage in India may be difficult, but it is not impossible, and ongoing advocacy and public awareness efforts are essential in fostering acceptance and changing legal landscapes. And the issue of legalizing same-sex marriage is also pointed in some cases i.e. Naz Foundation v. Govt. of NCT of Delhi and Deepika Singh v. Central Administrative Tribunal.

IV. CONCLUSION

The legalization of LGBTQ Marriages in India fosters both positive and challenging consequences which signifies a crucial stride towards inclusivity recognising the rights and dignity of individuals irrespective of sexual orientation and gender equality. The empowerment it offers to the community is one of the foremost positive outcomes of legalizing LGBTQ Marriages. In conclusion, on one side it brings positive changes by empowering and affirming the rights of the LGBTQ community but on other side it also demands continued efforts to overcome societal resistance and ensure comprehensive implementation with persistence.

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