
MARRIAGE EQUALITY IN INDIA AND THE CONSTITUTIONAL AND LEGAL CHALLENGES FOR LGBTQIA+ INDIVIDUALS

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ABSTRACT

After the landmark decriminalisation of consensual same-sex intimacy in *Navtej Singh Johar v. Union of India* and the recognition of transgender identity in *NALSA v. Union of India*, the struggle for LGBTQIA+ equality in India has now shifted to the legal recognition of non-heterosexual relationships. However, the scholarship is mainly preoccupied with the judicial enforcement of constitutional morality, and does not examine the structural and statutory impediments that still exist in the gender-binary personal and secular marriage laws in the post-*Supriyo v. Union of India* verdict. This article examines the constitutional, statutory and institutional restrictions of marriage equality in India and the ways in which the current legislative architecture systematically excludes LGBT couples from marriage and marriage-related rights. The paper uses a doctrinal, comparative constitutional and case-law analysis to compare the Indian legislative framework with the experiences in South Africa, the United States and Taiwan. The study concludes that while the judiciary has strengthened the constitutional principles of dignity, privacy and equality, the gender-binary language of current marriage regulations poses an insurmountable interpretation challenge. Thus, judicial interpretation cannot fill the void; only thorough legislative reform can provide rights to marriage, to adoption and to spousal benefits. This article's unique contribution lies in refocusing scholarly attention away from judicial activism and toward legislative necessity and in providing a clear, policy-oriented strategy for statute reform to advance substantive equality.

Keywords: Marriage Equality, LGBTQIA+ Rights, Transformative Constitutionalism, *Supriyo v. Union of India*, Special Marriage Act, Personal Laws, Comparative Constitutional Law, Legislative Reform.

1. INTRODUCTION

1.1 BACKGROUND

The world-wide scene of identification of relationships has changed dramatically in the last three decades. Historically, marriage was imagined as a rigorous, heteronormative institution for opposite-sex couples only, based on biological reproduction and sex-differentiated responsibilities in marriage. However, the modern legal paradigm has evolved toward relationship equality, from Denmark's recognition of registered partnerships in 1989 to historic court rulings and legislative enactments across many continents. Today, more than thirty jurisdictions legally recognise same-sex marriage. There is a growing consensus that the freedom to marry is a fundamental component of individual liberty, human dignity, and equal citizenship. This global trend has pushed constitutional courts and legislatures to re-examine the historical confines of family law, eroding discriminatory barriers in favour of more inclusive and pluralistic models of familial recognition that embrace human diversity.

1.2 LGBTQIA+ MARRIAGE DEBATE IN INDIA

With the de-criminalisation of consensual same-sex intimacy in *Navtej Singh Johar v. Union of India* and the recognition of transgender identity in *National Legal Services Authority v. Union of India*, the battle for equality in relationships in India has reached a critical juncture. These historic cases established that the guarantees of equality, non-discrimination and privacy under the Part III of the Constitution protect sexual minorities. However, this did not automatically convert into relationship recognition. The legal discourse reached its pinnacle in *Supriyo @ Supriya Chakraborty v. Union of India*, where the Supreme Court examined the constitutionality of excluding same-sex couples under the Special Marriage Act, 1954. The Court's unanimous rejection of a reading down of the SMA to permit same-sex marriage and its split 3:2 decision refusing a positive right to civil unions exemplify the profound fissures in Indian jurisprudence on the limits of judicial review, statutory interpretation and the separation of powers.

1.3 RESEARCH GAP

Although the *Supriyo* ruling has been the subject of much criticism, the scholarship remains inadequate. Most commentaries are either descriptive summaries of the particular judicial rulings or broader critiques of judicial deference. There is a crucial research gap in the thorough

analysis of the structural and statutory impediments that continue to exist throughout gender-binary personal and secular laws post-Supriyo. In particular, there is no assessment in the existing literature of the systematic exclusion of queer couples from an interlocking web of civil rights such as adoption, surrogacy, inheritance, maintenance and domestic violence protection, through the non-recognition of marriage. Nor is there an assessment of how these statutory exclusions can be systematically addressed through legislative reform rather than piecemeal judicial interpretation.

1.4 RESEARCH QUESTIONS

The paper is structured around three main research questions:

1. To what degree do the existing gender binary frameworks of the Indian personal and secular marriage laws infringe the fundamental rights of the LGBTQIA+ persons as under Articles 14, 15, 19 and 21 of the Constitution?
2. What do the institutional constraints of judicial interpretation and the separation of powers do to influence the judicial response to relationship equality claims in India, as shown by Supriyo?
3. What legislative and policy changes are needed to ensure substantive equality, marital rights and related spousal benefits for gay couples in India?

1.5 METHODOLOGY

This study uses doctrinal, comparative constitutional and case-law analysis to solve these questions. The doctrinal study examines the content, structure and judicial interpretation of significant statutes such as Special Marriage Act, 1954 and personal law codes. The case-law analysis critically examines the constitutional rationale and judicial technique of landmark cases, following the development of equality, dignity and autonomy from Naz Foundation to Supriyo. Finally, the comparative constitutional analysis compares the statutory regime in India with the experiences of South Africa, the United States, and Taiwan and draws important insights to draft a tangible, policy-driven legislative blueprint for India.

1.6 STRUCTURE OF THE ARTICLE

The article is divided into eight sections. This introduction is followed by Section 2 which deals

with marriage as a constitutional institution and traces its historical growth and statutory formation under the Indian personal laws. Section 3 discusses the constitutional context for marriage equality under Articles 14, 15, 19 and 21, Part IV Directive Principles and international treaties. Section 4 offers a critical case-law study of the judicial history of connection claims culminating in *Supriyo*. In Section 5, I discuss legal and financial issues for LGBT couples outside of marriage recognition. 6. Comparative constitutional experiences of South Africa, the United States and Taiwan. Section 7 discusses particular legislative and policy recommendations. Section 8 closes the paper.

2. MARRIAGE AS A CONSTITUTIONAL INSTITUTION

2.1 HISTORICAL EVOLUTION OF MARRIAGE

The traditional development of marriage as a social institution was preceded by the state and the formal political institutions and legal codes. In the ancient paradigm, marriage was constituted outside of the state, deriving its legality from unwritten custom, communal acknowledgement and religious tradition. Marriage was mainly a secular family partnership for transfer of property, continuation of the family line and control by the father as illustrated by the idea of coverture. Not until the thirteenth century did church authorities exercise jurisdictional control, which developed into the contemporary state-administered licensing regimes of Western democracies. At the same time, the very idea of marriage was transformed, from a parental economic transaction into a choice, egalitarian contract based on human autonomy, companionate love, and mutual expressive commitment. Modern constitutional jurisprudence has therefore acknowledged that civil marriage has both an expressive dimension indicating friendship and commitment and a material dimension, which works as a doorway to a thick, state-sanctioned web of legal rights, benefits, and obligations. However, these structural alterations did not change the legal definition of marriage, which was still historically and culturally tied to heterosexual unions and structurally based on procreation and gender-differentiated marital obligations.

2.2 MARRIAGE UNDER INDIAN PERSONAL LAWS

In India this evolutionary trajectory is fractured over a diverse architecture of personal laws. In India, marriage is first legitimised by personal laws and religious practices established by the colonial and post-colonial nations, unlike the Western licensing regimes. Under uncoded Hindu law, marriage was envisaged as an indissoluble, sacramental union (*samskaram*) of flesh

and bone. While the Hindu Marriage Act, 1955, incorporated statutory reforms like mandatory monogamy and divorce it retained this sacramental nature through Section 7, even as Section 5(iii) structurally restricts the institution to opposite sex partners by explicitly referring to a “bridegroom” and “bride.” At the same time, the Act accommodates customary practices to coexist under Sections 5(iv), 5(v) and 29(2), but these statutory provisions are still firmly within a heterosexual framework. In contrast, Muslim personal law administered by the Muslim Personal Law (Shariat) Application Act, 1937 treats marriage (nikah) as a civil transaction which requires consensus, offer and acceptance. But this contractual space exists solely within the limits of the gender binary, only acknowledging biological male husbands and female spouses. Likewise, the Indian Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1936, laid forth inflexible, sex segregated statutory age limits for the “man” and “woman” or “male” and “female” respectively. This heteronormative structure is finally reflected in the Special Marriage Act, 1954, passed as a secular and civil alternative to promote inter-faith partnerships independent of personal laws, which requires under Section 4(c), a “male” of twenty-one years and a “female” of eighteen years. Such personal and secular regulations together form an insurmountable gender-binary barrier that systematically denies access to marriage and allied rights to non-heterosexual couples.

2.3 MARRIAGE UNDER CONSTITUTIONAL JURISPRUDENCE

The institution of marriage has been steadily re-anchored from a traditional, status-driven paradigm to a rights-based framework established in Part III safeguards, under the Indian constitutional matrix. At the centre of this conceptual shift is the identification of marriage as a location of realisation of liberty, dignity and privacy under Article 21. The nine-judge Bench in Puttaswamy held that privacy is not a negative right to be left alone, but a fundamental constitutional principle that includes the protection of personal intimacies, sanctity of family life and marriage itself. This fundamental safeguard of privacy directly implicates dignity and liberty, ensuring that deeply personal decisions – like entering into a marriage tie – are protected from arbitrary state intervention and majoritarian moral policing. Constitutional jurisprudence thus recognises that the choice of a life partner is an inalienable part of the right to life, because a person’s dignity and self-worth would be greatly diminished if their most intimate personal relationships were to be dictated or limited by the state.

2.4 MARRIAGE AND INDIVIDUAL AUTONOMY

Individual liberty is focused on decisional autonomy. It is what enables the individual to make

the decisions which are crucial to his personhood and to his future. This liberty under Article 21 guarantees the supreme authority of an adult individual to decide whom to love and with whom to have an abiding companionate relationship, within or without the legal marital connection. The Supreme Court has declared in *Shafin Jahan and Shakti Vahini* that the unqualified faith of an individual to pick his/her mate is paramount and beyond the jurisdiction of the state or social collectives. Moreover, the Court observed in *Supriyo* that the freedom to form a partnership, marked by physical, emotional and companionate intimacy is a constitutional right open to all persons, regardless of sexual orientation or gender identity. This ability to associate and form partnerships is a fundamental expression of *swaraj*, ensuring that marginalised sexual minorities can live true, self-determined lives and not be compelled to adhere to majoritarian norms. The Constitution protects decisional autonomy, and so protects the freedom to create human relationships without the structural violence of societal prejudice.

3. CONSTITUTIONAL FRAMEWORK GOVERNING MARRIAGE EQUALITY

3.1 ARTICLE 14

The Constitution under Article 14 provides for the principle of “equality before the law” and “equal protection of the laws” throughout the territory of India. When considering relationship recognition, the systematic exclusion of same-sex couples from civil marriage fails the traditional two-pronged test of reasonable classification. This test requires that any statutory classification be based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved. The Special Marriage Act, 1954 does not recognise non-heterosexual couples due to their sexual orientation and gender identity which are ascriptive qualities that do not affect their potential to build stable and companionate relationships. Further, the modern jurisprudence on equal protection especially after *Lt. Col. Nitisha v. Union of India* and *Deepika Singh v. Central Administrative Tribunal* has transcended from legal equality to substantive equality. This doctrinal development acknowledges that facially neutral laws that have a “disparate impact” on marginalised groups contradict Article 14. Excluding non-conventional and elective families from the statutory benefits of civil marriage is a type of indirect discrimination, which denies them equal protection and reinforces their socio-economic marginalisation.

3.2 ARTICLE 15

Article 15(1) of the Constitution forbids discrimination on the grounds of “sex” among other

categories against any citizen. Constitutional jurisprudence has developed to recognise that “sex” is not limited to biological differences but includes gender identity, sexual preference, and sexual stereotypes. In *NALSA*, the Supreme Court held that gender self-identification is protected under Articles 14 and 15 and found discrimination on the ground of sex to be discrimination on the ground of gender identity. *Johar* Court also decided that sexual orientation is an equivalent ground protected against discrimination. It said, “A classification based on gender stereotypes or orientation is violative of the mandate of non-discrimination. This constitutional safeguard generates negative and positive state obligations. The State is banned from implementing discriminatory laws, but it also has a positive obligation to implement preventive measures for the elimination of historical biases and for the social inclusion of marginalised sexual minorities. Moreover, Article 15(2) forbids horizontal discrimination in public areas, meaning that homosexual couples are protected from private acts of exclusion and violence.

3.3 ARTICLE 19

Art 19(1)(a) of the Constitution protects the right to “freedom of speech and expression”. This also includes the right to express one’s identity, gender and relationships. In *NALSA*, the Supreme Court has concluded that “expression of one’s gender identity is a fundamental expressive choice that is protected from interference by the state”. This expressive option also include choices of relationship, picking a partner is a fundamental kind of self-expression, companionate affection and emotional harmony. Article 19(1)(c) also preserves the right to “form associations”, including the ability to form personal partnerships and companionate unions. Read in harmony with Article 19(1)(e) (the right to dwell and settle in any part of India), these rules really guarantee the freedom of cohabiting LGBT couples to navigate public spaces, to reside together and to form household units free from state sponsored and private harassment.

3.4 ARTICLE 21

Article 21 ensures "No person shall be deprived of his life or personal liberty except according to procedure established by law". The right to human dignity, privacy and decisional autonomy has been strengthened by the contemporary constitutional jurisprudence under Article 21. The right to privacy, as held in *Puttaswamy*, guarantees the sanctity of private space and the freedom to make intimate personal decisions – including procreation, family and relationship

choice – free from the gaze of the state and moral policing. The safeguard is vital to dignity since one's self-worth is essentially offended when the state prescribes with whom one may associate. Therefore, the freedom to establish relationships and to select a partner is an integral part of the right to family life under Article 21, which is secured to all persons regardless of their sexual orientation or gender identity. The right to complete mental health and the ban of conversion treatment under Section 18 of the Mental Healthcare Act, 2017 further reinforces this protection and protects the person's mental and physical integrity against institutionalised conversion practices at the same time.

3.5 DIRECTIVE PRINCIPLES

The Directive Principles of State Policy (Part IV of the Constitution) are a major guide in the interpretation of statutes and in the reconciliation of the Part III fundamental rights with the preamble goals. Article 38 directs the State to endeavour to set up a social order whereby social, economic and political justice is established in all aspects of life. Article 39(a) demands the State to provide to the citizens the right to appropriate means of livelihood. Article 41 provides for the right to public assistance in circumstances of unemployment, old age, disease and disablement. This denial of spousal benefits and social security entitlements to LGBT cohabiting couples is in direct violation with these Directive Principles. Besides, Article 44 enjoins the State to provide for its citizens a Uniform Civil Code. Codification of personal laws is a complex legislative task but Article 44 underlines the necessity of moving away from fragmented and discriminatory codes of personal laws to a unified and egalitarian statutory architecture that ensures equality to all citizens irrespective of gender and religion.

3.6 INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The domestic struggle for recognition of relationships exists inside the international human rights framework. The right of marriage of the marriageable age and founding a family without any restriction of race, nationality and religion is provided in the Universal Declaration of Human Rights article 16 and International Covenant on Civil and Political Rights article 23(2). While some have historically read these rules within heterosexual bounds, international treaty organisations have increasingly rejected relationship discrimination. The Human Rights Committee has also found that the exclusion of same-sex couples from social security payments breaches the non-discrimination provision of Article 26 of the ICCPR. This emerging consensus is represented in the Yogyakarta Principles, which require nations to take all

necessary legislative and administrative measures to guarantee that no relationship is excluded or subjugated on the basis of sexual orientation or gender identity. Taken with Article 51 (c) of the Constitution of India, these international obligations provide an active obligation on the State to make domestic laws consistent with international human rights norms.

4. JUDICIAL DEVELOPMENT OF MARRIAGE EQUALITY CLAIMS

4.1 NAZ FOUNDATION

Delhi High Court's judgement in *Naz Foundation v. Govt., Delhi's NCT* was a watershed moment in the history of transformational constitutionalism, moving LGBTQIA+ demands from a rhetoric of sickness and criminality to a paradigm of equal citizenship and human dignity. Doctrinally, the court re-anchored Article 21 by fusing privacy, decisional autonomy and dignity. It said that criminalising private voluntary intimacy contradicts the core of individual personhood. Under Article 14, the court struck down the classification of non-procreative carnal contact under Section 377 of the Indian Penal Code, finding that majoritarian moral disapproval had no rational relationship to a legitimate state aim. The court further extended Article 15 by holding that "sex" included "sexual orientation" as a comparable basis of discrimination, therefore requiring heightened judicial scrutiny. Crucially, the court adopted the notion of "constitutional morality" as a counter-majoritarian weapon that states that popular disesteem cannot be a reason for the subversion of the essential preambular principle of inclusivity. The judgement confirmed that a written constitution does not create rights but affirms their pre-existence, making the law a site of social catharsis for marginalised minorities.

4.2 NALSA

In *National Legal Services Authority v. Union of India*, the Supreme Court initiated a fundamental constitutional reform by abolishing the state-enforced gender binary. The court's reasoning altered the jurisprudence from a biological determinist paradigm to a self-determination model. The court found that gender identity is a matter of innate psychological perception and not physical anatomy. The court held that gender self-identification is an integral part of human dignity, liberty and personal autonomy under Article 21. The court considered the freedom of gender expression (dress, appearance and behaviour) as within the basic provision of free speech under Article 19(1)(a). The court doctrinally harmonised Articles 14 and 15 by concluding that the gender-neutral term 'person' includes transgender persons

and that discrimination based on gender identity constitutes discrimination based on sex. By mandating the state to take affirmative action programs under Article 15(4), NALSA converted nominal equality into an obligation to ensure substantive socio-economic inclusion. Gender recognition is a fundamental human rights issue, and not a medical or social problem. This landmark decision had a radical reconfiguration of the relationship between the state and the sexual citizen by establishing a third gender category on an equal footing.

4.3 JUSTICE K.S. PUTTASWAMY

The nine-judge Bench of the Supreme Court, in Justice K.S. Puttaswamy (Retd.) v. Union of India, established the right to privacy as a part of the right to life and personal liberty under Article 21 of the Constitution, marking a significant shift in the doctrinal landscape for the recognition of relationships. On the doctrine front, the Court rejected majoritarian and originalist contentions of the State and held that privacy is a primitive natural right that accompanies the human being and not a luxury bestowed by the State. In Puttaswamy, the legal rationale had tied privacy inexorably with dignity and individual autonomy, not just as a negative right to be left alone, but as a positive guarantee of decisional privacy, which included procreation, family and sexual orientation. Importantly, the Court recognised sexual orientation as integral to privacy and dignity and, accordingly, held the reasoning in *Suresh Kumar Koushal v. Naz Foundation* to be untenable. Puttaswamy asserted that constitutional rights are not subject to a majoritarian consensus and hence created a counter-majoritarian protection for sexual minorities. The implications of this jurisprudential leap for marriage equality are profound: by declaring that the choice of a life partner, marriage, and family life are protected zones of personal intimacy, the Court laid the constitutional foundation for attacking the exclusion of non-heterosexual unions from statutory recognition.

4.4 NAVTEJ SINGH JOHAR

In *Navtej Singh Johar v. Union of India*, the Supreme Court unanimously decriminalised consensual same-sex contact by reading down Section 377 of the Indian Penal Code, making choice in relationships a key constitutional principle. In Johar, the reasoning of the court supported the idea of transformative constitutionalism, which posits that the Constitution is a living instrument, an organic document, created to break down historical prejudices and achieve equal citizenship. The Court under Article 14 held that Section 377 was obviously arbitrary. The Court noted that a classification based on a “intrinsic and core trait” like sexual

orientation would have no reasonable relationship to a legitimate State aim at all. In addition, the Court broadened the scope of Article 15(1) by ruling that “sex” encompasses “sexual orientation” and so prohibits gender and orientation-based stereotyping. Significantly, the Court went beyond decriminalisation and recognised a genuine constitutional right to a companionate union under Article 21 which protects physical, emotional and mental companionship from governmental and societal intervention. Johar found that the state has an active commitment to end the structural injustice suffered by the LGBT community, privileging constitutional morality over public morality. There are two implications of Johar for marriage equality, both of which are meaningful. While the Court expressly refused to decide the issue of marital rights, the Court’s acknowledgement of a fundamental right to form a union and its denunciation of institutionalised homophobia charted an inevitable course towards insisting on equal statutory recognition of queer relationships.

4.5 SUPRIYO V. UNION OF India

The Supreme Court’s judgement in *Supriyo @ Supriya Chakraborty v. Union of India* is a significant doctrinal landmark, revealing fissures over statutory interpretation, transformational constitutionalism and the counter-majoritarian function of the judiciary. The five-judge Bench held unanimously that the Constitution did not give any basic right to marriage under Part III and defined marriage as a statutory social institution, the conditions of which would be regulated by the legislature and not created by the courts. Moreover, the Court unanimously declined to read down or re-construct the Special Marriage Act, 1954 in a gender-neutral fashion. The majority and dissent both agreed that substituting gendered binary terminology such as “husband” and “wife” with “spouse” would shred the statutory coherence of the SMA, creating a cascade of disturbances throughout an intricate, interwoven web of personal and succession law. It was held that the under-classification under the SMA was not illegal because the main historical objective of the Act was to encourage inter-faith heterosexual nuptials, and hence the exclusion of LGBT couples was not a discrimination between members of the same class.

A 3:2 doctrinal split over civil unions and adoption rights, however, revealed a severe divide over the separation of powers and judicial restraint. Writing for the minority, Chief Justice Chandrachud and Justice Kaul took an activist, rights-expansive stance, arguing that the fundamental freedom to form an enduring “union” flowing from Articles 19, 21 and 25

imposed a positive constitutional obligation on the State to recognise queer relationships and provide spousal benefits to prevent discriminatory “disparate impact.” They also struck down CARA’s adoption regulations as discriminatory under Article 14.

Conversely, the majority judgement, penned by Justice Bhat (with Justices Kohli and Narasimha concurring), re-emphasized a classical positivist concept of judicial restraint. The majority opined that LGBT persons have a natural right to live together and co-exist under Article 21, but the Court cannot force the state to create a new legal status or “bouquet of entitlements” like civil partnerships. In a supplementary judgement, Justice Narasimha observed that evolving such a regulatory framework is a very “polycentric” legislative task needing democratic consensus-building and legislative changes which cannot be short-circuited by judicial fiat. Most also supported CARA’s limits on adoption, concluding that they had a legitimate basis in the prioritisation of stable, legally recognised marriage structures for vulnerable children. *Supriyo* is ultimately a huge loss for relationship equality, moving the fight for LGBTQIA+ rights from the constitutional court to the legislature and highlighting the institutional constraints of judicial review in amending gender-binary family regulations.

4.6 JUDICIAL TRENDS AFTER SUPRIYO

The legal battlefield has now moved to the pending review petitions after the *Supriyo* verdict where the petitioners have argued that the Court wrongly construed their claim of equal access to the existing Special Marriage Act as a quest for new legal status. At the same time, High Courts continue to struggle with rights of identity and relationship on the ground. For example, the Calcutta High Court directed the State of West Bengal in 2024 to reserve 1% of public jobs for transgender persons. These rising tendencies highlight a continued judicial involvement with relationship and identity recognition that pushes the bounds of legislative deference and separation of powers.

5. LEGAL CHALLENGES BEYOND MARRIAGE RECOGNITION

5.1 ADOPTION RIGHTS

The lack of acknowledgement of same-sex partnerships in India leads in substantial legal and institutional impediments to parenting, systematically excluding LGBTQIA+ couples from the pathways of joint adoption. Adoption, under uncodified Hindu law and subsequently under

Sections 7 and 8 of the Hindu Adoptions and Maintenance Act, 1956, is essentially binary and gendered, recognising only opposite-sex couples or single individuals as adoptive parents. Meanwhile, joint adoption is restricted to couples in a stable “marital relationship” under the secular Juvenile Justice (Care and Protection of Children) Act, 2015 and Adoption Regulations, 2022. The requirement of a formal marriage excludes cohabiting same-sex couples from joint adoption. They are forced to adopt as individuals. This restricted regulatory framework renders the partner of an individual adoptive parent a legal stranger to the kid without guardianship rights, medical authority or parental succession privileges, in violation of the child's and the partners' right to family life under Article 21.

5.2. SURROGACY

India's surrogacy regime has been designed to ensure a strict heteronormative monopoly on assisted family-making, actively marginalising same-sex couples, single men, and transgender people. The Surrogacy (Regulation) Act, 2021 limits the availability of altruistic surrogacy exclusively to “commissioning couples” as defined under Section 2(1)(h) comprising strictly of a lawfully married heterosexual “man” and “woman” within specific age groups and single, divorced or widowed women. The statutory definition creates a complete bar to non-heterosexual couples who cannot meet the marriage criterion. This statutory exclusion violates the fundamental rights of LGBTQIA+ persons to reproductive autonomy and family life under Article 21, as recognised in *Puttaswamy*, by denying them the medical means to have genetically related offspring on the basis of their sexual orientation alone.

5.3 ASSISTED REPRODUCTIVE TECHNOLOGIES

The Assisted Reproductive Technology (Regulation) Act, 2021, along with the surrogacy legislation restricts reproductive aid to a mandatory opposite-sex married arrangement. Section 2(1)(g) of the Act restricts access to in vitro fertilisation, intrauterine insemination and other advanced reproductive procedures to married “commissioning couples” and certain single women. This statutory exclusion systematically denies the access to important fertility therapies and sperm/oocyte donation to same-sex cohabiting partners and transgender persons. In linking access to medical innovations in reproduction to a gender-binary marriage, the statutory regime is a violation of Part III guarantees of equality and non-discrimination, and thereby ensures that sexual minorities remain legally and medically excluded from family-making.

5.4 SUCCESSION, INHERITANCE, AND PROPERTY

In India, the non-recognition of same-sex marriage has serious implications for intestate succession and property devolution, leaving surviving couples legally exposed when a partner dies. The Hindu Succession Act, 1956 rigidly governs intestate succession based on gender-binary kinship classifications, privileging Class I and Class II heirs, who are solely identified by biological or opposite-sex marital bonds. Similarly, the Indian Succession Act, 1925 limits intestate devolution to legally recognised spouses and biological relations, treating a surviving same-sex partner as a legal “stranger.” While queer persons can use testamentary wills under Section 30 of the HSA and the ISA, such testaments are highly vulnerable to being challenged by biological families, who often exploit societal prejudice to contest the mental capacity of the testator or allege “undue influence.” Furthermore, the banking and financial sectors routinely deny recognition to same-sex partners as joint property holders, blocking access to joint home loans, tenancy protections, and automatic survivorship benefits automatically extended to heterosexual spouses.

5.5 MAINTENANCE, ALIMONY, AND SPOUSAL RIGHTS

Without a recognised partnership status, separated same-sex spouses have no statutory entitlement to maintenance or spousal assistance, and are therefore left in a position of acute financial precarity. Under Section 25 of the HMA, Section 18 of the HAMA and Section 37 of the SMA, the right to claim alimony and maintenance during or after matrimonial proceedings is strictly restricted to a legally recognised “husband” or “wife.” Similarly, the secular, summary remedy for maintenance under Section 125 of the Code of Criminal Procedure, 1973 is available only to a legally wedded biological “wife.” Thus, if an economically dependent partner in a long-term same-sex union is abandoned, they have no civil remedy to secure spousal support, demonstrating the unequal treatment of queer partners under family law codes.

5.6 TAXATION, INSURANCE, NOMINATION, EMPLOYMENT BENEFITS, PENSION

Same-sex relationships are not recognised under the statute and are therefore denied critical state-sanctioned financial benefits and social security entitlements, which results in a substantial “disparate impact” on LGBT workers. Same sex partners are not entitled to file taxes jointly, enjoy the spousal tax exemption or the designation of “relative” under the Income

Tax Act, 1961, which means property transfers between partners are heavily taxed. In the insurance sector, same-sex partners are frequently denied the right to name their partners as beneficiaries under life and health insurance policies, as insurers routinely reject non-kin partners on the basis of a supposed lack of “insurable interest.” Similarly, statutory social security schemes, such as Rule 2(vii) of the Employees’ Pension Scheme, 1995, the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, and the Workmen’s Compensation Act, 1923, precisely define “family” and “dependents” within the parameters of heterosexual marriage and biological kinship, systematically denying surviving same-sex partners access to provident funds, gratuity, and pension benefits earned by their deceased partners through their labour.

5.7 MEDICAL DECISION-MAKING

The absence of recognition of same sex relationships in India results in a critical lacuna in the legal space of healthcare settings. Regulation 7.16 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 limits the right to offer surrogate medical consent for incompetent patients to the “closed heteronormative family” and legal guardians. This means that intimate couples are legal strangers, cannot visit each other in hospital or sign proxy consent for life-saving surgery. While a section of Supriyo argued for including partners as next of kin in medical schemes, the majority’s insistence on waiting for legislative action leaves LGBT couples in grave precarity, violating their right to health under Article 21.

5.8 PROTECTION AGAINST DOMESTIC VIOLENCE

The legislative framework on domestic violence in India always excludes queer connections. Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 defines “aggrieved person” as a “woman” who is or has been in a domestic relationship. In *Indra Sarma v. V.K.V. Sarma* the Supreme Court held that the phrase “relationships in the nature of marriage” in Section 2(f) is restricted to opposite sex relationships and not same sex relationships. It leaves gay people, transmasculine people and non-binary partners unprotected against violence committed by intimate partners and natal families, but actual data show rates of abuse similar to those experienced by opposite-sex couples. This statutory exclusion contravenes the guarantees of equality and non-discrimination in Articles 14 and 15, and directly infringes the right to safety and dignity guaranteed under Article 21.

6. COMPARATIVE CONSTITUTIONAL EXPERIENCE

6.1 SOUTH AFRICA

South Africa's constitutional path offers an inspiring paradigm of the acknowledgement of relationships based on transformational constitutionalism and the end of historical subordination. In *Minister of Home Affairs v Fourie*, the Constitutional Court of South Africa held that the common law definition of marriage and Section 30(1) of the Marriage Act, 1961 were unconstitutional as they excluded same-sex couples. Writing for a unanimous Court, Justice Albie Sachs found that the exclusion was a "crass, blunt, cruel and serious invasion" of the dignity of homosexual and lesbian people, and violated Sections 9 (equality), 10 (dignity) and 14 (privacy) of the post-apartheid Constitution. Crucially, the court dismissed religious concerns, stating that the state's secular commitment to accommodate diversity and equal concern across difference does not operate by religious views but, rather, side-by-side with them. To avoid the Court usurping the legislative function, the Court stayed the pronouncement of invalidity for a period of one year, and the legislature passed the Civil Union Act, 2006.

6.2. UNITED STATES

Relationship equality in the United States was the result of a rights-based synthesis of liberty and equal protection under the Fourteenth Amendment. In *Obergefell v. Hodges*, the Supreme Court found 5:4 that same-sex couples have a fundamental right to marry. Justice Anthony Kennedy, writing for the majority, listed four essential values that demonstrate the fundamental nature of marriage: individual autonomy, close association of two persons, protection of children and family stability, and marriage as the foundation of the social order. Kennedy identified the "profound connection" and synergy between the Due Process Clause and the Equal Protection Clause, showing that denying same-sex couples marriage liberty also subordinated them as unequal citizens. Doctrinally, this decision was opened by *United States v. Windsor* (2013). This case invalidated Section 3 of the Defence of Marriage Act because it violated the Fifth Amendment's guarantee of equal liberty.

6.3 TAIWAN

Taiwan became the first country in Asia to embrace marriage equality through discourse between its constitutional court and legislative. In Interpretation No. 748 (2017), the

Constitutional Court of Taiwan (Judicial Yuan) ruled that the restriction of marriage to opposite-sex couples in the Civil Code violates Article 22 (freedom of marriage) and Article 7 (right to equality). The Court applied a strict equality test and found that sexual orientation is an unalterable feature and that banning same-sex couples from civil marriage had no reasonable basis to defend the institution of marriage. Like the South African method, the Judicial Yuan allowed the legislature two years to revise or implement suitable laws. This judicial trigger has resulted in the enactment of the Act for Implementation of Judicial Yuan Interpretation No. 748 in 2019, thereby securing same-sex marriage through democratic legislation.

6.4 LESSONS FOR INDIA

These contrasting experiences offer important insights for India's developing relationship jurisprudence post *Suprio*. In *Supriyo*, the majority first contrasted the Indian path of personal law from the "licensing regime" of Western governments such as the United governments. The majority held that marriage is not a natural or fundamental common law right in India. But that Taiwan has successfully included relationship equality into its Civil Code shows that civil codes can be updated on a progressive basis without destroying statutory frameworks. Second, South Africa's experience post-*Fourie* is a caution against adopting a 'separate but equal' civil union framework that is nevertheless a message of inferiority. Finally, the suspended declarations of invalidity in South Africa and Taiwan demonstrate the power of the constitutional courts as counter-majoritarian catalysts, compelling a hesitant legislature to action. India's path to marriage equality must therefore go beyond passive judicial constraint, and use constitutional morality to bridge the gap between the rights of Part III and discriminatory personal law statutes.

7. LEGISLATIVE AND POLICY REFORM

The constitutional provisions of Part III must be translated into a functioning rights-regime through substantial legislative and policy reform. In *Supriyo v. Union of India* (2023), the Supreme Court reflected on how the court might become an engine for rights-discourses. But, the hard work of overhauling gender-binary laws is a key legislative duty.

First, the Special Marriage Act, 1954 needs to be modified to facilitate a secular, gender-inclusive way to marriage. This necessitates replacing gender-binary terminology like "husband" and "wife" or "bride" and "bridegroom" with the gender-neutral term "spouse" in

Sections 4, 5, 12 and 24. Canada's Civil Marriage Act, 2005, should serve as a model for amending section 4 of the SMA to define marriage as a lawful union of "any two persons, irrespective of their gender identity or sexual orientation," and to mandate the minimum age of marriage at eighteen years for both parties. Furthermore, Sections 5 and 6 obligatory notice and objection procedures should be done away with so that there is no harassment from natal families and majoritarian organisations.

Second, although some scholars and the minority in *Supriyo* suggested a "civil union" model as an incremental step, comparative constitutional experience cautions against this separate-but-equal paradigm. The post-*Fourie* South African experience shows that the creation of a separate civil union regime outside of marriage sends a message of second-class citizenship and entrenches systematic subordination. Therefore, the goal of full marriage recognition in India should not be a separate legal status but relationship equality.

Third, family law reform needs to be comprehensive, to undermine the gender binaries that control associated rights. The Hindu Adoptions and Maintenance Act, 1956 and the Juvenile Justice Act, 2015 should be changed to allow unmarried and same-sex cohabiting couples to jointly adopt. "Similarly, the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 should expand the definition of eligible "commissioning couples" to include queer partners." Further, the Protection of Women from Domestic Violence Act, 2005 (PWDVA) should be amended to be gender-neutral under Section 2(a) so as to protect LGBTQ partners from domestic and natal family violence.

Finally, these reforms demand genuine parliamentary initiative. Rather than piecemeal amendments, Parliament should pass a comprehensive code like the proposed 'Queer Community (Protection of Rights) Bill' to systematically secure relationship recognition, succession, adoption and anti-discrimination protections in public and private spaces. By decisive action, the legislature can make the preambular pledges a lived reality for India's sexual minorities and satisfy its constitutional mission of substantive equality.

8. CONCLUSION

In sum, this article has examined the constitutional, statutory and institutional hurdles in the way of relationship recognition for LGBTQIA+ persons in India and tracked the jurisprudential journey from *Naz Foundation* and *NALSA* to the Supreme Court's landmark judgement in

Supriyo. The main findings reveal that the judiciary has greatly strengthened Part III safeguards of dignity, privacy and decisional autonomy, but the gender-binary wording of secular and personal marriage statutes remains an insuperable structural impediment. This systematic exclusion carries dire constitutional ramifications, as it deprives cohabiting partners of vital material and allied spousal benefits such as joint adoption, surrogacy, inheritance, maintenance, exemption from spousal taxation and employment social security and such denial disproportionately impacts cohabiting partners and consolidates their subordinate status of citizenship.

A full legislative remedy is necessary to cure these constitutional injuries. The article has made specific proposals, including changing the Special Marriage Act, 1954 to include gender-inclusive vocabulary and standardisation of marriageable age, while discarding parallel civil union structures that would risk continuing separate-but-equal subordination. In the long run, additional study should direct academic focus to the impacts of non-recognition in varied socio-economic, rural and customary settings and the structural feasibility of alternate forms of chosen families and intra-gender marriage regimes. Through pursuing these questions, and enacting robust legislative change, research and policy can each play a role in bridging the chasm between preambular promises and the actual reality of sexual minorities in India.

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