

SAME SEX MARRIAGES IN INDIA

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Abstract:

Same-sex marriage refers to the legally recognized union between two individuals of the same gender. In India, such marriages are presently not legally recognized, despite increasing judicial engagement and sustained advocacy efforts by members of the LGBTQIA+ community. The issue of legal recognition of same-sex marriage is intrinsically linked to fundamental rights, particularly equality, dignity, privacy, and non-discrimination as guaranteed under the Constitution of India. While Indian personal laws traditionally conceptualize marriage as a sacred and social institution between a man and a woman, constitutional morality demands an evolving interpretation aligned with contemporary human rights standards. Judicial pronouncements, particularly the landmark decision in *Navtej Singh Johar v. Union of India* (2018), decriminalizing consensual same-sex relations, have strengthened the discourse on relationship recognition. However, the absence of statutory recognition continues to deprive same-sex couples of legal protections relating to inheritance, adoption, maintenance, succession, taxation, and spousal benefits. The debate surrounding legalization reflects tensions between constitutional principles and deeply rooted socio-cultural norms. Legal recognition of same-sex marriages would not merely validate intimate partnerships but would also promote inclusivity, reduce systemic discrimination, and affirm the equal citizenship of LGBTQIA+ persons. This paper critically examines the constitutional framework, judicial developments, and socio-legal challenges surrounding same-sex marriage in India, while assessing the potential implications of its legalization within the Indian legal system.

Keywords: Same-Sex Marriage, LGBTQIA+ Rights, Constitutional Morality, Equality, Non-Discrimination, Indian Legal System.

1. INTRODUCTION

The legal and constitutional journey of LGBTQ rights in India is deeply intertwined with the history and interpretation of Section 377 of the Indian Penal Code, 1860. Enacted during British colonial rule, Section 377 criminalized “carnal intercourse against the order of nature,” a vague and morally loaded phrase that effectively targeted consensual same-sex relations. Although framed in ostensibly neutral language, the provision functioned as a tool of systemic discrimination against sexual minorities for over a century. After India gained independence in 1947, the colonial statute remained intact, reflecting the persistence of Victorian moral codes within the Indian penal framework. The continued enforcement of Section 377 reinforced stigma, social exclusion, and institutionalized discrimination against lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals. The constitutional promise of equality, dignity, and liberty under Articles 14, 15, 19, and 21 of the Constitution of India appeared fundamentally inconsistent with the criminalization of consensual adult relationships. However, for decades, the issue remained marginalized within mainstream legal discourse, primarily due to societal conservatism, lack of political will, and the invisibilization of LGBTQ identities in public life.

The emergence of LGBTQ rights as a constitutional question gained momentum in the late twentieth century, particularly during the HIV/AIDS crisis, when discriminatory enforcement of Section 377 hindered public health outreach and exacerbated vulnerabilities within marginalized communities. Activist organizations such as the AIDS Bhedbhav Virodhi Andolan (ABVA) began challenging the constitutionality of the provision, emphasizing that criminalization not only violated fundamental rights but also obstructed access to healthcare and social services (Narain & Bhan, 2005). The legal struggle intensified with the filing of a Public Interest Litigation (PIL) by the Naz Foundation before the Delhi High Court in 2001, seeking the decriminalization of consensual same-sex relations. The petition marked a pivotal shift in Indian constitutional litigation, framing LGBTQ rights within the broader discourse of equality, privacy, and human dignity. The Delhi High Court's landmark judgment in *Naz Foundation v. Government of NCT of Delhi* (2009) read down Section 377 to exclude consensual sexual acts between adults in private, holding that the provision violated Articles 14, 15, and 21 of the Constitution. The Court invoked the doctrine of constitutional morality, emphasizing that popular morality could not override fundamental rights (*Naz Foundation v. Govt. of NCT of Delhi*, 2009).

However, this progressive interpretation was short-lived. In *Suresh Kumar Koushal v. Naz Foundation* (2013), the Supreme Court of India reversed the Delhi High Court's decision, reinstating the criminalization of consensual same-sex relations. The Court reasoned that LGBTQ persons constituted a "minuscule minority" and that legislative action, rather than judicial intervention, was the appropriate remedy (*Suresh Kumar Koushal v. Naz Foundation*, 2013). This judgment attracted widespread criticism from scholars, activists, and international human rights bodies for undermining constitutional guarantees and disregarding the lived realities of LGBTQ individuals. The reasoning appeared inconsistent with evolving jurisprudence on equality and dignity, particularly in light of global trends toward decriminalization and recognition of sexual minority rights. The decision intensified activism and mobilization, transforming the issue into a prominent constitutional debate concerning the scope of judicial review and the protection of minority rights in a democratic society.

The constitutional landscape shifted significantly in subsequent years. In *National Legal Services Authority (NALSA) v. Union of India* (2014), the Supreme Court recognized transgender persons as a "third gender" and affirmed their right to self-identification, grounding its reasoning in Articles 14, 15, 16, 19, and 21 (*NALSA v. Union of India*, 2014). The judgment marked a crucial acknowledgment of gender identity as intrinsic to personal autonomy and dignity. Further, in *Justice K.S. Puttaswamy v. Union of India* (2017), a nine-judge bench of the Supreme Court unequivocally recognized the right to privacy as a fundamental right under Article 21. Importantly, the Court explicitly criticized the reasoning in *Koushal*, observing that the protection of fundamental rights does not depend on the numerical strength of a community (*Justice K.S. Puttaswamy v. Union of India*, 2017). These developments laid the doctrinal foundation for revisiting the constitutional validity of Section 377.

The culmination of this legal evolution occurred in *Navtej Singh Johar v. Union of India* (2018), where a five-judge Constitution Bench unanimously declared Section 377 unconstitutional to the extent that it criminalized consensual same-sex relations between adults. The Court affirmed that sexual orientation is an essential attribute of identity and that criminalization violated the rights to equality, freedom of expression, privacy, and dignity (*Navtej Singh Johar v. Union of India*, 2018). The judgment embraced transformative constitutionalism, asserting that the Constitution is a living document intended to promote social transformation and protect marginalized communities. While the decision represented a historic milestone, it did not extend to the recognition of same-sex marriage, leaving unresolved

questions regarding family law, inheritance, adoption, and spousal benefits. Thus, the central inquiry that emerges is whether decriminalization alone is sufficient to secure substantive equality, or whether full constitutional realization requires affirmative legal recognition of same-sex relationships.

This article examines the constitutional journey from criminalization to decriminalization, analyzing judicial reasoning, activist interventions, and socio-legal implications. It argues that while the reading down of Section 377 marked a transformative moment in Indian constitutional jurisprudence, the absence of marriage equality continues to perpetuate structural inequality. The introduction sets the normative framework for evaluating whether the Indian legal system has moved beyond tolerance toward genuine inclusion and equal citizenship for LGBTQ individuals.

2. HISTORICAL AND JUDICIAL EVOLUTION OF LGBTQ RIGHTS IN INDIA

The historical trajectory of LGBTQ rights in India reflects a complex interplay between colonial legacy, social activism, and constitutional adjudication. Section 377, introduced in 1860 under British rule, was modeled on the English Buggery Act of 1533 and codified Victorian moral standards within colonial criminal law (Gupta, 2008). Pre-colonial Indian societies exhibited diverse understandings of gender and sexuality, evidenced in religious texts, temple art, and cultural practices. However, colonial administrators imposed rigid heteronormative frameworks, criminalizing non-procreative sexual conduct. After independence, despite significant reforms in other areas of law, Section 377 remained unchanged, symbolizing the endurance of colonial morality within postcolonial governance structures.

The first organized legal challenge emerged during the 1990s, when the HIV/AIDS epidemic exposed the public health consequences of criminalization. Activist groups such as ABVA highlighted how fear of prosecution deterred LGBTQ individuals from accessing medical care and reporting abuse. In 2001, the Naz Foundation filed a PIL before the Delhi High Court, arguing that Section 377 violated constitutional rights by criminalizing consensual adult intimacy. After prolonged litigation, the Delhi High Court delivered its landmark judgment in 2009, holding that moral disapproval could not justify infringement of fundamental rights. The Court emphasized that constitutional morality must prevail over societal morality and that discrimination based on sexual orientation was incompatible with Article 14's guarantee of equality and Article 21's protection of life and personal liberty (*Naz Foundation v. Govt. of NCT of Delhi*, 2009). The judgment drew upon international human rights principles, including the Yogyakarta Principles, thereby situating Indian jurisprudence within a global rights framework.

The Supreme Court's reversal in *Suresh Kumar Koushal* (2013) represented a significant setback. By characterizing LGBTQ individuals as a negligible minority and deferring to legislative prerogative, the Court adopted a formalistic approach that prioritized parliamentary sovereignty over substantive rights protection. Critics argued that the judgment failed to engage with constitutional values of dignity and equality, and it overlooked comparative jurisprudence recognizing sexual orientation as a protected ground (Narain, 2014). The backlash to *Koushal* galvanized civil society and intensified demands for reconsideration.

The transformative shift began with *NALSA* (2014), where the Supreme Court recognized transgender persons' right to self-identification and directed the government to implement affirmative measures. The Court's reasoning underscored that discrimination on the basis of gender identity violated Articles 14 and 15, which prohibit discrimination "on grounds of sex." The judgment broadened constitutional interpretation to encompass gender identity within the ambit of sex discrimination (*NALSA v. Union of*

India, 2014). Subsequently, the recognition of privacy as a fundamental right in *Puttaswamy* (2017) reinforced autonomy in matters of sexual orientation, explicitly disapproving of the reasoning in *Koushal*.

Finally, in *Navtej Singh Johar* (2018), the Supreme Court overruled *Koushal* and decriminalized consensual same-sex relations. Each concurring opinion elaborated distinct constitutional principles. Chief Justice Dipak Misra emphasized constitutional morality; Justice Nariman focused on manifest arbitrariness under Article 14; Justice Chandrachud articulated a robust conception of dignity and equal citizenship; and Justice Indu Malhotra acknowledged the historical injustice inflicted upon LGBTQ persons. The judgment affirmed that intimacy between consenting adults lies beyond legitimate state interests and that fundamental rights protect individual autonomy irrespective of majoritarian views (*Navtej Singh Johar v. Union of India*, 2018).

Despite these judicial milestones, the absence of marriage equality remains a critical gap. Decriminalization removed the threat of prosecution but did not confer positive recognition of same-sex relationships. The Transgender Persons (Protection of Rights) Act, 2019 sought to prohibit discrimination and provide legal recognition of gender identity, yet it has been criticized for procedural limitations and inadequate safeguards (Dutta, 2020). Thus, the evolution of LGBTQ rights in India demonstrates both remarkable constitutional progress and persistent structural challenges. The judiciary has progressively affirmed dignity, equality, and privacy, yet full substantive equality—particularly in the realm of family law—remains unrealized. The historical and judicial journey underscores the dynamic nature of constitutional interpretation and the continuing struggle to align legal frameworks with the egalitarian vision of the Indian Constitution.

3. CONSTITUTIONAL ANALYSIS OF SECTION 377 AND JUDICIAL REASONING

The constitutional adjudication of Section 377 of the Indian Penal Code, 1860, represents one of the most significant developments in contemporary Indian constitutional jurisprudence. The challenge to Section 377 fundamentally raised questions regarding the scope and interpretation of Articles 14, 15, 19, and 21 of the Constitution of India, 1950. At the heart of the controversy was whether the criminalization of consensual same-sex relations between adults violated the constitutional guarantees of equality, non-discrimination, freedom of expression, privacy, dignity, and personal liberty. The Supreme Court's decision in *Navtej Singh Johar v. Union of India* (2018) marked a decisive constitutional shift by reading down Section 377 to exclude consensual sexual conduct between adults in private. The Court held that the provision, insofar as it criminalized consensual same-sex intimacy, was unconstitutional because it infringed fundamental rights and perpetuated systemic discrimination (*Navtej Singh Johar v. Union of India*, 2018).

Article 14 guarantees equality before the law and equal protection of the laws. In *Navtej Singh Johar*, the Court applied the doctrine of manifest arbitrariness and held that Section 377 was arbitrary because it targeted a specific class of individuals based on their sexual orientation without a rational nexus to any legitimate state objective. Justice Rohinton F. Nariman emphasized that criminalization solely on the basis of sexual orientation lacked any intelligible differentia and failed the test of reasonable classification under Article 14. The Court further clarified that constitutional protection is not contingent upon the numerical strength of a community, thereby rejecting the reasoning adopted earlier in *Suresh Kumar Koushal v. Naz Foundation* (2013), which had characterized LGBTQ persons as a “minuscule minority.” The recognition that constitutional rights are counter-majoritarian in nature reinforced the

judiciary's role in safeguarding minority rights against majoritarian prejudice (Justice K.S. Puttaswamy v. Union of India, 2017).

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. The Court expanded the interpretation of "sex" to include sexual orientation, drawing from earlier reasoning in *National Legal Services Authority v. Union of India* (2014), where gender identity was recognized within the ambit of sex discrimination. By holding that discrimination on the basis of sexual orientation is constitutionally impermissible, the Court strengthened the anti-discrimination framework under the Constitution. This interpretation aligned Indian jurisprudence with international human rights standards that recognize sexual orientation as a protected characteristic (Narain & Bhan, 2005). The judgment underscored that equality is substantive rather than merely formal, requiring the dismantling of structural barriers that perpetuate marginalization.

Article 21, which guarantees the right to life and personal liberty, emerged as the central constitutional anchor in the judgment. The Court reiterated that the right to life encompasses dignity, autonomy, and the freedom to make intimate personal choices. Drawing extensively from *Justice K.S. Puttaswamy v. Union of India* (2017), the Court affirmed that privacy includes decisional autonomy in matters of sexual orientation and intimate relationships. Justice D.Y. Chandrachud emphasized that sexual orientation is an essential attribute of identity and that criminalization invades the core of individual dignity. The recognition that intimacy between consenting adults falls beyond the legitimate interests of the state marked a decisive repudiation of moral paternalism. The Court held that the state cannot intrude into the private sphere merely on the basis of societal disapproval or moral condemnation (*Navtej Singh Johar v. Union of India*, 2018).

The doctrine of constitutional morality played a pivotal role in the Court's reasoning. Chief Justice Dipak Misra articulated that constitutional morality must prevail over social morality, particularly when fundamental rights are at stake. This doctrine, rooted in the vision of Dr. B.R. Ambedkar, mandates adherence to constitutional values such as liberty, equality, and fraternity, even when they conflict with prevailing social norms. The Court's reliance on transformative constitutionalism signified an understanding of the Constitution as a dynamic instrument designed to foster social change and protect marginalized communities. Transformative constitutionalism recognizes that constitutional interpretation must evolve to address historical injustices and promote substantive equality (Bhuvania, 2019).

Each concurring opinion in *Navtej Singh Johar* contributed distinct constitutional insights. Justice Nariman applied the doctrine of manifest arbitrariness to strike down the provision. Justice Chandrachud emphasized dignity and equal citizenship, arguing that the law must not stigmatize identities. Justice Indu Malhotra poignantly acknowledged that "history owes an apology" to members of the LGBTQ community, recognizing the centuries of discrimination and suffering endured due to criminalization. The collective reasoning demonstrated a jurisprudential shift from tolerance to affirmation, establishing that the Constitution protects the rights of sexual minorities as an integral component of democratic citizenship.

However, the judgment's scope was limited to decriminalization. While Section 377 was read down, the Court did not address broader questions relating to marriage equality, adoption rights, inheritance, and spousal benefits. The constitutional analysis thus resolved the question of criminal liability but left open the issue of positive recognition. Decriminalization removed the threat of prosecution, yet it did not

automatically confer equal status within the domain of family law. This distinction between negative liberty (freedom from criminal sanction) and positive equality (affirmative legal recognition) remains central to contemporary debates on LGBTQ rights in India.

4. PERSISTENT CHALLENGES FACED BY THE LGBTQ COMMUNITY

Despite the historic decriminalization of consensual same-sex relations in 2018, LGBTQ individuals in India continue to face pervasive social, legal, and institutional challenges. The removal of criminal sanctions under Section 377 did not eradicate entrenched stigma, discrimination, or violence. Social attitudes shaped by heteronormative and patriarchal norms continue to marginalize LGBTQ persons within families, workplaces, educational institutions, and communities. Empirical studies indicate that many LGBTQ individuals experience rejection, harassment, and psychological distress due to societal prejudice (Chakrapani, 2016). The persistence of discrimination highlights the gap between constitutional guarantees and lived realities.

One of the most pressing challenges is the absence of comprehensive anti-discrimination legislation. While Articles 14 and 15 provide constitutional safeguards, there is no specific statutory framework prohibiting discrimination on the basis of sexual orientation across employment, housing, healthcare, and education. The Transgender Persons (Protection of Rights) Act, 2019 represents a legislative attempt to address discrimination against transgender persons, yet it has been criticized for procedural hurdles in legal recognition and inadequate enforcement mechanisms (Dutta, 2020). Moreover, the Act does not extend comprehensive protection to the broader LGBTQ community. As a result, many individuals continue to encounter barriers in accessing basic services and opportunities.

Violence and harassment remain significant concerns. LGBTQ individuals frequently report instances of physical assault, “corrective” violence, blackmail, and police harassment. Although consensual same-sex relations are no longer criminalized, societal hostility often translates into informal mechanisms of coercion and abuse. The lack of sensitization among law enforcement authorities further compounds these vulnerabilities. Justice Nariman in *Navtej Singh Johar* explicitly directed the Union Government to publicize the judgment to reduce stigma, yet implementation of awareness and sensitization programs remains uneven (*Navtej Singh Johar v. Union of India*, 2018).

Family law constitutes another domain of persistent inequality. The non-recognition of same-sex marriages denies LGBTQ couples access to rights and benefits associated with marital status, including inheritance, joint property ownership, maintenance, tax benefits, medical decision-making authority, and adoption. While heterosexual couples derive legal protection from personal laws and the Special Marriage Act, 1954, same-sex couples remain excluded from these frameworks. The denial of marriage equality perpetuates a hierarchy of relationships, reinforcing the notion that same-sex partnerships are less worthy of legal recognition. Scholars argue that decriminalization without recognition results in incomplete citizenship, as it fails to secure substantive equality (Menon, 2021).

Economic marginalization further exacerbates inequality. Discrimination in employment limits economic opportunities, particularly for transgender individuals who often face exclusion from formal labor markets. Limited access to education and healthcare perpetuates cycles of poverty and vulnerability. Intersectional discrimination—based on caste, class, gender identity, and sexual orientation—intensifies marginalization for individuals belonging to multiple disadvantaged groups. The

constitutional promise of fraternity and dignity remains unrealized for many within the LGBTQ community.

Psychological and mental health challenges are also prevalent. Social ostracism and internalized stigma contribute to higher rates of anxiety, depression, and suicidal ideation among LGBTQ youth. The absence of inclusive policies in schools and workplaces reinforces feelings of isolation. While judicial recognition affirms dignity at a normative level, meaningful social transformation requires sustained efforts in education, awareness, and policy reform. Transformative constitutionalism, as articulated in *Navtej Singh Johar*, envisions not merely legal change but societal transformation; however, translating judicial principles into social acceptance remains an ongoing challenge.

In conclusion, although decriminalization marked a watershed moment in Indian constitutional history, structural inequalities persist. The lack of marriage equality, inadequate anti-discrimination legislation, social stigma, and institutional barriers collectively impede the realization of full citizenship for LGBTQ individuals. The journey from criminalization to equality is incomplete, requiring coordinated legislative action, judicial vigilance, and societal reform. The persistence of these challenges underscores that constitutional recognition, while foundational, must be accompanied by substantive legal and social measures to achieve genuine inclusion.

5. WHY SAME-SEX MARRIAGE REMAINS UNRECOGNIZED IN INDIA

Despite the transformative constitutional developments culminating in *Navtej Singh Johar v. Union of India* (2018), same-sex marriage remains legally unrecognized in India. The decriminalization of consensual same-sex relations represented a significant milestone in securing negative liberty—freedom from state prosecution—but it did not translate into positive recognition of same-sex unions within the legal framework governing marriage and family. The distinction between decriminalization and marriage equality is constitutionally significant. While the former removes criminal liability, the latter confers affirmative legal status, social legitimacy, and a bundle of civil rights. The continued non-recognition of same-sex marriages reflects the complex interplay between personal laws, statutory interpretation, constitutional principles, and socio-cultural resistance.

Marriage in India is regulated primarily through religion-specific personal laws such as the Hindu Marriage Act, 1955; the Muslim Personal Law (Shariat) Application Act, 1937; the Indian Christian Marriage Act, 1872; and the Parsi Marriage and Divorce Act, 1936. Additionally, the Special Marriage Act, 1954 provides a secular framework for inter-faith and civil marriages. However, these statutes uniformly conceptualize marriage as a union between a “man” and a “woman.” This gender-specific terminology has been interpreted as excluding same-sex couples from the institution of marriage. The argument advanced before the Supreme Court in recent constitutional challenges was that such heteronormative definitions violate Articles 14, 15, 19, and 21 of the Constitution by discriminating on the basis of sexual orientation and denying equal protection of the law. Petitioners contended that the right to choose a life partner is an intrinsic aspect of personal liberty, as previously affirmed in *Shakti Vahini v. Union of India* (2018) and *Shafin Jahan v. Asokan K.M.* (2018), and therefore must extend to same-sex couples as well.

In 2023, a Constitution Bench of the Supreme Court considered petitions seeking marriage equality under the Special Marriage Act and other statutes in *Supriyo @ Supriya Chakraborty v. Union of India* (2023). While the Court unanimously acknowledged that LGBTQ persons possess equal constitutional

rights and that discrimination based on sexual orientation is impermissible, the majority declined to recognize a fundamental right to marry for same-sex couples. The Court held that the power to alter the legislative scheme of marriage laws lies primarily with Parliament, not the judiciary. The majority reasoned that reading gender-neutral language into the Special Marriage Act would amount to judicial legislation. However, the Court affirmed that same-sex couples are entitled to protection from discrimination and harassment and directed the State to consider measures to ensure their access to social welfare benefits (*Supriyo v. Union of India*, 2023). The judgment reflects judicial restraint in matters involving broad social policy while simultaneously reiterating constitutional commitments to equality and dignity.

The reluctance to recognize marriage equality is also rooted in socio-cultural and religious considerations. Marriage in India is not merely a civil contract but is often regarded as a sacrament embedded within religious traditions and familial structures. Opponents of same-sex marriage frequently invoke arguments concerning tradition, procreation, and social stability. However, constitutional jurisprudence has consistently held that majoritarian morality cannot override fundamental rights. In *Navtej Singh Johar*, the Court explicitly stated that constitutional morality must prevail over social morality (*Navtej Singh Johar v. Union of India*, 2018). The tension between constitutional values and societal norms thus remains central to the debate.

Another significant dimension of non-recognition involves the legal consequences attached to marital status. Marriage in India confers numerous rights, including inheritance, succession, adoption, joint property ownership, maintenance, tax benefits, pension rights, medical consent, and next-of-kin status. Same-sex couples, lacking legal recognition, are deprived of these protections. While certain contractual arrangements may mitigate limited aspects of this exclusion, they cannot replicate the comprehensive legal framework attached to marriage. Scholars argue that the denial of marriage equality perpetuates a form of structural discrimination by relegating same-sex relationships to a secondary status (Menon, 2021). Thus, the absence of recognition not only affects symbolic legitimacy but also has tangible legal and economic consequences.

Furthermore, the non-recognition of same-sex marriages exposes LGBTQ couples to vulnerabilities in matters of child custody, adoption, and surrogacy. Current adoption laws and surrogacy regulations in India predominantly presume heterosexual married couples as eligible applicants. This exclusion reinforces heteronormative assumptions about family and parenthood. The constitutional promise of dignity and equal citizenship articulated in *Navtej Singh Johar* remains incomplete so long as LGBTQ individuals are denied the opportunity to form legally recognized families. Therefore, while judicial pronouncements have affirmed identity and autonomy, the realization of substantive equality requires legislative reform and social transformation.

6. CONCLUSION AND SUGGESTIONS

The constitutional journey from criminalization under Section 377 to decriminalization in *Navtej Singh Johar v. Union of India* represents a profound affirmation of equality, dignity, and personal liberty under the Indian Constitution. The Supreme Court's embrace of transformative constitutionalism signaled a commitment to dismantling historical injustices and safeguarding minority rights against majoritarian prejudice. By recognizing sexual orientation as an intrinsic component of identity and affirming that intimacy between consenting adults lies beyond the legitimate interests of the state, the judiciary restored the constitutional promise of equal citizenship to LGBTQ individuals. However, the

decriminalization of consensual same-sex relations constitutes only a foundational step. The continued non-recognition of same-sex marriage underscores the incomplete realization of substantive equality.

The refusal of the Supreme Court in *Supriyo v. Union of India* (2023) to recognize marriage equality reflects a cautious deference to legislative authority. While judicial restraint may be justified within the separation of powers framework, it places the responsibility squarely upon Parliament to enact reforms that align statutory law with constitutional values. The Indian Constitution envisions a society grounded in liberty, equality, fraternity, and dignity. These principles cannot be fully actualized if LGBTQ individuals remain excluded from institutions that confer social legitimacy and legal protection. The denial of marriage equality perpetuates structural inequality by depriving same-sex couples of inheritance rights, adoption privileges, social security benefits, and legal recognition of their partnerships.

In light of these developments, several suggestions merit consideration. First, Parliament should undertake comprehensive legislative reform to amend the Special Marriage Act, 1954 and related statutes to adopt gender-neutral language, thereby ensuring equal access to marriage irrespective of sexual orientation. Such reform would align statutory provisions with constitutional mandates under Articles 14, 15, 19, and 21. Second, the enactment of a comprehensive anti-discrimination law prohibiting discrimination on the basis of sexual orientation and gender identity across employment, housing, healthcare, and education is essential to bridge the gap between constitutional ideals and lived realities. Third, state institutions must implement sensitization programs for law enforcement agencies, judiciary, and public officials to ensure effective enforcement of rights recognized by the Supreme Court. Fourth, policies relating to adoption, surrogacy, and social welfare benefits should be revised to eliminate heteronormative presumptions and recognize diverse family structures.

Beyond legal reform, societal transformation remains indispensable. Transformative constitutionalism requires not only judicial declarations but also cultural change, public awareness, and inclusive education. The judiciary has affirmed that history owes an apology to the LGBTQ community; it is now incumbent upon the legislature and society to translate that acknowledgment into concrete action. The path toward marriage equality and substantive inclusion may be gradual, yet constitutional morality demands persistence in advancing the ideals of equality and fraternity. Ultimately, the realization of full LGBTQ rights in India will signify not merely the recognition of a minority community but the strengthening of constitutional democracy itself.

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