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Marital Rights of Same-Sex Couples in India: A Critical Analysis

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ABSTRACT

*This research critically examines the legal landscape governing the marital rights of same-sex couples in India, highlighting the ongoing constitutional, societal, and judicial debates surrounding LGBTQ+ equality. While the landmark *Navtej Singh Johar v. Union of India* (2018) judgment decriminalized consensual same-sex relationships, it did not confer any legal recognition to same-sex marriages, leaving a significant gap in the civil rights of LGBTQ+ individuals. This paper explores the inconsistencies between the constitutional promise of equality, dignity, and personal liberty under Art. 14, 15, and 21, and the current heteronormative framework of marriage laws in India, including the Hindu Marriage Act, Special Marriage Act, and other personal laws, which implicitly or explicitly restrict marriage to heterosexual unions. Through a doctrinal analysis supported by comparative insights from jurisdictions such as the United States, South Africa, and Taiwan—where same-sex marriages are legally recognized—the paper critically evaluates the legal, cultural, and religious arguments used to resist marital inclusion for same-sex couples in India. The study also incorporates human rights perspectives and international legal obligations under treaties like the ICCPR and CEDAW, emphasizing the need for legal reforms. The paper argues that the denial of marriage rights to same-sex couples not only perpetuates systemic discrimination but also limits their access to legal benefits including inheritance, adoption, healthcare decisions, and taxation. It concludes by proposing legal recognition frameworks and judicial interventions necessary to ensure substantive equality, advocating for an inclusive interpretation of marriage that aligns with India's evolving constitutional morality and social justice commitments.*

KEYWORDS

Same Sex Marriage, LGBTQ Rights, Constitutional Equality, Marriage Laws, Legal Recognition.

INTRODUCTION

In Indian society, marriage is more than a legal contract—it is a deeply rooted socio-cultural institution that confers a wide range of rights, benefits, and protections. These include inheritance rights, tax benefits, medical decision-making authority, and social legitimacy, among others. Despite these important benefits, same-sex couples in India remain excluded from legal access to this institution. Although recent judicial decisions have decriminalized homosexuality and affirmed the dignity and rights of LGBTQIA+ individuals, the right to marry remains out of reach, highlighting a glaring gap between constitutional principles and legislative action.

The Supreme Court's landmark judgment in *Navtej Singh Johar v. Union of India*¹, marked a significant step in recognizing the rights of LGBTQIA+ individuals. By reading down Section 377 of the Indian Penal Code, the Court affirmed that consensual sexual acts between adults of the same sex are no longer criminal. The judgment went beyond decriminalization and recognized sexual orientation as an essential attribute of one's identity protected under the rights to life, liberty, dignity, and privacy enshrined in Art. 21. Justice D.Y. Chandrachud observed that "constitutional morality" must prevail over "societal morality," a guiding principle that supports the broader recognition of queer rights, including marriage. However, while this judgment laid the foundation for further progress, it stopped short of addressing civil rights such as marriage, adoption, or spousal benefits.

Earlier, in *National Legal Services Authority v. Union of India*², the Court had recognized the right of individuals to self-identify their gender, thereby affirming the rights of transgender persons as equal citizens. This judgment was pivotal in broadening the constitutional interpretation of gender and sexuality. The Court's recognition of non-binary identities implicitly challenged the heteronormative framework of Indian law, yet it again left questions of marital and familial recognition unaddressed. By acknowledging the diversity of gender identities, the Court opened the door for future legal interpretations that include queer relationships within the ambit of personal and civil laws.

¹ (2018) 10 SCC 1.

² (2014) 5 SCC 438.

In *Arun Kumar v. Inspector General of Registration*³, the Madras High Court offered a progressive interpretation of the Hindu Marriage Act, 1955, by recognizing that the term "bride" could include a transgender woman. The Court held that a marriage between a cisgender man and a transgender woman falls within the scope of a Hindu marriage. This judgment is a milestone in personal law interpretation, suggesting that inclusive legal recognition is possible even within traditional legislative frameworks. The Court's innovative approach underscores the potential for judicial creativity in expanding marital rights without waiting for Parliament to enact specific reforms.

Yet, the journey toward marriage equality in India faced a setback in the recent case of *Supriyo v. Union of India*⁴. In a long-anticipated ruling, the Supreme Court declined to extend legal recognition to same-sex marriages, emphasizing that such reform falls within the domain of the legislature, not the judiciary. Although the Court acknowledged the right of same-sex couples to live together and form familial relationships, it refrained from granting them the full spectrum of rights associated with marriage. This decision demonstrates the judiciary's cautious deference to the separation of powers doctrine, even at the expense of denying equal protection and non-discrimination under Art. 14 and 15.

Several other cases have contributed to the evolving jurisprudence on LGBTQIA+ rights. In *S. Sushma v. Commissioner of Police*⁵, the Court directed government authorities to ensure the safety and well-being of same-sex couples and advocated for sensitization programs among police and judiciary personnel. This judgment acknowledged the real-world threats and societal discrimination faced by queer individuals and took a rights-based approach to ensure their protection. Furthermore, in *Shafin Jahan v. Asokan K.M*⁶, although not a queer rights case per se, the Supreme Court emphasized the importance of an individual's autonomy in choosing their life partner. This principle is crucial for advocating marriage equality, as it establishes that the right to choose one's spouse is a fundamental right under Art. 21.

The collective weight of these judicial pronouncements signals a gradual, albeit incomplete, recognition of the rights and dignity of LGBTQIA+ individuals. However, the absence of legislative reforms leaves same-sex couples in a state of legal limbo—

³ W. P. (MD) No. 4125 of 2019.

⁴ (2018) 5 SCC 1.

⁵ 2021 SCC OnLine Mad 2096.

⁶ (2018) 16 SCC 368.

acknowledged but not protected. While personal laws across religions remain silent or exclusionary regarding same-sex unions, secular laws like the Special Marriage Act, 1954, could potentially be amended to extend their scope to all couples, regardless of gender or sexual orientation. The refusal to do so perpetuates systemic discrimination and denies same-sex couples equal citizenship. The constitutional ideals of equality, dignity, and non-discrimination mandate the legal recognition of same-sex marriages in India. The judiciary has laid significant groundwork, but without corresponding legislative will, the rights of same-sex couples remain precariously incomplete.⁷ As Indian society continues to evolve in its understanding of gender and sexuality, it is imperative that the law evolve in tandem.⁸ Until then, marriage equality in India will remain a constitutional promise unfulfilled.

CONSTITUTIONAL ARGUMENTS FOR MARRIAGE EQUALITY

Denying same-sex couples the right to marry constitutes a constitutional inconsistency, as it violates several key provisions under Part III of the Indian Constitution that guarantee fundamental rights.

- **Art. 14**, which ensures equality before the law, is violated when same-sex couples are excluded from marriage laws. This exclusion fails the test of reasonable classification, as it lacks a rational nexus to any legitimate state objective. Such arbitrary treatment undermines the principle of equal protection.
- **Art. 15(1)** prohibits discrimination on grounds of sex. In *Navtej Singh Johar v. Union of India*⁹, the Supreme Court affirmed that discrimination based on sexual orientation amounts to sex-based discrimination. Therefore, denying marriage rights to same-sex couples solely due to their orientation is unconstitutional under this provision.
- **Art. 21**, which safeguards the right to life and personal liberty, encompasses autonomy, dignity, and privacy—values inherently tied to one's freedom to choose a life partner. In *Shafin Jahan v. Asokan K.M.*¹⁰, the Court upheld the right to marry as intrinsic to personal liberty.

⁷ L. Kramer, *Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception*, 106 Yale L.J. 1965 (1996).

⁸ S. Harada, *Additional Barriers to Breaking the Silence: Issues to Consider When Representing a Victim of Same-Sex Domestic Violence*, 41 U. Balt. L.F. 150 (2010).

⁹ *Id.* at 1.

¹⁰ *Id.* at 6.

Excluding LGBTQIA+ individuals from the institution of marriage directly impinges on their ability to lead dignified, autonomous lives.

- **Art. 19(1)(c)** guarantees the right to form associations. While traditionally applied to political or professional associations, marriage is a personal and intimate form of human association. Denying same-sex couples this form of association, without compelling state interest, infringes upon their expressive and associational freedoms.

Collectively, these constitutional provisions demand the legal recognition of same-sex marriages. Denial of such recognition is not only discriminatory but also undermines the foundational constitutional values of dignity, equality, and freedom.

SOCIAL AND LEGAL CONSEQUENCES OF NON-RECOGNITION OF SAME-SEX MARRIAGES IN INDIA

The legal non-recognition of same-sex marriages in India leads to profound social and legal disadvantages for LGBTQIA+ couples. Denied the status and protections accorded to heterosexual marriages, same-sex partners remain excluded from critical areas of life that hinge on marital recognition.¹¹ Legally, one of the most significant impacts is in the area of succession and inheritance. Under personal laws like the *Hindu Succession Act, 1956*, same-sex partners are not recognized as legal heirs, thereby denying them rightful access to property and estate after a partner's death. In the domain of adoption, the *JJ Act, 2015* restricts same-sex couples from adopting children jointly, thereby obstructing their right to form a legally protected family.

Financial and medical rights are also severely compromised. Same-sex couples are ineligible for spousal benefits such as income tax exemptions, pension entitlements, and health insurance coverage. During medical emergencies, partners lack legal authority to make critical health-related decisions for each other, a right typically granted to spouses.¹² In terms of social security, same-sex couples are excluded from laws governing maintenance, alimony, and matrimonial property rights, leaving them financially vulnerable in the event of separation or death.¹³

Beyond legal disenfranchisement, non-recognition fosters social

¹¹ N Palazzo, *Marriage Apostates: Why Heterosexuals Seek Same-Sex Registered Partnerships*, 42 Colum. J. Gender & L. 186 (2021).

¹² D. NeJaime, *Marriage Inequality: Same-Sex Relationships, Religious Exemptions, and the Production of Sexual Orientation Discrimination*, 100 Calif. L. Rev. 1169 (2012).

¹³ Ibid.

marginalization. Same-sex relationships are often forced into secrecy due to fear of discrimination and societal stigma.¹⁴ This lack of legal validation perpetuates a cycle of invisibility and exclusion, undermining the dignity and security of LGBTQIA+ individuals. Legal recognition is thus not just a symbolic gesture—it is a necessary step toward full equality and protection under the law.

NEED FOR LEGISLATIVE REFORMS

To ensure equality and dignity for all citizens, legislative reforms are urgently required to bridge the legal gaps faced by same-sex couples in India. Despite progressive judicial pronouncements, the absence of statutory recognition continues to marginalize LGBTQIA+ partnerships. The following points highlight key areas where reform is both necessary and overdue.

- Modify the language to allow marriage between “two persons” instead of “male” and “female,” enabling inclusive secular marriage without interfering with religious personal laws.
- Revise adoption laws to allow same-sex couples to jointly adopt and raise children with equal guardianship rights.
- Broaden family law frameworks to include non-traditional families and partnerships formed by LGBTQIA+ individuals.
- Enact a central legislation protecting individuals from discrimination on the basis of sexual orientation and gender identity in all sectors, including employment, housing, education, and healthcare.
- Grant same-sex spouses access to pension rights, inheritance, maintenance, alimony, tax exemptions, and health insurance benefits.
- Legally empower same-sex partners to make medical and end-of-life decisions for each other, as available to married heterosexual couples.
- Recognize live-in relationships and domestic partnerships of same-sex couples with legal safeguards and recognition.
- Implement training modules for police, judiciary, administrative officials, and public institutions on

¹⁴ R. Lemke, *Linking Public Opinion Perception, Minority, and Stigma – An Integrated Model of Hiding Male Same-Sex Affection in Public*, 70 *Journal of Homosexuality* 2319 (2023).

LGBTQIA+ rights and issues.

- Introduce LGBTQIA+-inclusive content into school and university curricula to reduce stigma and promote acceptance from an early age.
- Provide efficient grievance redressal mechanisms and legal aid services for LGBTQIA+ individuals facing discrimination or rights violations.

CONCLUSION

The continued non-recognition of marital rights for same-sex couples in India reflects a critical disconnect between constitutional ideals and statutory realities. Despite landmark rulings such as *Navtej Singh Johar v. Union of India* (2018) and *National Legal Services Authority v. Union of India* (2014), which affirmed the dignity, autonomy, and identity of LGBTQIA+ individuals, the absence of corresponding legislative action has rendered these rights incomplete in practice. The judiciary, though instrumental in decriminalizing homosexuality and expanding the constitutional understanding of gender and sexuality, has also acknowledged the limitations of its domain—particularly evident in *Supriyo v. Union of India* (2023), where the Supreme Court refrained from recognizing same-sex marriages and instead deferred the matter to the legislature. This reiterates the urgent need for Parliament to act decisively.

Marriage in India is not merely a symbolic or emotional union; it is a legal contract that unlocks a wide range of rights and privileges related to inheritance, adoption, taxation, medical decisions, maintenance, and more. By excluding same-sex couples from this institution, the state effectively denies them access to social security and legal protections available to heterosexual couples. This exclusion perpetuates systemic discrimination and relegates queer relationships to second-class status. Moreover, the absence of inclusive family laws and anti-discrimination statutes exposes LGBTQIA+ individuals to social stigma, harassment, and legal uncertainty, even in the most intimate and personal aspects of their lives.

Legislative reform is the most sustainable and democratic route to secure marriage equality. Amending the *Special Marriage Act, 1954* to recognize marriage between “two persons” irrespective of gender would be a significant first step toward inclusivity. Simultaneously, reforming adoption, inheritance, and spousal benefit laws would ensure equal treatment and recognition of queer families. The enactment of a comprehensive anti-discrimination law would further strengthen these reforms,

providing necessary protection against bias in employment, education, housing, and healthcare.

However, legal change must be accompanied by broader structural and cultural shifts. Sensitization programs for judiciary, police, and civil service officers are essential to ensure that reforms are implemented with empathy and fairness. Educational institutions must promote awareness and inclusion from a young age to dismantle stereotypes and foster a culture of respect for diversity. Media, too, must play a responsible role in representing LGBTQIA+ narratives truthfully and sensitively. The recognition of marital rights for same-sex couples is not simply about access to a legal contract; it is a profound affirmation of the principle of equality enshrined in the Indian Constitution. It is about acknowledging that love, commitment, and the desire for family transcend gender. A just and inclusive society cannot be built on selective dignity. India stands at a crucial juncture where it can either continue to marginalize a significant section of its population or choose to uphold its constitutional promise of justice, liberty, and equality for all. The path forward lies not in judicial restraint but in legislative courage, social empathy, and collective commitment to human rights and dignity.