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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

REEVALUATING THE NORM: A CRITICAL EXAMINATION OF SAME-SEX MARRIAGES AND THEIR IMPACT ON TRADITIONAL MARRIAGE

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Abstract

This paper aims to comprehensively analyze the debate around legalizing same-sex marriage and its negative impact on moral, cultural, and societal perspectives. This paper is a dissenting opinion towards the acceptance of same-sex marriages around the world, Analyzing the available research and natural law theories the objective of this paper is to provide deep-eyed views of the potential consequence of altering the fundamentals of traditional marriage.

This paper inspects the moral disagreement with same-sex marriages keeping in mind the views derived from the religious perspective, age-old custom of marriage, and the societal acceptance of the same. It ransacks into the religious and ethical foundation that defines marriage as a unification of male and female only, Moreover, it scrutinizes the future impact on religious freedom and habituation of different moral perspectives in a society that legalizes same-sex marriage.

Cultural values and norms are also examined which have special significance in India and the confrontation of the old-age tradition of marriage which has been deeply entrenched in the society and the possible attempt into redefining it.

Moreover, the deep study addresses the social aftermath of accepting same-sex marriages. It studies perturb related to the well-being of children raised in same-sex households, investigating the possible impact on their development and societal perceptions. The "slippery slope" argument is also considered, discussing the potential challenges of redefining marriage and the broader implications for the institution.

Keywords

Same-sex, marriage, religious, concern, analysis.

Introduction

Marriage is a social institution that has been thoroughly embedded in cultural relationships since the evolution of human beings. In India, this belief has been deeply rooted in the fabric of society for centuries that Marriage will be solemnized only between two opposite sexes; [Male and Female]. Same-sex marriage also known as gay marriage, is the marriage of two people of the same sex. Marriage is for procreation. Legalizing same-sex marriage will fragile the root of the family system and have a catastrophic impact on society at numerous. The Supreme Court of India is now deliberating on a case that could change the history of marriage which has been going on for decades. The case, which seeks to legalize same-sex marriage in our country is a ground-breaking issue. Many petitions have been filed to approve same-sex marriage in different state adjudicatory bodies. The institution of marriage has long served as an essential component of societal norms, corresponding to traditional, religious, and cultural principles. However, in recent years, the conception of marriage has undergone significant shifts, especially in the context of the acceptance and acknowledgment of same-sex unions. In an effort to independently evaluate the social implications of same-sex marriage, this research paper will provide justifications against its widespread adoption and legalization. From a moral perspective, critics believe that marriage constitutes a sacrosanct relationship with historical and religious significance, generally defined as a union between a man and a woman. Redefining marriage to encompass same-sex couples violates the ethical basis established by religious doctrines and traditional ethical principles. Societal concerns also come into play, as countries across the globe have different cultural customs and practices associated with marriage. It is believed that recognizing same-sex weddings may clash with firmly established cultural values, thus compromising the bonds between people and irritating cultural identities.

Homosexuality in Ancient India

The Indian judiciary decriminalized homosexuality in India through the landmark case of Navtej Johar vs Union Of India¹ on 7 September 2018 and following which any act of homosexuality between consenting adults was no more prosecutable by law. The adults who were consenting could now engage in homosexual sex among themselves in their private sphere. Before this landmark judgment, the act of homosexuality was punishable by law and also prohibited keeping ethical values in perception. India is a country whose social institution is largely dominated by

¹Gulia, KK. "Navtej Singh Johar vs Union Of India Ministry Of Law And ... on 6 September, 2018." *Indian Kanoon*, 6 September 2018, <https://indiankanoon.org/doc/168671544>. Accessed 7 June 2023.

moral values and morals are kept at ascendency. Right from the ancient time the act of homosexuality was considered a grave sin in India, In the Mughal era any act of homosexuality was punishable by 50-100 lashes and stoning to death in case the offender was a Muslim² as homosexuality is a grave sin in Islam³. According to Hinduism and Hindu religious text, the act of homosexuality is a punishable offense and section 377 of the Indian Penal Code which prohibited unnatural intercourse was based on a reference to Narada Purana⁴ which states that “anyone who discharges semen in non-vaginas, in those beings destitute of the vulva, and uterus of animals is a great sinner and will fall in hell”⁵ another major Hindu text the Manu smriti which is also one of the legal Hindu text promulgates that “any girl having sexual act with another girl should be punished with 10 whips and 200 coins however if one of the partners is a minor girl then the head of the offender be shaved or fingers cut.”⁶ In the Mughal era of India, the law of sharia or the Islamic law was prevalent in the form of Fatawa-Alamgiri,⁷ and in Islam, the act of homosexuality is considered a grievous sin according to the holy Quran “If two men are engaged in lewdness to punish them both⁸”. Another verse of the holy Quran says that “Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds”⁹. These verses of the Holy Quran are clear that homosexuality is forbidden in Islam.

Perspectives on Marriages in India

In India marriages have always been a matter of great significance, marriage in India is not only of two individuals but also of their respective families. Since the immemorial time marriage has been a sacrament, the union of a male and a female. Marriage in India is not seen as a choice but as a mandatory duty that every individual has to fulfill with time marriage has become a deeply embedded, long-prominent, and pervasive tradition of basic ritual. The Hindu social patrimony has never looked upon marriages from a materialistic perspective but always as a sacrament that

² Jaitley, Celina, and Patrick Olivelle. “Homosexuality in India.” *Wikipedia*, https://en.wikipedia.org/wiki/Homosexuality_in_India. Accessed 7 June 2023.

³ *The Punishment For Homosexuality - Islam Question & Answer*, <https://islamqa.info/en/answers/38622/the-punishment-for-homosexuality>. Accessed 7 June 2023.

⁴ “Narada Purana.” *Hindu Online*, <http://Hinduonline.co/Scriptures/Puranas/NaradaPurana.html>. Accessed 7 June 2023.

⁵ Dutta, Prabhash K., and Yusuf Begg. “10 instances of homosexuality among LGBTs in ancient India.” *India Today*, 10 July 2018, <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>. Accessed 7 June 2023.

⁶ See *ibid*.

⁷ “Fatawa 'Alamgiri.” *Wikipedia*, https://en.wikipedia.org/wiki/Fatawa_%27Alamgir. Accessed 7 June 2023.

⁸ The holy Quran 4:16

⁹ The holy Quran 7:80-83

is of immense importance to them. This is very evident from the Verse 85 of the Rig Veda¹⁰ “sam añjantu viśve devāḥ sam āpo hr̥dayāni nau | sam mātariśvā sam dhātā sam u deṣṭrī dadhātu nau” that translates to “May the universal gods unite both our hearts; may the waters unite them; may Matarisvan, Dhātā and the bountiful (Sarasvati) unite both our hearts.” The husband and wife initiate the family which is not only a biological requisite but also a societal quintessential. Out of all the objectives of a Hindu marriage, the most vital of them is the “Dharma” according to which acquiring a partner is the fulfillment of one's religious duty.¹¹ Followed by progeny which has been regarded by the “Hindu Shastra Karas” as a basic essential after a marriage. Marriage in India is not a mere union of two individuals but a sacred phenomenon that plays a vital role in the social fabric of the Indian communities. In the Muslim population of India marriage is a strong bound “Mithaqun Ghaleez”, a religious duty. Nikah (Arabic: نكاح nikāḥ) is a contract between two people. Both the groom and the bride are to consent to the marriage of their own free will which is an obligatory duty for a Muslim as it was performed by the last prophet of Islam Mohammad. In accordance with the Indian civilization, marriage has developed over the years into an oath of devotion that is fervently maintained. Since the beginning of time marriage, It has primarily been viewed as a relationship between men and women, and no previous instance justifies marriages between individuals who are of the same sex. Indian culture places a high value on morality, tradition, and custom in all spheres of life. It would be difficult for them to accept such a significant alteration in one of their most treasured possessions.

Same-Sex Marriage: Ethical and Theological Standpoint

The spiritual and religious aspects of a marriage are among its most crucial components. In addition to finding a lifelong partner, people get married because their faith and traditions consider it to be sacred and important. According to religious doctrine and holy text, marriage is a part of the faith and not another sophisticated procession. There is no religious acceptance of homosexuality and the act is considered unorthodox to the laws of nature that God has created. A simple and basic argument can elaborate on this point, God created Adam and Eve the very first humans of this world to make love and continue life on earth which subtly implies, God made man for a woman and women for a man and not man for another man or women for another woman. A person's life and the way they live it are greatly influenced by their religious beliefs

¹⁰ Wilson, HH. *Rig Veda 10.85.47 [English translation]*, 27 August 2021, <https://www.wisdomlib.org/Hinduism/book/rig-veda-english-translation/d/doc839508.html>. Accessed 8 June 2023.

¹¹ “MARRIAGE IN INDIA - TriumphIAS.” *Triumph IAS*, 11 February 2023, <https://triumphias.com/blog/marriage-in-india-2/>. Accessed 8 June 2023.

and religious instruction is mostly centered on morals and ethics. According to Hinduism the act of homosexuality is a sin and punishable¹² In Islam a much more detailed view has been given concerning homosexuality which explicitly considered the act of homosexuality forbidden and punishable with the death penalty. From these verses of the Quran, it becomes transparent “And (remember) Lut: behold, he said to his people: "Ye do commit lewdness, such as no people in Creation (ever) committed before you. "Do ye indeed approach men, and cut off the highway? - and practice wickedness (even) in your councils?" But his people did not answer but this: they said: "Bring us the Wrath of Allah if thou tellest the truth." He said: "O my Lord! help Thou me against people who do mischief!" When Our Messengers came to Abraham with the good news, they said: "We are indeed going to destroy the people of this township: for truly they are (addicted to) crime”¹³. “And (We sent) Lut when he said to his people: What! Do you commit an indecency which anyone in the world has not done before you?”¹⁴ in the next verse of Surah Al’A’raaf, “Most surely you come to males in lust besides females; nay you are an extravagant people.”¹⁵

When the very foundation of marriage is based on the religious discipline and sacred text, not only prohibits but has forbidden the act of homosexuality, changing the fundamentals of traditional marriage from a male and female to a male and another male can never be normal. The basis of morality is the natural law which is the law of God and the prominent jurist and adherent of natural law jurisprudence thought that same-sex marriage is against nature and an act which is of serious immorality. Thomas Aquinas while condemning homosexuality considered it as, “A special type of deformity in which the venereal act is rendered unbecoming... may occur in two ways: first, by being contrary to the right reason, which is common to all lustful vices; second, by being contrary to the natural order of the venereal act as becoming to the human race: this is known as the unnatural vice copulation with unnatural sex, male with male or female with female... This is known as the vice of sodomy.”¹⁶ Morality was given considerable emphasis by the natural school of jurisprudence and all of the natural law school's renowned jurists denounced homosexuality as morally evil. Plato, who penned a famous celebration of romantic and spiritual man-boy erotic connections in his book Symposium, made it very plain that all types of sexual conduct other than heterosexual marriage are humiliating, unlawful, and detrimental.¹⁷

¹² See supra note 4.

¹³ The holy quran 29:28-31

¹⁴ The holy quran 7:80

¹⁵ The holy quran 7:81

¹⁶ SAINT THOMAS AQUINAS, *SuMMA THEOLOGICA*, Secunda Secundae, quest. 154, art. 11, vol. 4 (Fathers of the English Dominican Province, trans., 1948).

¹⁷ John M. Finnis, Law, Morality, and "Sexual Orientation", 69 *Notre Dame L. Rev.* 1049 (1993-1994). Available

Lastly, many religious traditions hold that getting married serves a divine significance. It is understood as a way to fulfill religious obligations, disseminate the faith, and lay a solid foundation for the development of children in a religious atmosphere.

The repercussion of same-sex unions

Even in the 21st century, people still view gay relationships with revulsion, even in nations where homosexual relationships are legal. The primary reason for this is due to the fact that individuals are not accustomed to seeing this abnormal behavior. The act is considered abnormal since the sacred texts, society, history, eminent jurists, and various other sources all acknowledge that it is abnormal being suddenly recognized in the traditional society we all live in. A number of issues emerge whenever same-sex unions become legal, such as "Who would serve as the husband in a gay marriage"? The question might appear illogical at this point, but it is significant as there is no certainty that marriage will endure perpetually, and given that there is a 1% chance that the couple will split up, it elevates the question of "who would receive the maintenance" similar to what a typical female would receive after her husband leaves her. All these factors need to be considered even at the thought of legalizing same-sex marriages. For a child to achieve proper development and mental health, parents are required to be both male and female. For instance, if a gay couple adopts a girl child, the girl will likely be compelled to keep the hormonal changes she experiences during puberty to herself considering it is common in Indian society for girls to not be that transparent and forthcoming with their father. However, the girl is extremely comfortable addressing the same topics with the mother. A similar situation would arise with a lesbian couple. The father of a child plays a very important role in the future and development of a child as the love of both father and mother creates a balance and a sense of belongingness for the child. Where the mother gives emotional support and love to a child the father tends to impart discipline and morals in a child and it is an observed fact. A prime instance from our own experiences might be that we tend to disobey or neglect the instructions from our mother, but we would ponder several times before going against the same command from our father. With this illustration, I want to demonstrate how crucial is the role of both father and mother in nurturing a child. A quick review of the noxious disease's history revealed that in 1981, doctors in Los Angeles, California, began noticing that every one of their gay patients was exhibiting a comparable immune-deficiency condition, and they gave it the moniker "gay cancer" because it mainly affected gay males. The church's religious community referred to it as God's wrath against the gay community. The ailment

was investigated, and the condition was given the name “gay-related immune deficiency”¹⁸. Out of the total 9000 people who had HIV seventy percent were gay and bisexual men.¹⁹ This brings us to the conclusion that although not all same-sex relationships spread HIV/AIDS, the vast majority do.

Legal Complications with same-sex Unions

The legalization of same-sex marriage is not only unethical and morally incorrect but it will have an unfavorable effect on Indian laws pertaining to personal laws, family law, adoption, domestic violence, divorce, and the right of the wife to remain in the matrimonial home, all of which are connected to the institution of marriage. Additionally, laws have been created that maintain the traditional roles of husband and wife. The first and foremost question would be who in case of a marriage between two males would be the husband? This question is significant in the context of section 304B²⁰ and numerous other Indian laws of the Indian Penal Code, Now Section 304 B of the IPC lays down the ground for the dowry death of a wife. The term "wife" is used by the legislature to refer to a female who has died after being tortured, and abused, in connection to a dowry by her husband. How would this provision be carried through if the partners were both men or women? and death with regard to dowry has been committed? This is just one example of an act, other major laws in regard to marriage only such as divorce, when both the partners are of the same gender how would the divorce for them be carried with? The Hindu marriage act has laid down certain grounds for divorce for instance adultery²¹ According to the act, having intercourse with anybody other than the spouse—whether they are married or not—of the opposite sex constitutes grounds for divorce; however, this proviso is worthless when a couple is of the same sex. The act of bequest in India is governed by either personal law or succession act, which is based on the nearness of blood and the property is shared according to the bloodline of the heir being half or full blood, which would be impossible with the same sex couple as they can never have a child with full blood because a child must come from the same woman and the same ancestor in order to be considered a full-blood relative under Section 2 of the Hindu Succession Act²². This is another significant issue that would persist with same-sex marriage. The institution

¹⁸ Ibid

¹⁹ Supra note 18

²⁰ “Section 304B in The Indian Penal Code.” *Indian Kanoon*, <https://indiankanoon.org/doc/653797/> . Accessed 9 June 2023.

²¹ “Section 13 in The Hindu Marriage Act, 1955.” *Indian Kanoon*, <https://indiankanoon.org/doc/1284729/>. Accessed 10 June 2023

²² “Section Details.” *India Code: Section Details*, https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00019_195443_1517807321908&orderno=2 .Accessed 10 June 2023.

of marriage serves to help families grow, procreate children, and maintain a family's bloodline. These purposes aren't feasible by a same-sex couple because they have no other options for procreation other than adoption, surrogacy, or IVF, none of which result in full-blooded children. Adoption cannot be done, if the partner is Muslim, as the notion is not recognized by Islamic law²³. Same-sex marriage will end a person's bloodline if it is legalized and practiced. The guidelines for adoption followed in India is strict to protect the child from any potential danger and organization such as the national commission for the Protection of Child right has expressed their dissent in giving the child to a same-sex couple for adoption The statutory authority declared that laws including the Juvenile Justice Act and the Hindu Marriage Act do not acknowledge adoption by same-sex couples. By the NCPCR, "enabling a gay couple to adopt a female child would be against the scheme of the Juvenile Justice Act 2015,²⁴ referring to regulations that prevent a single man from adopting a female child²⁵. Since same-sex couples are less stable than heterosexual couples, placing their kid for adoption would put the child's life in jeopardy, according to the NCPCR²⁶. The growth and development of the children raised by a same-sex couple would be hampered by the fact that they would not be aware of traditional gender norms and would receive little to no exposure to these normative socially accepted gender roles.²⁷

Conclusion

This research paper has made a persuasive case against the legalization of same-sex marriages while engaging in an in-depth examination of this topic while considering numerous arguments. We have looked at the arguments made against same-sex unions throughout this discussion, including how they might affect traditional marriage, religious freedom, and the welfare of children. By seriously analyzing these concerns, it becomes clear that legalizing same-sex unions can have unforeseen repercussions that threaten communal harmony, freedom of religion, and the best conditions for raising children.

²³ Vijaysinh, Vijaysinh. "ADOPTION RIGHTS AND ISLAMIC JURISPRUDENCE." *INTERNATIONAL JOURNAL OF RESEARCH AND ANALYTICAL REVIEWS*, vol. 5, no. 4, 2018, pp. 1-4. *ijrar.org*, <https://www.ijrar.org/>. Accessed 10 June 2023.

²⁴ "Juvenile Justice (Care and Protection of Children) Act, 2015." *India Code*, https://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362 . Accessed 10 June 2023.

²⁵ "Section 57 - The Juvenile Justice (Care and Protection of Children) Act." *LAWGIST*, <https://lawgist.in/juvenile-justice-care-and-protection-of-children-act/57> . Accessed 10 June 2023.

²⁶ Sharma, Padmakshi. "Allowing Adoption To Same Sex Couples Endangers Children' : NCPCR Intervenes In Marriage Equality Petitions In Supreme Court." *LiveLaw*, 17 April 2023, <https://www.livelaw.in/top-stories/allowing-adoption-to-same-sex-couples-endanger-children-ncpr-intervenes-in-marriage-equality-petitions-in-supreme-court-226522> . Accessed 10 June 2023.

²⁷ *Ibid*

The potential deterioration of the institution of conventional marriage is one of the main worries voiced by opponents of same-sex unions. The foundation of the family and society has traditionally been viewed as being the union of a man and a woman. By changing this fundamental notion, society's norms and values might be rearranged, possibly upending existing social systems. When considering the legalization of same-sex unions, religious freedom also becomes a major issue. Many religious groups view homosexuality as incompatible with their moral and religious tenets. Forced recognition and solemnization of same-sex unions may violate religious organizations' strongly held convictions and restrict their capacity to freely practice their religion. Concerns have also been expressed about the welfare of children raised by same-sex couples. It is challenging to come to firm conclusions from studies that look at the outcomes of kids raised in same-sex households since the findings are frequently ambiguous. Given the importance of the family in a child's development, it is wise to go slowly and put the interests of the kids first by maintaining the conventional model of marriage and family.

The arguments put out in this research paper in opposition to same-sex unions emphasize the value of preserving societal stability, religious freedom, and the welfare of children. We can recognize the possible dangers and protect the integrity of conventional marriage and family structures by taking into account the possible effects of legalizing same-sex unions. The pursuit of equality must be carefully balanced with the preservation of traditional values and community cohesion.