
LOVE, LAW AND RECOGNITION: REWRITING THE 'ORDER OF NATURE'

Aarshitha Unnikrishnan, The National University of Advanced Legal Studies (NUALS),
Kochi

Each culture around the world has its perception and perspective on marriage. For some, it is purely a contract; for others, it's a sacred bond between two loving souls. In Hindu tradition, marriage is often viewed as a sacramental union, formed not just between two people in this life, but between two families, binding the couple for the next seven lifetimes.

For an average Western or European couple, the process is refreshingly simple: the man loves the woman, she loves him back, and they decide to tie the knot. However, for people in India, who have mastered the art of overcomplicating simple things, a love marriage is anything but that straightforward. Falling in love is merely step one. After that, the guy's family needs to like the girl, the girl's family must like the guy, and as a cherry on top, the families must like each other. And *if* by some cosmic accident everyone's still talking to each other, only then does a wedding happen.

All this drama is reserved for the society that deems a 'normal' marriage, but what about the other couple who do not fit in this 'normalcy'?

Vikriti Evam Prakriti

The Sanskrit phrase 'Vikriti Evam Prakriti', found in Indic philosophical discourse, roughly translates to 'what seems unnatural is also natural'. Since ancient times, albeit often begrudgingly, Indian society has acknowledged the existence of the LGBTQ+ community. And surprisingly, that acknowledgement didn't always translate into hounding or ostracising them. While disapproval was common, Indian society, by and large, exhibited a degree of tolerance towards the queer community¹.

Ample evidence supports this cultural tolerance². The story of Shikhandi from the Mahabharata

¹ Aditi Yadav, 'A Brief History of LGBTQ+ in India' (The CBS Post, 8 June 2025) <https://newsletter.sscbs.du.ac.in/a-brief-history-of-lgbtq-in-india/> accessed 3 February 2026.

² Sucheta, 'Mapping the Progression of LGBTQ+ Rights in India – Important Laws and Judicial

is about a warrior-born woman who was raised as a man and played a crucial role in Bhishma's downfall during the Kurukshetra War against the Kauravas. The Kamasutra, for instance, refers to lesbian women who married each other and raised children together, calling them *Swarinis*.

During the Medieval period, both Hindu and Mughal rulers often patronised the transgender community; they were employed as singers and dancers in the women's quarters and were invited for weddings and childbirths to bless, usher in fertility and ward away malevolent spirits³.

Meanwhile, the Khajuraho temple of Madhya Pradesh is particularly well known for its overt erotic sculptures, many of which unapologetically depict same-sex intimacy and sexual fluidity⁴.

Though all this is said, do not be under the misconception that ancient India was a rights-respecting utopia. Tolerance existed, but it was conditional. Queer identities were visible but never equal. Acceptance was often for ritualistic or functional purposes only.

But somewhere between the Khajuraho Temple and colonisation, the Indian culture of nuanced tolerance was either lost or quietly erased, and slowly, the new 'ordinary order' became normal and acceptable.

With the arrival of the East India Company and colonial rule, homosexuality somehow found its way into the IPC under the grand and ominous title of Section 377.

From Sin to Crime, From Penance to the Gallows

The first British law targeting what was then termed 'buggery' was enacted in 1533 under the reign of Henry VIII, denouncing it as a 'detestable and abominable vice'. The Buggery Act of 1533 was not a mere act of bigotry; instead, it was a calculated instrument of state power thinly veiled as a measure of 'moral enforcement'. Henry VIII used this law strategically to attack

Pronouncements' (SCC Online, 11 June 2025) <https://www.scconline.com/blog/post/2025/06/11/mapping-the-progression-of-lgbtq-rights-in-india-important-laws-and-judicial-pronouncements/> accessed 3 February 2026.

³ Devdutt Pattanaik, 'The Hijra Legacy' (Devdutt.com, 31 July 2014) <https://devdutt.com/the-hijra-legacy/> accessed 3 February 2026.

⁴ 'Ancient India Didn't Recognize Homosexuality? Yes It Did, RSS' (The Quint, 11 September 2018) <https://page.ke/articles/ancient-india-didn-t-recognise-homosexuality-yes-it-did-rss> accessed 3 February 2026.

and undermine the Catholic Church, dissolve monasteries and seize their wealth.⁵

Before the ecclesiastical courts handled this, buggery or sodomy. It was regarded as a sin rather than a crime, so punishments were essentially spiritual: flogging, acts of humility, or excommunication, as the Church focused more on moral correction and the salvation of the soul than on physical execution. However, after the 1533 Act, buggery became a matter of the Crown, not the church. It became a criminal offence triable by the royal court, and punishment escalated to death by hanging, stripping the accused of the benefit of clergy that they once enjoyed under the ecclesiastical court.

By the early 19th century, Parliament recognised that British criminal law was overlapping, archaic, and chaotic. To modernise and reorganise them, the Offences Against the Person Act 1828 was introduced. The Act broadened the definition of unnatural sexual acts to ‘the abominable crime of buggery, committed with mankind or beast’, still punishable by death. Though the reform simplified prosecution for violent crimes, it continued to criminalise private acts between consenting adults.⁶

It took thirty-three more years of brutalities for the English lawmakers to finally abolish the death penalty for buggery, replacing it with life imprisonment with the Offences Against the Person Act 1861. Yet even this so-called “liberalisation” sang the same tune of archaic morality, insisting that non-procreative sexual intercourse was unnatural and punishable.

When the British formally took control of India’s criminal justice system, they brought this legacy with them. As the empire expanded across continents, it carried this new moral code proudly with it as a weapon. They weren’t too fond of the Indian society’s uncomfortable yet tolerant coexistence with gender and sexual diversity, as it was too ‘lenient’ for the colonial tastes. In response, the British undertook a reform project aimed at ‘uplifting’ the colonised and aligning them with the supposed standards of an English gentleman.

Section 377

The legal dilemmas faced by the British in the early nineteenth century turned India into a

⁵ Douglas Sanders, ‘377 and the Unnatural Afterlife of British Colonialism in Asia’ (27 November 2008) <https://www.sxpolitics.org/wp-content/uploads/2009/03/article-darchaicBritish,,ouglas-sanders.pdf> accessed 3 February 2026.

⁶ Chaitanya Kediya, ‘Tracing the History of Section 377 of IPC’ (Factly, 11 July 2018) <https://factly.in/tracing-the-history-of-ipc-section-377/> accessed 3 February 2026.

colonial laboratory for imperial codification. Both the Offences Against the Person Act, 1861, and the Indian Penal Code were shaped by this movement to reform and systematise British criminal law.

The moral uplift the British promised soon took legal form through the Indian Penal Code of 1860, drafted under the chairmanship of Thomas Babington Macaulay. The IPC was treated as a civilising instrument, a legal ‘blessing’ for India to ‘modernise’ its society according to Victorian moral standards. Section 377 was born from this vision. It declared ‘*carnal intercourse against the order of nature*’ with any person or animal punishable with imprisonment or fine,⁷ thus, imposing a colonial conception under the guise of ‘modernisation’. What had been tolerated as a natural sexual variation, albeit reluctantly, was now branded as a crime and cemented a sense of shame for this ‘deviance’.

When India gained independence in 1947, it proudly introduced itself to the world as one of the largest democracies, swearing by the principles of liberty, equality, and fraternity. The nation entered a new era, dismantling many archaic and discriminatory British laws. Yet, amidst all the legal reforms, Section 377 quietly survived, unnoticed and untouched. The irony was hard to miss: the country that fought tooth and nail for its freedom from foreign rule was still denying that freedom to many of its own. This forced countless individuals to live a life with dual identities, one for the world and the other for themselves.

The Change is in the Air

The First Spark

In May 1994, a team led by Dr K Aggarwal visited the adolescent ward of the Tihar Jail, Delhi, as part of a public health outreach to assess HIV/AIDS risks amid growing concerns over the epidemic. During the examination, over two-thirds of young inmates reportedly admitted to homosexual activity, raising serious concerns about the spread of HIV within prisons. Dr Aggarwal consequently recommended distributing condoms to the inmates to enable safer sexual practices, thus curbing the spread of the epidemic. This proposal, however, was denied by the then Inspector General of Prisons, Kiran Bedi, who characterised homosexuality as ‘abnormal’ and he further held that he would take all steps necessary to give the inmates a

⁷ Indian Penal Code 1860, s 377 https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&ordemo=434 accessed 5 October 2025

‘chance to be normal’, and asserted that he would step up surveillance to ‘ensure’ that the inmates did not engage in homosexual activities⁸.

In 1994, the need to question the Victorian moral code was first raised in an Indian Court. AIDS Bhedbhav Virodhi Andolan (ABVA) approached the Delhi High Court, challenging the constitutionality of Section 377 and contesting the authorities' ban on condoms⁹. However, this petition did not reach anywhere due to the petitioner-defunct, a procedural failure in litigation in which the petitioner failed to pursue the case¹⁰ actively. And the petition had lost its momentum by the time it was decided.

Morality to Right

When ABVA was fighting to sustain its petition, another player came into the picture: the Naz Foundation, an NGO that worked to prevent and care for HIV/AIDS. They started working closely with the gay community in the 90s, and after seeing multiple assaults, harassments and abuse like these. In one incident, a young man had to undergo electroshock therapy to ‘cure’ his homosexuality.

They filed a complaint with the National Human Rights Commission (NHRC). However, they did not consider the rights of homosexuals as ‘human rights’ and dismissed the complaint, saying homosexual acts amounted to a criminal offence under Section 377 IPC¹¹.

The NGO filed a Public Interest Litigation (PIL) with the Delhi High Court challenging the same in 2001. The Government of India (GOI) responded to it in 2003 by saying, *‘while the right to respect for private and family life is undisputed, interference by public authority in the interest of public safety and protection of health and morals is equally permissible – this is precisely what Section 377 does’*¹².

⁸ South Asia Citizens Web, ‘India: An Open Letter to Kiran Bedi’ <https://www.sacw.net/article10476.html> accessed 3 February 2026.

⁹ Chinki Sinha, *Love for all: A timeline of fight against Section 377* (India Today, 7 September 2018) <https://www.indiatoday.in/india/story/love-for-all-timeline-fight-against-section-377-ipc-1334359-2018-09-07> accessed 3 February 2026.

¹⁰ Mansi Katiyar, ‘The Struggle Against Section 377 and Its Impact’ (Manupatra) <https://articles.manupatra.com/article-details/The-Struggle-Against-Section-377-and-its-Impact> accessed 3 February 2026.

¹¹ Ibid.

¹² Abhiudaya Verma, ‘Legal Journey of Section 377 – A Relentless Battle of Expression and Recognition’ (LexQuest Foundation, 18 April 2020) <https://www.lexquest.in/legal-journey-of-section-377-a-relentless-battle-of-expression-and-recognition/> accessed 3 February 2026.

In September 2003, the Ministry of Law and Justice submitted to the Court that Section 377 should remain because it was a tool that the government could use to interfere in the private sphere in “*the interest of public safety and the protection of health and morals*”. They further contended that deleting Section 377 would “*open the flood gates to delinquent behaviour*”¹³.

The petition was ultimately dismissed by the HC in 2004 on the ground that Naz lacked locus standi. The two-judge bench comprising Chief Justice B. C Patel and Justice Badar Durrez Ahmed held that a ‘purely academic challenge to the constitutionality of a legislative provision could not be entertained’, meaning the Court wanted actual prosecutions under the law as evidence and that the petitioners' arguments were largely theoretical rather than grounded in reality. What the Court failed to acknowledge was that the absence of prosecution was itself attributed to the stigma associated with homosexuality, and people seldom came to the courts seeking relief¹⁴.

Naz filed a review petition in the same year with the Delhi HC, which was also dismissed under the same grounds. They were not ready to give up this easily despite all of this. They approached the SCI with a Special Leave Petition (SLP) to counter the Delhi HC’s dismissed petitions in February 2006. They raised the question of whether the HC could dismiss the petition for lack of cause of action.

The SCI upheld the SLP, saying that the petition raised an issue that has been debated worldwide and is therefore in the public interest, and that it does not involve an academic question. It thus reinstated the petition before the HC¹⁵, reigniting the spark which had died down ages ago.

July 2 2009, is a date the queer community can never forget. On this day, Hon’ble Mr Justices A. P Shah and Dr S. Muralidhar wrote a landmark judgement of *Naz Foundation v Govt. of NCT Delhi*¹⁶. After sixty-one years of independence, the Indian judiciary finally saw the plight of the LGBTQ community and recognised their rights. The Court read down section 377 on the ground that it violates Articles 21, 14 and 15 of the Indian Constitution and criminalised the private consensual acts between adults as the Constitution guarantees dignity, equality and

¹³ *History* (Voices Against 377).

¹⁴ *History* (Voices Against 377) <https://www.voicesagainst377.org/history/> accessed 3 February 2026.

¹⁵ Verma, ‘Legal Journey of Section 377’.

¹⁶ *Naz Foundation v Government of NCT of Delhi* MSeparateANU/DE/0SeparateSeparate869/2009 (Delhi High Court, 2 July 2009).

freedom from discrimination based on sexual orientation. However, any non-consensual sexual acts between adults and children will continue to be governed by Section 377¹⁷.

However, the Delhi HC's constitutional reasoning did not go unchallenged.

The 'Separate Class'

When the queer community let out a sigh of relief on July 2nd 2009, they did not imagine in their wildest nightmares how short-lived that relief would be. The Honourable SC, on the fateful day of December 11 2013, set aside years of struggle of a community that demanded nothing but the right to live with dignity, respect and privacy.

The Court reversed the Delhi High Court decision to read down Section 377 and recriminalise homosexuality in *Suresh Kumar Koushal v Naz Foundation*. And the reasons given by the Court were far from the lived realities of the minority.

It justified the application of Section 377 by saying people who engage in carnal intercourse against the order of nature belong to a separate class, and it targets a *type of act* and not a particular identity.

*Those who indulge in carnal intercourse in the ordinary course and those who indulge in carnal intercourse against the order of nature constitute different classes, and the people falling in the latter category cannot claim that Section 377 suffers from the vice of arbitrariness and irrational classification*¹⁸.

The Court further held that the HC overlooked the fact that only a 'miniscule fraction' of the country's population constituted the LGBT and that in the past 150 years only less than 200 cases were reported under the Section as per official records and that cannot be used as a sound basis for declaring the provision ultra vires of Articles 14, 15 and 21 of the Constitution¹⁹.

If that was not enough, the Court went a step further and said

'In its anxiety to protect the so-called rights of LGBT persons and to declare that

¹⁷ Arvind Narrain and Marcus Eldridge (eds), *The Right That Dares to Speak Its Name: Naz Foundation v Union of India and Others* (Alternative Law Forum, Bangalore, 2009) https://feministlawarchives.pldindia.org/wp-content/uploads/The_right-that_Dares-to_Speak_its_Name.pdf accessed 3 February 2026.

¹⁸ *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1 [42].

¹⁹ *Ibid* [43].

Section 377 IPC violates the right to privacy, autonomy and dignity, the High Court has extensively relied upon the judgments of other jurisdictions. Though these judgments shed considerable light on various aspects of this right and are informative in relation to the plight of sexual minorities, we feel that they cannot be applied blindly for deciding the constitutionality of the law enacted by the Indian legislature²⁰.

And just like that, decades of blood, sweat and tears went down the drain, and the Court held that Section 377 IPC *'does not suffer from the vice of unconstitutionality'* and that the declaration made by the Division Bench of the HC is *'legally unsustainable'*²¹.

The Constitutional Turning Point

The ball was now officially in the Parliament's court after the Suresh Kumar Koushal judgment. The Apex Court had, in its decision, held that *it is for the legislature to look into the desirability of deleting Section 377 IPC from the statute book or amending the same*²². But the Naz was not going down without a fair fight, and it filed a review petition; however, by then, they were just fighting a losing battle. That petition, too, got dismissed by the SC in 2014. The GOI, by this time, in a written reply to the Lok Sabha, said that it does not plan to amend Section 377 of the IPC, as the matter is sub-judice before the SC²³.

While all of this was happening in parallel, the SC in another landmark decision upheld the constitutional rights of transgender persons under Articles 14, 15, 19 and 21 of the Constitution, and the same arguments that were rejected in the Suresh Kumar Koushal case were affirmed and admitted in *National Legal Services Authority of India v Union of India*²⁴.

Once the ball was back in the Court, fresh petitions started piling up in various HC across the country, and pride movements and marches were conducted in all major cities, pressuring judicial or legislative intervention on the matter.

²⁰ Ibid [52].

²¹ Ibid [54].

²² *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1 [52].

²³ *No plans to amend Section 377 till Supreme Court decision* (India Today, 22 July 2014) <https://www.indiatoday.in/india/north/story/section-377-modi-govOn-t-supreme-court-homosexuals-ipc-201314-2014-07-22> accessed 3 February 2026.

²⁴ *Section 377 Referred to a Constitution Bench – Some Issues* (IndConLawPhil, 8 January 2018) <https://indconlawphil.wordpress.com/2018/01/08/section-377-referred-to-a-constitution-bench-some-issues/> accessed 3 February 2026.

When all doors were closed, Naz resorted to the last resort: they filed a *curative petition*, as laid down in the landmark case of *Rupa Ashok Hurra v Ashok Hurra* (2002). A curative petition is an extraordinary remedy available to the SCI, in which a case is looked into even after the Court dismisses a review petition.

Like any other petition, a curative is not something that takes up the matter immediately; thus, Naz's petition started collecting dust in a corner of the Court's pending cases records.

Later that year, six fresh writ petitions were filed before the SC, including one by Bharatanatyam dancer Navtej Singh Johar. These petitions were filed before a two-judge bench, which, in June 2016, referred them to the curative petition of the Naz²⁵.

On August 24, 2017, the landmark judgment of Justice K S Puttaswamy v Union of India was delivered. Justice Chandrachud observed

'Sexual orientation is an essential attribute of privacy. Discrimination against an individual based on sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution²⁶.'

The Court explicitly disagreed with all the reasons relied on by the learned Judges of the Suresh Kumar Koushal case. Chandrachud J criticised the 'De Minimis' logic as unconstitutional, as fundamental rights do not depend on numbers. If violated, the dignity of even one person must be constitutionally protected. Another serious blow to the Koushal case came when the Court firmly held that the State cannot wash its hands of its authorities' actions by saying that the legislators did not intend the misuse of power. They also held that if fundamental rights are violated, then the Courts must intervene, thus strengthening judicial review. Finally, one of the most important arguments upon which the Koushal judgement was grounded was that Section 377 falls within 'reasonable classification'; there is an intelligible differentia linked to public health/morality, and the provision does not apply to a specific community. In the Puttaswamy

²⁵ Human Dignity Trust, *Case Digest: Johar v India 2018* (January 2019)

<https://www.humandignitytrust.org/wp-content/uploads/resources/2019.01-Case-Digest-Johar-v-India-2018-.pdf> accessed 3 February 2026.

²⁶ *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1 [126].

case, the Court held that

*'Reasonableness, which is the foundation of the guarantee against arbitrary state action under Article 14, infuses Article 21. A law which provides for a deprivation of life or personal liberty under Article 21 must lay down not just any procedure but a procedure which is fair, just and reasonable.'*²⁷

*'... Consequently, we disagree with the manner in which Koushal has dealt with the privacy–dignity–based claims of LGBT persons on this aspect'*²⁸.

Thus, after decades, the LGBTQ community began to see a ray of hope. Though the Puttaswamy case never adjudicated on the constitutionality of Section 377 or overruled the Koushal case, it furnished the constitutional foundation upon which Navtej Singh Johar would ultimately rest.

Take me as I am. I am what I am.²⁹

The Puttaswamy case had a significant impact on Navtej Singh Johar's collective fresh writ petition and the curative petition of Naz. Once privacy was recognised as a fundamental right and sexual orientation comes under sex of Article 15, coupled with the strong condemnation of reasoning adopted in Koushal by the nine-judge bench of the Honourable Court, the constitutional foundation of that case stood eroded.

The petitions gained momentum like never before. The Bench thus answered the questions of the constitutionality of Section 377 of the IPC and the sustainability of the Suresh Kumar Koushal judgment.

One of the first things that the Court clarified was the absence of intelligible differentia. The Court pointed out that in Koushal it had failed to classify or differentiate between 'ordinary intercourse' and 'against the order of nature'. The expressions 'natural' and 'unnatural' in themselves were vague and indeterminate, thus failing the first limb of Article 14³⁰.

Relying on NALSA v UOI, the Court held that the Constitution was meant to prevent

²⁷ Ibid [23].

²⁸ Ibid [128].

²⁹ Navtej Singh Johar v Union of India 2018 (10) SCC 1[1].

³⁰ Navtej Singh Johar v Union of India (2018) 10 SCC 1 [28].

stereotypical binary notions and ‘sex’ is not merely limited to biological anatomy, but instead it includes gender identity and psychological sense of self³¹.

The Court further held that criminalisation resulted in stigma, silence, social exclusion and conflation of identity with criminality, so the reasoning of ‘minuscule fraction’ relied upon by this Court in Koushal is fundamentally flawed³².

The Court thus concluded that Section 377 is unconstitutional to the extent of consensual sexual conduct between adults of the same sex and that the members of the LGBTQ community should have the same constitutional rights as heterosexual couples without discrimination, including the right to choose whom to partner with and the right not to be subjected to discriminatory behaviour. The Koushal decision was expressly overruled in this case, thereby recognising the LGBT community as equals³³.

Constitutionally Included yet Institutionally Excluded

6th September 2018 is a historical date for the LGBTQ community in India, as it was on this fateful day that the Honourable SCI delivered the landmark judgment in *Navtej Singh Johar v Union of India*. The judgment was hailed worldwide, as it should be; yet it was silent on many aspects of a relationship, and many questions remain unanswered that ordinarily flow from the institution of marriage. And that was what was challenged in the Supriyo Chakraborty case.

Marriage is a very complex social and legal concept, and when it comes to India, it gets even more complicated due to its strong influence of religion and customs. When a couple is ‘married’, there are certain rights and legal consequences to that union for both parties; these are rights attached to the union simply because the couple have tied the knot under the country's marriage laws. The right to adopt, succession rights, pension, tax, and immigration benefits, and marital remedies under personal laws are all examples of such rights that heterosexual couples receive by default. However, this bundle of rights remain inaccessible to homosexual couples, highlighting the constitutional inclusion but institutional exclusion.

Post Navtej Singh Johar, HCs across the country were approached with petitions seeking police protection from families and the public, as well as recognition of interfaith and queer unions.

³¹ Ibid [37].

³² Ibid [47].

³³ Ibid [155].

And most of them were granted, recognising the right to cohabit for same-sex couples under Article 21 as part of their autonomy and dignity. This slowly but steadily paved the way for another constitutional battle for the queer community: marriage equality.

Marriage equality refers to the legal recognition of marriages between individuals regardless of their gender or sexual orientation³⁴. Thus, the constitutional courts faced a new challenge. By 2020, HCs of Kerala, Madras and Delhi were approached by same-sex couples to recognise their union legally.

On November 14, 2022, the SC was approached with two separate writ petitions seeking legal recognition of same sex marriages in India. The petitioners wanted the Court to declare Section 4(c) of the Special Marriages Act, 1954 (SMA) unconstitutional, for it only recognises marriages between a 'male' and a 'female'³⁵. This case later came to be known as the 'marriage equality' case or the Supriyo Chakraborty case.

Similar challenges were also raised against the Hindu Marriages Act, 1954 (HMA) and the Foreign Marriage Act, 1969, in the HCs of Kerala and Delhi, which were later transferred to the SC in 2023. By March 2023, all the petitions filed under various HC and directly with the SC were referred to a five-judge Constitutional Bench, and on October 17th 2023, the Bench delivered a landmark judgement.

The Court, in a unanimous decision, held that '*there is no fundamental right to marry*'³⁶. The Court further held that reading onto the SMA would amount to judicial legislation and would exceed the Court's institutional limitations³⁷; thus, it is on the Legislature to decide if same-sex unions must be legally recognised and what benefits and entitlements follow from such a union³⁸.

The Court's decision was peculiar and was heavily criticised and questioned by LGBTQ rights

³⁴ *Marriage Equality: Definition and Explanation* (The Oxford Review DEI Dictionary) <https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/marriage-equality-definition-and-explanation/> accessed 3 February 2026.

³⁵ Advay Vora, 'Plea for Marriage Equality' (Supreme Court Observer, 26 June 2023) <https://www.scobserver.in/cases/plea-for-marriage-equality/>, accessed 3 February 2026.

³⁶ *Supriyo @ Supriya Chakraborty v Union of India* (2023) 15 SCC 1[136].

³⁷ Vivek Tiwari, 'Navigating the Path to Equality: The Landmark Case of *Supriyo @ Supriya Chakraborty v Union of India* and the Future of LGBTQIA+ Rights' (Manupatra) https://articles.manupatra.com/article-details/NAVIGATING-THE-PATH-TO-EQUALITY-THE-LANDMARK-CASE-OF-SUPRIYO-V-UNION-OF-INDIA-AND-THE-FUTURE-OF-LGBTQIA-Plus_-RIGHTS accessed 3 February 2026.

³⁸ *Ibid* [59].

activists. Though the decision of the Court to respect the jurisdiction of Parliament in this matter is a valid ground, the Court, however, seemed to have forgotten about the Parliament's 'role' in the cases of Navtej Singh Johar, Puttaswamy and NALSA³⁹.

Even with constitutionally recognised identity and protected intimacy, same-sex couples are left at a crossroads with institutional non-acceptance. In the wake of the Supriyo case, the Court has left a constitutional gap that, according to the judiciary, it cannot fill, and the onus is on the Legislature to act. So now the question is: what is the next step?

The most sensible question is: why cannot Parliament step in and amend the SMA? From a constitutional standpoint, there are no legal implications with the Parliament doing that. Article 246 read with Entry 5 of List III empowers the Parliament to enact laws on matters of '*marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition;...*'⁴⁰. However, the matter gets complicated when it comes to the question of 'how to amend it?'

The Parliament's replacement of the terms 'husband' and 'wife', 'male' and 'female' in the SMA would only be the beginning of a ripple effect. Marriages under the SMA, or any personal law relating to marriage, are closely connected to other personal law legislations, such as adoption law, maintenance law, guardianship law, surrogacy law, pension and service benefits laws, domestic violence laws, etc, due to which, multiple legislations would need amendment at the same time in order to have the intended effect of achieving marriage equality for the queer community. Thus, marriage is not just a ceremonial or symbolic status; instead, it is a ticket to a wide range of rights and duties intersecting with multiple statutes.

This is where matters get complicated. India, unlike foreign jurisdictions, does not have a uniform law governing matters such as marriage, adoption, and divorce, which means attempts by the Parliament or the State Legislature would be met with social, political, and religious objections, and the legislature will not do anything that will jeopardise their political position.

That being said, the constitutional journey of the queer community, particularly in the 21st century, has undoubtedly transformed the socio-legal landscape in India. However, the constitutional recognition of dignity, autonomy and privacy is of little value unless it is coupled

³⁹ Tiwari, 'Navigating the Path to Equality'.

⁴⁰ Constitution of India 1950, sch 7, list III, entry 5.

with institutional inclusion. Without enforceable entitlements, constitutional inclusion is incomplete.

Conclusion

The evolution of Indian Constitutional jurisprudence has come a long way from non-acceptance to decriminalisation to recognition, and it still has a long way to go because only then will the journey till now have value; otherwise, it will be futile. Recognition of dignity and identity was a necessary first step; however, to achieve marriage equality, one would need to dismantle the socio-political, cultural, religious and legal barriers. Even with constitutional acceptance, equality remains unattainable without institutional recognition.

The Court's denial of recognising queer marriages has revealed a vacuum which cannot be filled by the judiciary and would need legislative intervention. And until then, the queer community is torn in half between reality and principle.