

The Fundamental Right to Marry in India: Viewing Same-Sex Marriages through the Lens of Constitutional Morality

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Abstract

The Indian Constitution does not expressly recognise right to marry as a fundamental or a constitutional right. It is through judicial interpretation that the freedom of choice in marriage has been recognised as an inherent aspect of Article 21 of the constitution. Marriage as an institution is a concept based on exclusion. Same sex marriages are not currently acceptable under the Indian social structure. The Indian Supreme Court decriminalised homosexuality in 2018 and took a positive step towards the recognition of equality rights of queer people. This paper argues that it is through such creative interpretations that new constitutional spaces are developed. It is through the lens of constitutional morality which is defined by values of inclusiveness that the institution of marriage can be expanded to cover all gender and sexual identities.

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