
A PRACTICAL ANALYSIS OF LGBTQIA+ RIGHTS IN INDIA

Sudipa Bhattacharjee, B.A. LL.B. (Hons.), Assam University, Silchar

ABSTRACT

The question of legalising same-sex marriage in India presents both a constitutional dilemma and a societal test. After the Supreme Court's landmark judgment in *Navtej Singh Johar v. Union of India* (2018)¹, which decriminalised homosexuality by reading down Section 377 of the IPC, public anticipation grew around legal recognition of same-sex unions. However, the 2023 decision in *Supriyo v. Union of India*² denied such recognition, holding that it lies within the legislative domain.

This paper examines the paradox between judicial progressivism and legislative inaction, questioning whether the Court was right in deferring the issue to Parliament despite rising public expectations. It critically assesses the principles of institutional restraint, social readiness, and cultural resistance, arguing that while courts can uphold rights, social reform often demands broader democratic consensus.

Further, it analyses whether Parliament's silence stems from political conservatism, structural complexity, or a cautious approach to systemic legal reform involving adoption, inheritance, and family law. Through doctrinal research, case law, and comparative analysis, this paper presents a grounded, realistic assessment of the legal, institutional, and societal pathways to marriage equality in India.

Keywords: Same-Sex Marriage, Judiciary, Parliament, LGBTQIA+ Rights, Legal Reforms, Conservatism.

¹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

² *Supriyo v. Union of India*, (2023) 9 SCC 655.

INTRODUCTION

India's journey toward recognizing the rights of LGBTQIA+ individuals has been long and complex, shaped by a history of setbacks as well as significant legal advancements. Section 377 of the Indian Penal Code³, inherited from colonial-era legislation, criminalized consensual same-sex relations by categorizing them as "carnal intercourse against the order of nature." Rooted in Victorian morality, this provision acted as a tool of legal discrimination for more than 150 years.

The Delhi High Court's decision in *Naz Foundation v. NCT of Delhi*⁴ (2009) marked the first significant challenge to Section 377, holding it unconstitutional to the extent it criminalized consensual acts between adults in private. However, the Supreme Court's reversal in *Suresh Kumar Koushal v. Naz Foundation*⁵ (2013) reinstated the provision, reducing the LGBTQIA+ community to a "minuscule minority" undeserving of constitutional protection. This judgment triggered national and international condemnation and intensified advocacy for queer rights in India.

In *Navtej Singh Johar v. Union of India* (2018), a Constitution Bench of the Supreme Court unanimously read down Section 377, decriminalizing consensual same-sex conduct and affirming the right to dignity, autonomy, and equality. The judgment relied on the doctrine of constitutional morality, emphasizing that constitutional guarantees must not be subordinated to prevailing societal norms. This ruling was widely perceived as a judicial affirmation of LGBTQIA+ existence and identity.

Post-*Navtej*, there emerged a legitimate expectation of further legal recognition, particularly in the realm of marriage and family rights. However, in *Supriyo v. Union of India* (2023), the Supreme Court refused to extend marriage rights to same-sex couples, holding that such matters fall within the exclusive legislative domain. While the Court acknowledged the discrimination faced by queer individuals, it invoked judicial restraint, citing separation of powers and democratic legitimacy.

³ Section 377, Indian Penal Code, 1860

⁴ *Naz Foundation v. Govt. of NCT of Delhi*, 160 DLT 277 (Del HC 2009).

⁵ *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

This gap between decriminalization and full legal recognition highlights the ongoing conflict between constitutional ideals and legislative inaction. India's marriage laws, firmly rooted in heteronormativity, along with political conservatism and societal pushback, have resulted in a legal void where queer relationships remain unacknowledged and unprotected. The debate around same-sex marriage, therefore, serves as a critical measure of how effectively constitutional morality can withstand the pressures of majority opinion and institutional hesitation.

Significance of the study

This study is significant because it sheds light on the disconnect between legal recognition and social acceptance of LGBTQIA+ rights in India. The judiciary has made progressive interventions by upholding constitutional principles like dignity, equality, and non-discrimination. However, the absence of legislative action on same-sex marriage reflects not just political hesitation but also broader societal resistance. The issue goes beyond legal rights, it intersects with cultural norms, traditional family structures, and public morality. By examining this tension, the study aims to provide a realistic understanding of the roadblocks to marriage equality and what meaningful reform would require.

Objective

- To critically analyze the evolution of LGBTQIA+ rights in India with emphasis on same-sex marriage.
- To assess the judiciary's role in upholding constitutional principles versus public perception.
- To evaluate the legal and societal hurdles that prevent the recognition of same-sex marriage.
- To identify whether the resistance is due to genuine practical complications or masked conservatism.

Research Questions:

- How has Indian constitutional law evolved in relation to LGBTQIA+ rights?

- What are the legal and societal challenges in recognizing same-sex marriage in India?
- Is the resistance to same-sex marriage purely cultural, or are there valid legislative complexities

Hypothesis:

While the judiciary in India has upheld LGBTQIA+ rights, Parliament remains reluctant to legalize same-sex marriage due to deeper structural and legal challenges.

This hesitation is not merely societal conservatism but reflects the complexities of aligning personal laws and public sentiment.

The public remains divided, revealing a society that accepts in principle but hesitates in practice.

LITERATURE REVIEW

The discourse around LGBTQIA+ rights in India has grown significantly post-*Navtej Singh Johar*, yet the literature continues to wrestle with the tension between legal progress and social resistance. While the constitutional recognition of queer identities has been hailed as transformative, the path toward same-sex marriage remains fraught with legal, cultural, and political complexities. This literature review draws on three foundational books and two academic articles to understand this evolving debate.

1. Arvind Narrain – “*Because I Have a Voice: Queer Politics in India*”⁶

This seminal work, co-edited by Arvind Narrain and Gautam Bhan, provides early documentation of queer political thought in India. It captures the foundational struggles of the LGBTQIA+ movement and contextualizes the demands for legal recognition within broader issues of visibility, identity, and rights. Narrain critically examines how heteronormative legal structures exclude queer relationships, but the focus remains largely pre-*Navtej*, emphasizing decriminalization over marriage rights.

2. Gautam Bhan – “*In the Public’s Interest: Evictions, Citizenship, and Inequality in*

⁶ Arvind Narrain & Gautam Bhan (eds.), *Because I Have a Voice: Queer Politics in India* (Yoda Press 2005).

Contemporary”⁷

Though not exclusively about queer rights, Bhan's broader work on urban citizenship and structural inequality informs his later writing on LGBTQIA+ inclusion. His perspective that rights must be embedded in lived experiences is central to the same-sex marriage discourse. Bhan argues in later essays that marriage equality must go beyond symbolic inclusion to address access to housing, healthcare, and economic stability—areas often overlooked in legalistic debates.

3. Article: Danish Sheikh, “Queer Constitutionalism: The Emerging Doctrine in Indian LGBT Rights”⁸

This article analyzes *Navtej Singh Johar* and *Puttaswamy* as foundational cases in India’s emerging queer constitutionalism. He argues that the Court’s reliance on dignity, autonomy, and non-discrimination introduces a doctrinal shift with long-term implications for marriage equality. However, Sheikh acknowledges that without legislative action, these constitutional values remain largely aspirational.

4. Article: Shikha Silliman Bhattacharjee, “The Right to Intimacy: Navigating Post-Navtej Equality”⁹

Here, the article explores how the right to intimacy recognized in *Navtej* fails to translate into practical guarantees like marriage, inheritance, or adoption rights. She emphasizes the intersection of law and culture, noting that legislative silence reflects political caution rooted in societal discomfort. The article makes a compelling case for policy reform but also highlights the difficulty of navigating deeply entrenched gender and caste hierarchies within Indian family law.

Research Gap:

While the reviewed literature lays a strong foundation for understanding the legal and cultural

⁷ Gautam Bhan, *In the Public’s Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (Orient BlackSwan 2016).

⁸ Danish Sheikh, *Queer Constitutionalism: The Emerging Doctrine in Indian LGBT Rights*, 11 NUJS L. Rev. 445 (2018)

⁹ Shikha Silliman Bhattacharjee, *The Right to Intimacy: Navigating Post-Navtej Equality*, 9(2) Indian J. Const. L. 58 (2020).

roots of queer rights in India, a critical gap remains in examining the structural complications involved in legalizing same-sex marriage. Most works either focus on normative arguments or historical legitimacy, while underexploring the procedural, legislative, and public-opinion barriers. This study aims to fill that space by combining doctrinal legal analysis with empirical observations on the lived realities and perceptions surrounding queer marriage in India.

METHODOLOGY

This study adopts a doctrinal research approach, relying on the analysis of constitutional provisions, statutory frameworks such as the Special Marriage Act, and landmark judgments, including *Navtej Singh Johar v. Union of India*, its precedents, and the central focus on *Supriyo Chakraborty v. Union of India*. It further examines secondary sources such as scholarly books, journal articles, and official documents to evaluate the legal framework and societal response surrounding same-sex marriage in India.

LEGAL FRAMEWORK

The rights of LGBTQIA+ individuals in India are rooted in the core values enshrined in the Indian Constitution, particularly through Articles 14, 15, 19, and 21. These provisions guarantee equality, prohibit discrimination, ensure freedom of expression, and protect personal liberty, forming the foundation of India's commitment to constitutional morality and individual dignity.

Article 14 ensures equality before the law and equal protection of laws to all individuals. The Supreme Court in *Navtej Singh Johar v. Union of India* held that Section 377 of the IPC violated this article by discriminating against individuals based on their sexual orientation, an impermissible classification not based on any rational or intelligible differentia.

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The Court broadened the scope of "sex" to include "sexual orientation", recognizing that discrimination against the LGBTQIA+ community falls within the ambit of Article 15.

Article 19(1)(a) guarantees freedom of speech and expression. The Court noted that the ability to express one's identity and love, including through sexual conduct between consenting adults, is essential to self-expression and autonomy. Section 377 was found to have a chilling effect on this right.

Article 21, guaranteeing the right to life and personal liberty, was held to encompass the rights to privacy, dignity, and autonomy — all of which were violated by the continued criminalization of consensual same-sex relationships.

The *Navtej Singh Johar* judgment, thus, marked a significant turning point by applying the doctrine of transformative constitutionalism, asserting that the Constitution is a dynamic document meant to promote inclusivity, tolerance, and human dignity. The Court emphasized that constitutional morality must prevail over social morality, especially when the latter reinforces majoritarian prejudices.

In contrast, the 2023 *Supriyo v. Union of India* judgment, which dealt with the demand for legal recognition of same-sex marriages, reflected a more cautious judicial stance. While acknowledging the dignity and rights of queer individuals, the Court refrained from granting legal recognition to same-sex marriages, citing institutional limitations and respect for parliamentary competence. The bench held that the matter involved complex socio-legal considerations best left to the legislature. Nevertheless, the Court urged the government to take affirmative measures to protect same-sex couples from discrimination and to provide some form of civil union framework.

Together, these landmark decisions illustrate a gradual evolution of LGBTQIA+ rights jurisprudence in India, from decriminalization and dignity to ongoing debates about legal recognition and equality, balancing judicial innovation with constitutional boundaries.

THE PRACTICAL CHALLENGES OF RECOGNISING SAME- SEX MARRIAGE IN INDIAN LAW

It is crucial to understand that the hesitation in legalizing same-sex marriage in India cannot be reduced to mere societal conservatism or moral backwardness. Such a view oversimplifies a deeply layered issue. The reality is that Indian legal and social structures are not yet equipped to seamlessly integrate same-sex marriage without significant disruption to existing frameworks.

1. The Complexity of Personal Laws

India does not have a uniform civil code governing marriage and related family matters. Instead, different religious communities follow their respective personal laws. Hindus follow

Hindu personal law (codified through Acts like the Hindu Marriage Act, 1955), Muslims largely follow uncoded personal law supplemented by statutory provisions, while Christians and Parsis have their own codified family laws. Most of these personal law statutes define marriage as a union strictly between a man and a woman.

Amending personal laws to include same-sex couples is not a straightforward process. For instance, the **Hindu Marriage Act** uses gender-specific terminology like “bride” and “bridegroom,” and concepts like *kanyadaan* (the giving away of the daughter) are deeply rooted in traditional gender roles. Changing this structure would require not only legal redrafting but also challenge long-standing religious and cultural beliefs that are protected under **Article 25** of the Constitution (freedom of religion).

Even the **Special Marriage Act, 1954**, which is meant to be a secular framework for interfaith and inter-caste marriages, assumes a heterosexual structure. It uses gendered language and refers repeatedly to “husband” and “wife,” and thus cannot automatically accommodate same-sex unions without substantial amendments. But modifying this Act alone is not enough. Marriage is a legal institution that extends far beyond the act of marriage itself.

2. Other Socio-Legal Issues

Legalizing same-sex marriage cannot happen in isolation. Indian society is still struggling with issues like caste-based discrimination and interfaith marriages. In fact, the Special Marriage Act itself exists because inter-caste or inter-religious marriages face social opposition. If heterosexual couples from different castes or religions face legal and societal hurdles, expecting smooth acceptance of same-sex marriage is unrealistic in the current climate.

Moreover, once same-sex marriage is legalized, corresponding rights such as adoption, succession, and spousal benefits would need realignment across multiple statutes, including:

- Hindu Succession Act
- Hindu Adoption and Maintenance Act
- Guardians and Wards Act
- Juvenile Justice Act

- Income Tax Act
- Citizenship and Visa Regulations
- Domestic Violence and Protection Laws

Without comprehensive and coordinated legislative reforms, recognizing same-sex marriage could create legal inconsistencies and ambiguities in rights enforcement.

3. It's Not Just About Society Being "Conservative"

Labeling the opposition to same-sex marriage as "conservative" ignores the structural logic of Indian society. The institution of marriage in India is viewed not just as a union between two individuals but as an alliance between families with direct implications for lineage, inheritance, and ritual responsibilities. The entire social order especially in rural and semi-urban regions is still based on heteronormative family structures.

This isn't about denying rights, it's about the readiness of the system to process such a transformation. In the absence of a supportive framework, simply legalizing same-sex marriage might create more chaos than clarity.

4. The Social Fabric and Role of Marriage in Indian Society

Another challenge lies in how marriage is viewed in Indian society. In many Western societies, marriage is considered a private contract between two consenting individuals. But in India, it is predominantly a family-driven, socially sanctioned institution that connects not just two individuals but two families, two lineages, and in many cases, two castes or communities.

This context makes the introduction of same-sex marriage uniquely difficult. Even today, inter-caste and interfaith heterosexual marriages face societal backlash in the form of honour killings and threats. Couples often turn to the courts or protection homes for safety, especially in conservative states. Against this backdrop, expecting society to accept same-sex marriages easily would be unrealistic.

Marriage in India also performs specific social functions. It ensures continuation of the family line, especially through patrilineal succession, and defines inheritance, dowry, religious rituals,

and social responsibilities. These are all based on gender binaries. Allowing same-sex marriage would fundamentally challenge this structure, not just legally but socially and culturally.

A GROUND REALITY CHECK: SURVEY

An informal survey conducted among peers and acquaintances (approx. 30 respondents across various age groups and backgrounds) revealed a noticeable divide in public opinion. The responses revealed that most people are divided on the question of legalizing same-sex marriage. While a considerable number of respondents, particularly from urban and educated backgrounds, expressed support for the idea of marriage equality, a significant portion either opposed it or were uncertain due to cultural, familial, or religious concerns.

This divide was also evident in their views on who should decide the matter, with some trusting the Supreme Court, others insisting it should be left to Parliament, and a few believing that societal norms should dictate such issues. The overall sentiment reflected that while awareness of LGBTQIA+ rights is gradually increasing, there remains no clear public consensus, highlighting that the matter is far more complex than a straightforward issue of equality.

RECOMMENDATIONS:

- **Uniform Civil Code:**

In light of the continued legislative inaction on the issue of same-sex marriage in India, a realistic and legally viable recommendation would be the revival and reformulation of the Draft Uniform Civil Code (UCC), 2017. The 2017 draft represented a progressive departure from traditional matrimonial frameworks by defining marriage in a broad, inclusive manner. Specifically, it conceptualized marriage as a union between “any two persons,” thereby implicitly encompassing both heterosexual and homosexual relationships. This inclusive language not only acknowledged same-sex partnerships but also extended legal recognition to non-marital cohabitation, including live-in relationships, irrespective of the gender identities involved.

By doing so, the draft UCC provided a potential legislative avenue for recognizing queer relationships without directly interfering with the religiously governed personal laws of various communities. This approach is particularly strategic in a pluralistic society like India, where personal laws are constitutionally protected and deeply

entrenched in socio-religious identity. The draft thus offered a secular, rights-based framework grounded in constitutional morality, rather than religious orthodoxy, to address the legal invisibility of LGBTQIA+ relationships. Reviving and refining this draft could pave the way for a uniform, inclusive civil code that upholds the principles of equality, dignity, and non-discrimination enshrined under Articles 14, 15, and 21 of the Indian Constitution, while avoiding the political and social resistance that often accompanies direct reforms to personal law systems.

- **Special Marriage Act, 1954:**

Given that the Special Marriage Act, 1954, continues to be the only secular legislation in India that allows individuals to marry outside the boundaries of religion and caste, it holds unique potential as a site for progressive reform. However, its current language and framework remain steeped in heteronormativity, reflecting outdated notions of marriage as a union solely between a "husband" and a "wife." To make this law truly inclusive and reflective of modern constitutional values, a comprehensive revision is needed, one that replaces gender-specific terms with gender-neutral language such as "spouse" or "partner."

Such a reform would not only accommodate same-sex couples but also acknowledge the diverse ways in which people today form relationships, regardless of gender identity or sexual orientation. It would send a powerful message that the Indian legal system recognizes and respects love in all its forms, and that access to legal rights such as inheritance, maintenance, and next-of-kin privileges, should not be contingent on traditional gender roles.

By making the Special Marriage Act inclusive, the state can take a meaningful step toward fulfilling the constitutional promises of equality, dignity, and personal liberty enshrined in Articles 14, 15, and 21. It is not merely a legal matter; it is about validating the lived realities of countless LGBTQIA+ individuals who seek nothing more than the same legal recognition and respect afforded to all citizens.

- **Civil Unions:**

Additionally, introducing a system of **civil unions** or **registered partnerships**, akin to

those in the United Kingdom or South Africa, would allow LGBTQIA+ individuals to access crucial rights related to inheritance, adoption, maintenance, and medical decision-making. Such arrangements would provide same-sex couples access to essential rights and entitlements, including inheritance, adoption, maintenance, and medical decision-making, which are presently tethered to the institution of heterosexual marriage. Civil unions, by their very design, are a legal recognition of intimate partnerships that do not conform to traditional matrimonial norms, thereby offering an inclusive and secular alternative.

Although civil unions may not equate to full marriage equality in terms of societal symbolism and emotional recognition, they represent a meaningful step toward substantive legal protection. In a socio-political context marked by resistance to altering the traditional definition of marriage, civil unions could serve either as a transitional model towards future marital equality or as a permanent, parallel structure existing alongside gender-neutral marriage laws. Their implementation would signal the State's commitment to safeguarding individual autonomy and ensuring that all citizens, regardless of their sexual orientation, are treated with equal respect and dignity. From a constitutional standpoint, this move would further the fundamental rights guaranteed under Articles 14 (equality before the law), 15 (prohibition of discrimination), and 21 (protection of life and personal liberty) of the Indian Constitution.

FINDINGS:

The Supreme Court's contrasting approaches in *Navtej Singh Johar* (2018) and *Supriyo Chakraborty* (2023) reflect a balance between protecting individual rights and respecting the constitutional separation of powers. While *Navtej* affirmed LGBTQIA+ rights by decriminalizing Section 377, *Supriyo* deferred the question of same-sex marriage to Parliament, acknowledging that law-making lies within the legislative domain.

Societal attitudes remain divided. Although awareness of LGBTQIA+ rights is increasing especially among younger, urban populations, there is significant hesitation toward same-sex marriage, particularly in rural and conservative segments. The judiciary's reliance on constitutional morality faces resistance from prevailing social norms, explaining the Court's cautious stance.

Rather than a setback, *Supriyo* signals a democratic pause, affirming that while the path to legal recognition is complex, the ongoing discourse is essential progress.

CONCLUSION

India's journey toward LGBTQIA+ equality has undoubtedly come a long way, especially since the *Navtej Singh Johar* judgment, which boldly affirmed the right to love and live with dignity. But the road from decriminalisation to full legal recognition, particularly of same-sex marriage, is far more complex than it may seem on the surface.

The Supreme Court's verdict in *Supriyo Chakraborty* was not a denial of queer rights, but a reflection of constitutional boundaries. The judiciary upheld individual freedoms, yet acknowledged that marriage, as a legal institution, lies within the domain of Parliament. This wasn't a failure of justice but a conscious decision to respect democratic processes and the principle of separation of powers.

At the same time, the hesitation to legalise same-sex marriage cannot be written off as mere conservatism. The challenges are real: from rigid personal laws deeply rooted in heteronormativity to a society that still grapples with understanding and accepting queer relationships, especially outside urban spaces. Survey findings show that while awareness is growing, acceptance, especially across rural and older populations remains fragmented.

This doesn't mean the fight is over. It means that change must now come from sustained dialogue, inclusive law-making, and patient reform. Perhaps the first steps are to legally recognise civil unions, to reform the Special Marriage Act, or to reimagine how marriage is defined in our legal system. True progress will happen not only when the law changes, but when society walks alongside it.

The conversation around same-sex marriage may feel slow and frustrating, but it is ongoing and that, in itself, is powerful. Real change is never instant. But with each legal debate, each courtroom verdict, and each public conversation, we move a little closer to a future where queer love is not just decriminalised, but fully dignified, accepted, and equal in every sense.

REFERENCES

1. *Navtej Singh Johar v. Union of India*, Columbia University Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/navtej-singh-johar-v-union-india/> (last visited July 6, 2025).
2. Priya Totla, *A Critical Analysis of LGBTQ+ Rights and the Judicial Approach in India*, D.Y. Patil L. Rev., <https://law.dypvp.edu.in/plr/Publication/all-publication/Priya-Totla-Research-Paper.pdf> (last visited July 6, 2025).
3. *LGBTQ Rights and Legislation in India: The Status Quo*, Int'l J. Integrated Rsch. L., <https://ijirl.com/wp-content/uploads/2023/03/LGBTQ-RIGHTS-AND-LEGISLATION-IN-INDIA-THE-STATUS-QUO.pdf> (last visited July 6, 2025).
4. Nyaaya, *Can Same-Sex Marriages Be Legalised in India?*, <https://nyaaya.org/guest-blog/can-same-sex-marriages-be-legalised-in-india/> (last visited July 6, 2025).
5. *Because I Have a Voice: Queer Politics in India* (Arvind Narrain & Gautam Bhan eds., Yoda Press 2005).
6. Gautam Bhan, *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (Orient BlackSwan 2016).
7. Ruth Vanita, *Love's Rite: Same-Sex Marriage in India and the West* (Penguin India 2005), <https://archive.org/details/lovesritesamesex0000vani>.
8. Danish Sheikh, *Queer Constitutionalism: The Emerging Doctrine in Indian LGBT Rights*, 11 NUJS L. Rev. 445 (2018).
9. Shikha Silliman Bhattacharjee, *The Right to Intimacy: Navigating Post-Navtej Equality*, Indian J. Const. L. 58 (2020).