
INTENTIONAL KINSHIP: SAME SEX MARRIAGE AND CHOSEN FAMILY DOCTRINE

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ABSTRACT

In India, same sex marriage has moved beyond arguments of legalization towards specific administration and empowerment strategies, after the refusal of the Supreme Court to grant full marriage equality. Even in the 21st century, same sex marriage is not legal, while consensual relationships between same sex couples have been legal since 2018. To this day, people do not have the right to marry by their choice, instead of granting them these rights, the Madras High Court came up with the Chosen family doctrine. This doctrine serves as a stepping stone for future advancement in related laws, as the law is never constant. However, as of now, it is used to protect the rights of same-sex couples, and it also reflects an emerging legal consensus that focuses on understanding family as a plural and inclusive term. Chosen family doctrine is a concept where people form kinship without any legal or biological bond, rather form a relationship based on mutual love, care, and shared experiences, often arising from rejection by traditional families. It also recognizes same-sex couples as a small family unit under Article 21 of the Indian Constitution (right to life and liberty) and its implications for protection from natal family harassment. Also, under this article, 'dignity' includes the right to form relationships with those they love. While on one hand, this doctrine gives some rights to same sex couples, and on the other, it denies them other necessary rights. This paper aims to rationalize why same sex marriage should be legalized and how the chosen family doctrine is acting as a stepping stone for the same.

Keywords: Supriyo Chakraborty case, Navtej Singh Johar case, Yogyakarta Principles, Article 21, Legal Limitations,

¹ Deepika Singh Vs. Central Administrative Tribunal and Ors, MANU/SC/1056/2022, Chief Justice Dhananjaya Yeshwant Chandrachud (para. 26), 2022,

Introduction

The traditional definition of the word ‘family’ has been anchored in the concept of heterosexual marriage, i.e., a family that consists of a mother, father, and children.¹ “Family is not just a biological or social unit; it is also a legal and juridical one”². Since our constitution is a living document and has been evolving since its adoption, it must evolve with the needs of the LGBTQI+ community. As a result, the court did allow a conceptual relation among the same-sex couples in *Navtej Singh Johar v Union of India* in 2018, but on the other hand, it did make same-sex marriage illegal in *Supriyo Chakraborty v Union of India* in 2023. In 2025, in the case of *M.A. v. Superintendent of Police & Others*, the Madras High Court stated that “adult individuals have the right to choose their partners and live with them under the protection of Article 21, and explicitly stated the term ‘chosen family.’³ By recognizing the right of LGBTQ+ couples to form families and affirming the legitimacy of chosen families, the Madras High Court has set a powerful precedent that advances India’s journey toward social acceptance free from prejudice.⁴ The court made it clear that the family should not just be literally interpreted, but rather should be understood with the golden mean rule, i.e., family is not just about marriage or blood, but also those by choice. This doctrine is deeply rooted in Article 21 of the Indian Constitution, and the judiciary has constantly expanded its scope from *Maneka Gandhi* (1978) to *M C Mehta v. Union of India*. The “right to choose” is a basic component of liberty under Article 21 (right to life and liberty). A person's autonomy is violated under Article 21 by the state if they are legally compelled to acknowledge only their biological relatives, particularly if those relationships are harmful. The chosen family is the pinnacle of self-determination since it enables an individual to identify who makes up their “safe harbor.”⁵

² The Right to (Queer) Family in Indian Constitutional Law, Oxford Human Rights Hub, Aditya Anand Singh, 1st sep 2025.

³ Reimagining the Family: Madras High Court and the Constitutional Recognition of Queer ‘Chosen Families, International Journal of Legal Studies and Social Science, Yadvendra Pratap Singh Bundela, 2021

⁴ Chosen Families: Legal and Social Avenue for LGBTQ+ Couples in India, Jus Corpus Law Journal <https://www.juscorpus.com/>, July, 2025.

⁵ The right to life and personal liberty under Article 21: A timeline, Supreme Court Observer, Laxmibai Chandaragi B. v The State Of Karnataka, SCO Team | 26th Jun 2025.

Chosen Family Doctrine

The doctrine of the 'Chosen Family' represents the evolution of the definition of the term family. It is anchored to Article 21 of the Indian Constitution, which guarantees the right to life, liberty, and dignity. Article 21 also safeguards individuals' "decisional autonomy," i.e., the power to make their own decisions, including who they want to live with or whom they regard as family, and the state cannot control it. The Supreme Court ruled in *K.S. Puttaswamy v. Union of India* (2017) that privacy encompasses the "sanctity of family life." Still, importantly, it defined family in terms of personal preference rather than inherited ancestry.⁶

Judicial Expansion of Article 21

The Supreme Court of India, in 2018, in the *Hadiya* case and *Shakti Vahini v. Union of India*, expanded the scope of 21 to include the individual's right to choose their partner at their own discretion.⁷ In *Shafin Jahan v. Asokan K.M.* (2018), also known as the *Hadiya* case, the Supreme Court overturned a Kerala High Court decision that annulled the marriage of Hadiya, an adult woman, claiming she was "brainwashed" into converting to Islam and marrying. The High Court had essentially treated Hadiya as property of her father, granting him protective custody over her despite her being a legal adult. Justice D.Y. Chandrachud, in his concurring opinion, famously asserted that the "right to marry a person of one's choice is integral to Article 21 of the Constitution" and that neither the state nor one's parents can infringe upon the decisional autonomy of an adult.⁸ This judgment links to the chosen family doctrine as its judgment observes that an adult individual has their own autonomy to choose their marriage partner. The Yogyakarta Principles (2006) map out exactly how existing human rights apply to sexual orientation.

⁶ Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors. (15.12.2017 - SC): MANU/SC/1604/

⁷ Navtej Singh Johar and Ors. vs. Union of India (UOI) and Ors. (06.09.2018 - SC): MANU/SC/0947/2018

⁸ Shafin Jahan vs. Asokan K.M. and Ors. (09.04.2018 - SC): MANU/SC/0340/2018

The Yogyakarta Principles

The Yogyakarta Principles are a set of international legal principles developed by a group of legal experts, including Judges, academics, and former UN High Commissioners, who met in Yogyakarta, Indonesia. They were developed to fill a particular legal void; although international human rights treaties are universal, they were hardly ever used to shield LGBTQ+ people from discrimination and targeted violence. These are soft laws and not treaties,⁹ which are used as an authoritative tool, as the Indian Supreme Court has cited this principle to understand international laws in relation to domestic laws. Principle 24 of the Yogyakarta Principles states that “Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination based on the sexual orientation or gender identity of any of its members.”¹⁰ It basically means that family exists in diverse forms and cannot be subjected to discrimination based on their sexual orientation; it also argues that ‘chosen family’ is not only a social arrangement but a legitimate legal unit. This was the cornerstone in the case of *Supriyo Chakraborty v Union of India*, 2023. The dissenting opinion of this judgment by the Chief Justice Chandrachud and Justice Kaul leans towards the said principle 24. The dissenting opinion stated that the right to enter into a civil union is a fundamental right under articles 14, 15, 19, and 21 of the Indian Constitution, and the state cannot remain passive while the queer couple is denied the right to form a civil union. The crucial arguments of the dissenting opinions were that the right to choose a life partner and form a family is a core component of personal liberty. They also argued that merely protecting the queer couple is not sufficient, but rather, to satisfy the demands of equality under Articles 14 and 15, the State must actively "democratize the private sphere" and grant legal status to non-heterosexual relationships.¹¹

⁹ Yogyakarta Principles, The International Commission of Jurists ICJ, 2007, available online at; Yogyakarta Principles-publication-2007-eng

¹⁰ The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2007), University of Minnesota Human Rights Library, 2023, Principle 24.

¹¹ *Supriyo v. Union of India*, 2023 INSC 920

Chosen Families as an Emerging Constitutional Principle

The Chosen Family doctrine is already becoming a stepping stone for future legal advancements in India. In *Deepika Singh v. Central Administrative Tribunal* (2022), Justice D Y Chandrachud stated that many families do not conform to the traditional model of a father, mother, and children. The ruling established that non-traditional families are equally deserving of rights, asserting that the constitutional guarantee of 'dignity' under Article 21 of the Indian Constitution inherently includes the liberty to form relationships with those whom one loves.¹² Historically, legal benefits like Insurance, Social Security, and Inheritance were only available after marriage, forming a traditional family. This doctrine argues that those basic rights should be tied to interdependence, not only for heterosexual marriage. This opens space for what might become an Indian "Civil Union" structure or even rules under "Domestic Partnership," which provides legal protections for every couple living together, regardless of their sexual orientation. This would also align with the Yogyakarta Principles 24. The Chosen family doctrine also advocates for treating intentionally formed bonds like real families during urgent moments, as the current legal status only recognizes biological relatives as close family during an emergency. Changes in health laws would let people pick who cares for them, skipping family members who oppose them. Instead of relying on strangers, someone close could make decisions during emergencies. Laws like these are shifting slowly across regions. A different setup could protect personal choices more effectively. As it is stated in the case of *Deepika Singh v. CAT* (2022), courts must recognize nontraditional households with fairness, recognizing how families actually live when care decisions are made.¹³ The Indian Succession Act and other personal laws still distribute property based on blood relations. The chosen family idea challenges this. It pushes for a Universal Civil Code or changes that recognize "Functional Heirship." That means the law would accept people who actually live as a family, not just those related by blood. The Yogyakarta Principles, especially Principle 24, mention that states should treat all family forms equally and give them equal rights, including inheritance rights.¹⁴ This doctrine acts as a catalyst in Indian Law as it aims and tries to move it from the rigid biological determinism toward a Functionalist Approach.

¹² *Deepika Singh vs. Central Administrative Tribunal and Ors.* (16.08.2022 - SC): MANU/SC/1056/2022

¹³ *Ibid*

¹⁴ *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007), University of Minnesota Human Rights Library, 2023, Principle 24.

Current Legal Limitations

1. Joint Adoption: The CARA Bar and Its Implications

CARA- The Central Adoption Resource Authority, it is the body governing the adoption rights in India. The current adoption laws in India are structured in favour of heterosexual couples, as only they can legally adopt through CARA. Whereas same sex couples are not recognized as potential adoptive parents.¹⁵ On the other hand, an individual, whether a part of the LGBTQ community or not, can adopt a child, but an unmarried couple cannot legally adopt a child. This creates an asymmetry as a same-sex individual can adopt as a single parent, but once they are in a committed relationship, the partner has no legal parental standing over the child whatsoever. The second partner is a legal stranger to the child.¹⁶ In *Supriyo v. Union of India* (2023), the Supreme Court declined to extend adoption rights and marriage rights to same-sex couples, while same sex relations are legal in India, holding that this was a matter for the legislature, i.e the Supreme Court did acknowledge the rights and dignity of LGBTQIA+ individuals, and it left the question of marriage equality to the legislature.¹⁷

2. Automatic Inheritance: The Gap in Succession Law

The Indian succession laws are all predicated on legal marriages or blood relatives, whether it be the Hindu Succession Act of 1956 or the Indian Succession Act of 1925. As a result, same-sex couples cannot inherit property except through private wills.¹⁸

¹⁵ **Child adoption process in India**, Rest the Case, (11.01.2023), available online at; <https://restthecase.com/knowledge-bank/child-adoption-process-in-india>

¹⁶ India; Marriage Equality, Now!, All Out, 2022, available online at; <https://campaigns.allout.org/india-marriage-equality>

¹⁷ Registration of Same Sex marriage in India: Legal status and emerging trends, Kamala and co Advocates, (18.11.2025), available online at; <https://kamalandcoadvocates.com/guide/same-sex-marriage-in-india/>

¹⁸ Same-sex love and marriage: understanding the Special Marriage Act, 1954, *Frontiers in Sociology*, Theodora Gomes TC, Kanungo S and Sengupta S (2026). available online at; <https://www.frontiersin.org/journals/sociology/articles/10.3389/fsoc.2025.1622997/full>

Problem of Legal Strangers

For succession, without marriage, a surviving same-sex partner is treated as a legal stranger under intestacy law (i.e., when someone dies without a will). Assets automatically pass to blood relatives, who are either parents, siblings, or children, entirely bypassing the partner, regardless of how many decades the couple lived together. If a couple is not registered, the surviving partner may face difficulty claiming property unless they have formal documents and proof of relationship, and even then, the claim may be challenged. This creates the problem of “Legal strangers”.¹⁹

Pension and Death Benefit Gap

The Inheritance deprivation extends beyond property rights. It also includes Pension nominations, gratuity payments, provident fund death benefits, and life insurance proceeds under group employer schemes, all of which require the nominee to be a legally recognised family member or "dependent." The lack of legal recognition affects inheritance, healthcare decisions, insurance, pensions, adoption, housing, and financial security. During crises, partners can effectively become strangers in the eyes of the law.²⁰

3. Employer and State Benefits Gaps

Since Same Sex couples are deprived of marriage rights, they are often denied spousal benefits in employment, healthcare, and social security schemes, creating disparities in legal and economic protections. For instance, Spousal medical coverage under the Employees' State Insurance (ESIC) is available only to legally recognised spouses.²¹

¹⁹ Registration of Same Sex marriage in India: Legal status and emerging trends, Kamala and co Advocates, (18.11.2025), available online at; <https://kamalandcoadvocates.com/guide/same-sex-marriage-in-india/>

²⁰ Exploring the legal, constitutional, and social reasons behind the delay in recognising same-sex marriage in India, The Free Press Journal, Satya Tirtharaj Ghosal, (13.06.2026), available online at; <https://www.freepressjournal.in/lifestyle/charcha-time-should-india-legalise-same-sex-marriage>

²¹ What Are the New Legal Challenges to Same-Sex Marriages in India Post-Decriminalization?, Law4u (Oct. 18, 2024), available online at; <https://law4u.in/top-answer/1235/what-are-the-new-legal-challenges-to-same-sex-marriages-in-india-post-decriminalization>.

Conclusion

“Marriage is a social institution. Marital status is not conferred by the state. The idea of marriage is not a fundamental right”—Justice Ravindra Bhat (while passing the *Supriyo Chakraborty v. Union of India* judgment on the petitions filed for legalizing same-sex marriages in India on 17th October 2023). This change rests on Article 21, giving each person the power to shape their closest relationships themselves. Looking back, how India treats new life has changed deeply. What once centred on control now values connection. From strict rules based on blood ties, slowly letting what counts as family depend on real-life bonds. Even though the majority in the *Supriyo* case doubted giving complete marriage rights, the steady buildup from *Hadiya* and *Navtej Singh Johar* to the "atypical family" model in *Deepika Singh* now leaves little room for doubt. With global benchmarks such as the Yogyakarta Principles folded into national debates, judges are starting to see that being alive matters little if laws force someone into a family setting where they cannot truly be who they are. A new rule needs to be made, one that closes the rights gap so every kind of family gets equal treatment under the law. In the end, what matters most is the place where love lives deep, where it should stay safe by law, not just by chance. Belonging by choice, built through shared commitment, carries weight only if rules stop treating it like an accident of biology.