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Love Knows No Gender: Why India Must Legalise Same-Sex Marriage

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ABSTRACT

In India, queer individuals stand at a bittersweet crossroads: free to love, yet forbidden to marry. While landmark judgments like Navtej Singh Johar and Puttaswamy have celebrated the ideals of autonomy, privacy, and identity, queer citizens remain legal strangers - excluded from marriage, adoption, and family rights. This exclusion is not a benign legislative delay but a direct affront to the Constitution's promises of equality, liberty, dignity, and non-discrimination under Articles 14, 15, 19, and 21. The Supreme Court's decision in Supriyo v. Union of India acknowledged queer love but offered symbolism without substance, recognition without remedy. This article contends that the denial of marriage equality is a grave constitutional violation, not a policy choice. Drawing on rigorous doctrinal analysis and international human rights standards under the ICCPR, it argues that marriage equality is a legal and moral imperative. Through proposed amendments to de-gender and democratize India's marriage statutes, the article charts a clear path forward. More than a legal reform, this is a democratic reckoning - a test of whether India's constitutional ethos can rise above social prejudice. A nation that prides itself on diversity cannot remain complicit in legally sanctioned exclusion. The Constitution demands more than passive recognition; it calls for transformative inclusion. History will remember whether the law merely observed queer love or truly upheld it. Marriage equality is not a distant goal - it is a constitutional necessity whose time has come.

I. INTRODUCTION

Marriage, as a socio-legal institution, is not merely a personal arrangement but a deeply embedded pillar of societal organisation. It embodies emotional commitment, legal recognition, and cultural legitimacy, and plays a fundamental role in shaping the legal and social fabric of individuals' lives. In legal terms, marriage acts as a gateway to numerous rights and entitlements, ranging from inheritance, adoption, guardianship, and medical decision-making to taxation, pensions, and spousal benefits. It serves as a vital site for the exercise of personal autonomy and is a key marker of social inclusion and equality.

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Despite this, in contemporary India, same-sex couples remain categorically excluded from the institution of marriage. Their relationships are relegated to the margins - recognised informally at best, but denied the dignity and protection that the law affords to heterosexual unions. This exclusion persists despite significant strides made in the legal recognition of LGBTQIA+ rights in India, particularly in the landmark decision of *Navtej Singh Johar and Ors. v. Union of India*²(*Navtej*), where the Supreme Court decriminalised consensual same-sex conduct by reading down Section 377 of the Indian Penal Code (IPC)³. The judgment was celebrated for affirming the equal citizenship and inherent dignity of LGBTQIA+ individuals, recognising sexual orientation as an intrinsic part of one's identity, and declaring that constitutional morality must prevail over social morality.

However, while *Navtej supra* laid the groundwork for LGBTQIA+ equality, it stopped short of articulating a comprehensive rights framework that would ensure substantive equality in areas such as marriage, adoption, and family law. This lacuna became more pronounced in *Supriyo @ Supriya Chakraborty and Another v. Union of India*⁴ (*Supriyo*), wherein the Supreme Court acknowledged the legitimacy of same-sex relationships and the right of queer individuals to cohabit and form unions. Chief Justice D.Y. Chandrachud, in his opinion, powerfully emphasised that queerness is not alien to Indian culture⁵ and that LGBTQIA+ persons face systemic discrimination in various spheres of life.

Yet, despite this progressive recognition, the Court ultimately declined to confer legal status on same-sex marriages, citing the doctrine of separation of powers and holding that such recognition must come through legislative action rather than judicial interpretation. The majority opinion refused to read gender-neutral language into the *Special Marriage Act (SMA)*⁶ or to recognise a fundamental right to marry for same-sex couples under the Constitution. This created a jarring contradiction: while queer individuals are now legally free to love and form intimate relationships, they remain barred from solemnizing these relationships in law and accessing the bundle of rights that flow from the institution of marriage.⁷

This contradiction starkly illustrates the limits of partial equality. Recognition without rights

² (2018) 10 SCC 1 (India).

³ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

⁴ 2023 SCC OnLine SC 1348 (India).

⁵ *Id.* at para 81-84.

⁶ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

⁷ Pratham Malhotra & Pravertna Sulakshya, *The Mehndi of Judicial Review In Same-Sex Marriages: Infusing The Hues Of Basic Structure On The Judiciary's Palms*, 16 (4) NUJS L. Rev. 533 (Oct – Dec 2023), (Jun. 28, 2025, 12:19 PM), <https://nujlawreview.org/wp-content/uploads/2024/02/16.4-Pravertana-Pratham.pdf>

creates an illusion of inclusion while preserving structural inequality.⁸ By denying same-sex couples the right to marry, the legal system continues to treat queer citizens as less than equal, reinforcing their social and legal marginalization.

This article argues that the denial of same-sex marriage in India is not just a legal oversight but a constitutional infirmity. It violates the guarantees of equality, dignity, personal liberty, and non-discrimination enshrined in Articles 14, 15, and 21 of the Constitution of India. Through a close reading of Indian constitutional jurisprudence, international human rights standards, and comparative legal developments, this article seeks to establish that marriage equality is not only a matter of legislative policy but a constitutional and moral imperative.

II. THE CONSTITUTIONAL CASE FOR MARRIAGE EQUALITY

A. Article 14: Equality Before the Law

Article 14 of the Constitution of India enshrines a foundational democratic principle: equality before the law and equal protection of the laws. It mandates that the State shall not make arbitrary distinctions between individuals or groups unless such classifications are based on an intelligible differentia and bear a rational nexus to a legitimate legislative or policy objective.⁹ This constitutional safeguard is not merely procedural - it is transformative, requiring the State to treat all individuals with equal concern and respect.

When opposite-sex couples are allowed to marry and thereby access a host of legal and social benefits - ranging from inheritance rights and spousal maintenance to hospital visitation, joint adoption, tax rebates, insurance coverage, and pension entitlements - denying the same to same-sex couples becomes an instance of institutionalised discrimination. Such exclusion not only undermines the principle of formal equality but also perpetuates substantive inequality, depriving LGBTQIA+ individuals of equal standing in society.

Moreover, the test under Article 14 is not a passive standard; it demands affirmative action to dismantle unjust hierarchies and to remedy historical exclusions. In failing to extend the institution of marriage to same-sex couples, the State does not merely withhold a privilege - it reinforces systemic marginalisation by signalling that the relationships of LGBTQIA+ persons are less worthy of legal recognition and social validation.

The notion that marriage must be preserved in its “traditional” heterosexual form has no place within a constitutional framework that mandates equality. Tradition, in and of itself, cannot be

⁸ Martine Schaap, *Recognition vs. Redistribution – A False Dichotomy?* (June 13, 2022) (Master’s thesis, Leiden University), (Jun. 28, 2025, 05:12 PM), <https://studenttheses.universiteitleiden.nl/access/item%3A3439591/download>

⁹ E.P. Royappa v State of Tamil Nadu, (1974) 4 SCC 3 (India).

invoked as a constitutionally valid justification for denying fundamental rights. As Justice Indu Malhotra eloquently stated in *Navtej supra*, “History owes an apology to this [LGBTQIA+] community and their families”. That apology must be meaningful - it must be embodied in legal reform that affirms the equal dignity and full citizenship of all individuals, irrespective of whom they love.

B. Article 15: Non-Discrimination

Article 15(1) of the Constitution of India mandates that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. It forms one of the bedrock provisions in the Indian constitutional scheme, expressly designed to eliminate systemic hierarchies and ensure that all citizens, regardless of their inherent characteristics, enjoy equal access to opportunities, institutions, and dignity.

In its transformative interpretation of Article 15, the Supreme Court has consistently held that the term “sex” is not confined to biological differences between men and women but must be interpreted expansively to include gender identity and sexual orientation. In *National Legal Services Authority v. Union of India*¹⁰ (*NALSA*), the Court formally recognised the rights of transgender persons. It declared that discrimination on the grounds of gender identity violates both Article 14 and Article 15. Similarly, in *Navtej supra*, the Court reiterated that sexual orientation is an innate and immutable characteristic, and discrimination based on it is a form of sex-based discrimination.

The exclusion of same-sex couples from the institution of marriage is a textbook case of unconstitutional discrimination. It creates a legal distinction between heterosexual and queer individuals based solely on their sexual orientation - an intrinsic trait that, under settled constitutional jurisprudence, cannot serve as a ground for differential treatment. When the law allows a heterosexual couple to marry but prohibits a same-sex couple from doing so, it is not merely failing to protect LGBTQIA+ individuals - it is actively discriminating against them on an impermissible ground.

Furthermore, it is worth noting that the Supreme Court in *Navtej supra* expressly held that constitutional morality must guide State action, not majoritarian morality. It is not the role of the Constitution to reflect prevailing social prejudices but to challenge and transform them. Discrimination against same-sex couples on the ground of sexual orientation, whether cloaked in tradition, public opinion, or religious belief, cannot be justified within a constitutional framework committed to equality and non-discrimination.

¹⁰ (2014) 5 SCC 438 (India).

The continued exclusion of queer couples from marriage laws, therefore, is not merely an omission - it is a constitutional transgression.

C. Article 21: Right to Life and Personal Liberty

Article 21 of the Constitution of India proclaims that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” While brief in its phrasing, this provision has become the most dynamic and expansive source of fundamental rights in India’s constitutional jurisprudence. The Supreme Court has interpreted it not merely as a guarantee against arbitrary State action, but as a repository of a wide range of substantive rights, including the right to dignity, privacy, autonomy, and the pursuit of a meaningful life.

The foundational importance of Article 21 lies in its ability to evolve with time. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*¹¹ (*Puttaswamy*), a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Article 21. The Court observed that privacy includes decisional autonomy in matters of personal life, such as marriage, procreation, family, and sexual orientation. The judgment stressed that privacy is intrinsic to dignity and that the State must not intrude upon choices that define personal identity and human intimacy.

This principle was further reinforced in *Shafin Jahan v. Asokan K.M.*¹², where the Supreme Court upheld an adult woman’s right to choose her life partner, declaring that such a choice is central to personal liberty. The Court categorically held that “*The right to marry a person of one’s choice is integral to Article 21 of the Constitution.*”¹³ The decision underscored that marriage is not merely a contractual or ritualistic act but a deeply personal and existential choice central to the realisation of one’s identity and aspirations. This right cannot, and should not, be denied merely because the persons involved are of the same sex.

When the State denies same-sex couples the right to marry, it is not merely imposing a legal restriction - it is rendering invisible the emotional and familial lives of queer individuals. It is effectively telling them that their love is unworthy of legal affirmation, their families unworthy of protection, and their choices unworthy of respect. This exclusion is not just unconstitutional - it is dehumanising.

To deny marriage to same-sex couples is to deny them the full expression of their liberty. It is to deny them the chance to lead lives of dignity, intimacy, and legal security.

¹¹ (2017) 10 SCC 1 (India).

¹² (2018) 16 SCC 368 (India).

¹³ *Id.* at para 77.

D. Article 19: Freedom of Expression and Association

Article 19 of the Constitution of India guarantees essential freedoms that form the lifeblood of a democratic society. Article 19(1)(a) confers upon all citizens the freedom of speech and expression, while Article 19(1)(c) grants the right to form associations or unions. These rights are not abstract liberties - they are concrete tools through which individuals express their identities, form meaningful relationships, and participate in the social and political life of the nation.

Marriage, while often viewed through the lens of private intimacy, is also a profoundly public expression of love, commitment, and identity. It is a declaration that two individuals have chosen to build a life together, and it signals to the State and society that their relationship deserves recognition, protection, and respect. Denying same-sex couples access to this institution is not merely a denial of legal benefits - it is a silencing of expression and a denial of association at its most intimate level.

Under Article 19(1)(a), the freedom of speech and expression includes not only verbal or written communication but also symbolic and non-verbal acts that convey identity and meaning. The Supreme Court has consistently interpreted this right liberally and expansively. In *NALSA supra*, the Court held that gender identity and expression are essential aspects of individual personality and autonomy. In *S. Khushboo v. Kanniammal*¹⁴, the Court emphasised that personal choices, including those concerning sexual autonomy, are protected forms of expression.

In this light, marriage must be recognised as a symbolic act of expression - one that communicates commitment, identity, and belonging. For same-sex couples, the right to marry is not only a legal necessity but a vital form of self-expression. To deny them this right is to force them into invisibility, to erase their narratives from the legal and cultural landscape, and to invalidate the expression of their most personal bonds.

Furthermore, Article 19(1)(c) protects the freedom to form associations or unions. While often applied in the context of trade unions, political organisations, or civil society groups, the constitutional language is broad and encompasses all voluntary associations formed for a lawful purpose. Marriage is, at its core, a voluntary association between two consenting adults who choose to unite their lives emotionally, socially, and legally. Preventing same-sex couples from entering this association solely based on their gender or sexual orientation violates their freedom to form such unions.

¹⁴ (2010) 5 SCC 600 (India).

The Supreme Court, in *Navtej supra*, recognised that LGBTQIA+ individuals have an equal right to express their identity, form relationships, and lead fulfilling lives. The Court held that “intimacy between consenting adults of the same-sex is beyond the legitimate interests of the state”¹⁵ and that such relationships fall squarely within the protective scope of the Constitution. If queer individuals are entitled to form intimate relationships free from state interference, then surely they must also be entitled to publicly affirm those relationships through the institution of marriage.

To deny marriage rights is to force queer relationships into the private shadows, shielding them from public legitimacy. It sends a message that same-sex relationships are somehow unworthy of celebration or acknowledgment. This not only infringes the rights of LGBTQIA+ persons under Article 19 but also denies them access to the social meaning and cultural affirmation that marriage entails.

The argument that same-sex marriages offend prevailing social or religious norms cannot override constitutional freedoms. Love, commitment, and partnership between same-sex couples are not threats to public order - they are expressions of human connection and aspirations for legal equality.

Thus, denying same-sex couples the right to marry is not just a denial of legal benefits; it is a denial of expression, association, visibility, and dignity. It violates Article 19’s guarantee that every citizen has the right to express their identity and to form associations of their choosing. In a society that aspires to inclusion and justice, the Constitution must protect not only the right to love but also the right to declare and celebrate that love in the fullest legal and social sense.

III. JURISPRUDENTIAL DEVELOPMENTS: PROGRESS AND PARADOXES

A. *Navtej Singh Johar and Ors. v. Union of India: A Constitutional Reset*

This judgment stands as one of the most transformative moments in Indian constitutional history. In a unanimous decision by a five-judge Constitution Bench, the Supreme Court struck down Section 377 of the Indian Penal Code¹⁶, to the extent it criminalised consensual sexual relations between adults of the same sex. More than just a legal victory, *Navtej* represented a moral and constitutional awakening - a repudiation of centuries of stigma, persecution, and silencing of LGBTQIA+ individuals in India.

The Court emphatically declared that sexual orientation is an innate, immutable aspect of

¹⁵ *Navtej, supra* note 1, at 185.

¹⁶ *Act, supra* note 2.

one's identity, deserving full protection under the Constitution. It held that discrimination based on sexual orientation violates Article 14, 15, and 21. In doing so, the judgment anchored queer rights firmly within the framework of constitutional morality, insisting that the Constitution - not tradition, majoritarian views, or societal discomfort - must guide the recognition and protection of individual rights.

Justice D.Y. Chandrachud, in his separate but concurring opinion, went further to articulate the historical and structural violence suffered by the LGBTQIA+ community. He recognised that Section 377 IPC had become a tool for oppression, blackmail, and state-sponsored denial of citizenship. The judgment was not merely about sex - it was about the freedom to love, to express, to exist, and to live with dignity.

Yet, for all its progressive rhetoric and landmark status, *Navtej* was also incomplete.¹⁷ It decriminalized queer existence, but it did not legalise queer living. The judgment removed the criminal sword hanging over queer relationships, but it failed to confer affirmative civil rights that flow from the legal recognition of those relationships - namely, the right to marry, adopt, inherit, maintain, and access healthcare, insurance, and spousal benefits.

The judgment also refrained from providing positive directives to the State, such as instructing the legislature to enact anti-discrimination laws or recognizing queer unions. It celebrated identity, autonomy, and love, but it did not institutionalize these values through legal structures that would safeguard queer families in everyday life.

This limitation is not trivial. In a country where marriage is the gateway to a host of social and legal entitlements, excluding queer couples from this institution perpetuates a hierarchy of relationships. Even after *Navtej*, queer couples remain legal strangers to one another. They are denied the status of spouses, the right to make end-of-life decisions for their partners, to adopt children together, to inherit each other's property, or to benefit from tax and pension schemes available to married heterosexual couples.

The consequences of this omission are not theoretical - they are profoundly material. The law, as it currently stands post-*Navtej*, tells queer Indians: *"You may exist, but you may not fully live. You may love, but your love will not be recognised. You may form a family, but the law will not protect it."*

Until same-sex couples are allowed to marry, adopt, and share the benefits and burdens of a shared life, the promise of *Navtej* remains only partially fulfilled. The judgment offered a

¹⁷ Devashri Mishra & Aashesh Singh, *Editorial Note: Navtej Singh Johar Special Issue*, 13 NUJS L. Rev. 3 (July–Sep. 2020) (Jun. 30, 2025, 02:33 PM), <https://nujlawreview.org/wp-content/uploads/2020/11/Navtej-Johar-Editorial-Note-13.3.pdf>

constitutional vocabulary of equality and freedom - it is now the responsibility of the State to translate that vocabulary into law.

B. *K.S. Puttaswamy v. Union of India: Privacy and Decisional Autonomy*

This judgment revitalised the fundamental right to privacy, elevating it to the status of a core constitutional value. Delivered by a nine-judge bench of the Supreme Court, the judgment unanimously affirmed that the right to privacy is intrinsic to life and personal liberty under Article 21, and that it forms the basis for a host of other freedoms, including dignity, autonomy, and identity.

More than just a rebuttal to the Aadhaar regime, *Puttaswamy* was a sweeping reassertion of the individual's right to self-determination in all matters of intimate life. The Court underscored that privacy is not a narrow right concerning secrecy, but a broad guarantee of decisional autonomy, allowing individuals the space to make personal choices, free from coercion, surveillance, or majoritarian control.

Most significantly for LGBTQIA+ rights, the Court explicitly recognised that choices concerning sexual orientation, intimacy, procreation, and marriage are protected within the sphere of privacy. It held that: "*Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation*¹⁸... *The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity.*¹⁹"

These words laid a jurisprudential foundation for the recognition of same-sex relationships and marriage under constitutional law. *Puttaswamy* redefined privacy as not just a shield against intrusion, but as a sword for affirming autonomy - the right to make intimate life choices without State interference.

In light of this, it becomes evident that denying same-sex couples the right to marry is a violation of the very autonomy that *Puttaswamy* enshrines. Marriage is a deeply personal decision, one that forms the cornerstone of family, identity, and emotional security. By excluding LGBTQIA+ persons from this institution, the State is effectively asserting control over their private and emotional lives, contradicting the constitutional guarantees articulated in *Puttaswamy*.

Moreover, *Puttaswamy* gave constitutional teeth to the concept of "decisional autonomy" - the idea that individuals must be free to choose how they live, whom they love, and what

¹⁸ *Puttaswamy*, *supra* note 10, at 844.

¹⁹ *Puttaswamy*, *supra* note 10, at 996.

relationships they enter into, as long as such choices do not harm others. This is particularly relevant in the context of marriage, which, though regulated by the State, is fundamentally a personal, moral, and emotional decision. To restrict marriage only to heterosexual couples is to arbitrarily curtail the decisional autonomy of queer individuals, placing an unconstitutional burden on the exercise of their privacy.

Therefore, *K.S. Puttaswamy* is not just a privacy judgment - it is a constitutional manifesto for human dignity and freedom in the most intimate aspects of life. It provides a powerful doctrinal basis for same-sex marriage, grounded in the right to make personal choices about love, partnership, and family. By denying this right to queer citizens, the State violates not only their privacy but their very personhood and constitutional identity.

C. *Supriyo @ Supriya Chakraborty v. Union of India*: A Missed Constitutional Moment

This verdict was anticipated with hope, particularly by India's LGBTQIA+ community. Coming five years after *Navtej*, many expected the Court to take the next logical step: granting legal recognition to same-sex marriages. Instead, the decision, delivered by a five-judge Constitution Bench, struck a delicate yet disappointing balance. It reaffirmed the dignity and equality of queer persons but stopped short of bestowing the civil rights that naturally flow from such recognition. In doing so, the Court missed a constitutional opportunity to fully realise the transformative promise of India's liberal jurisprudence.

Chief Justice D.Y. Chandrachud, in his powerful and empathetic opinion, acknowledged the lived realities of queer persons in India - discrimination in housing, bias in employment, exclusion from healthcare decisions, and social ostracization. He unequivocally rejected the argument that queerness is a Western import, observing that queer identities are as native, complex, and culturally embedded as any other form of human experience in India. His judgment was a remarkable exposition on inclusion, belonging, and the constitutional imperative to protect all identities.

Most significantly, the CJI recognised that same-sex couples form committed, emotionally interdependent relationships that deserve legal and societal acknowledgment. He advocated for the creation of civil unions with a framework of spousal rights and emphasised the need for anti-discrimination legislation to protect LGBTQIA+ persons in public and private spheres. His opinion echoed the spirit of *Navtej* and *Puttaswamy*, seeking to extend constitutional protections from principle to practice.

However, the majority opinion - delivered by Justices S.R. Bhat, Hima Kohli, and P.S. Narasimha - drew a conservative line, declining to recognise same-sex marriage as a

fundamental right. The Court refused to read gender-neutral language into the Special Marriage Act, 1954, and deferred the matter to Parliament, citing the doctrine of separation of powers. In effect, the judgment acknowledged that structural injustice exists but declined to provide structural remedies.

This outcome is paradoxical. The Court accepted that denying legal recognition to same-sex couples perpetuates material deprivation and symbolic exclusion—yet it declined to act. While civil unions were proposed in theory, no binding framework was laid down. And though the need for legislative reform was highlighted, the Court refrained from issuing even guidelines or interim measures, unlike in earlier landmark cases like *Vishaka v. State of Rajasthan*²⁰ (*Vishaka*), where the absence of legislative action was met with judicial innovation.

The reasoning that courts cannot legislate is valid in theory, but it is selectively applied. India's constitutional jurisprudence is replete with examples where the judiciary has stepped in to expand rights, especially when legislative inaction amounted to continued injustice. In *NALSA supra*, the Supreme Court granted legal recognition to transgender persons, ordering both affirmative protections and administrative reforms. In *Vishaka supra*, guidelines against workplace sexual harassment were judicially crafted in the absence of statutory safeguards. In both cases, the Court recognised its constitutional responsibility to protect fundamental rights even in the face of legislative silence.

Justice S. Ravindra Bhat, in his separate concurring opinion, emphasised that any expansion of the marriage framework must be a product of deliberative democracy, not judicial decree. While democratic legitimacy is crucial, it should not come at the expense of constitutional urgency. Rights delayed, especially for historically marginalised communities, are rights denied.

The tragedy of *Supriyo* lies not in its language - it is, at times, progressive and affirming - but in its lack of enforceable outcomes. The judgment reads like a manifesto for equality, yet delivers no legal instruments to secure it. It affirms queer love, but leaves queer families in legal limbo.

Yet, even in disappointment, *Supriyo* offers a platform. It affirms that queer persons are full citizens. It acknowledges the injustice of exclusion. It gestures toward a future of inclusion - if only the State chooses to act. The judgment has seeded the conversation, but the demand for legal recognition, dignity, and equality must now be taken up more forcefully - by civil

²⁰ (1997) 6 SCC 241 (India).

society, by the legislature, and, if needed, by the judiciary once again.

As constitutional jurisprudence evolves, *Supriyo* may come to be seen not as a final verdict, but as an unfinished chapter - a moment of recognition without remedy, of empathy without enforcement. A missed constitutional moment, yes - but perhaps the precursor to the moment yet to come.

IV. LEGISLATIVE REFORMS: ROADMAP TO EQUALITY

The legal recognition of same-sex marriage in India necessitates targeted and comprehensive amendments across a range of statutory regimes to bring them in line with the constitutional values of equality, dignity, and non-discrimination.

The proposed amendments to various laws aim to address gender-specific language, heteronormative assumptions, and systemic exclusions embedded within existing personal and secular legal frameworks. It is important to note that these amendments are not exhaustive, but explanatory and illustrative, intended to guide the broader legislative reform required for marriage equality.

A. Special Marriage Act, 1954: A Gateway to Marriage Equality

The Special Marriage Act serves as the secular route to matrimony in India, making it the most suitable vehicle for recognising same-sex unions without infringing on religious personal laws. However, its existing heteronormative language excludes queer relationships from its scope.

The proposed amendments below aim to modernise and de-gender the SMA, ensuring it affirms the equality, dignity, and autonomy of all couples.

Section / Provision	Current Wording	Proposed Amendment
Section 2(b) (Degree of prohibited relationship)	“a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.”	“two persons are said to be within the degrees of prohibited relationship if they are related to each other in any of the ways specified in Part I or Part II of the First Schedule, regardless of their sex or gender.”
Section 4(c) (Age	“the male has completed the	“each party has completed the

requirement)	age of twenty-one years and the female the age of eighteen years”	age of eighteen years”
Sections 11 & 12 (Declaration before marriage officer and ceremony)	“I, (A), take the (B), to be my lawful wife (or husband).”	“I, (A), take you (B), to be my lawful spouse.”
Section 27(1) (Grounds for divorce)	“Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent”	Replace all references to “husband/wife” with “spouse/partner” throughout divorce-related provisions.
Section 36 & 37 (Alimony and maintenance)	“wife who has no independent income sufficient for her support”	“a spouse who has no independent income sufficient for their maintenance”
References throughout the Act	“husband”, “wife”, “man”, “woman”, “bride”, “bridegroom”	Replace with: “spouse”, “partner”, or “person”
No definition for “marriage” or “spouse”	—	Insert new section: “‘Marriage’ means a union between two persons. ‘Spouse’ means either party to such a marriage.”

These reforms will help the SMA evolve into an inclusive statute that supports all unions based on love and commitment, irrespective of sex or gender identity.

B. Hindu Marriage Act, 1955²¹: Reimagining Personal Law through Constitutional Morality

Despite the secular promise of the Indian Constitution, much of India’s family law remains rooted in religious personal codes that reflect historically patriarchal and heteronormative

²¹ No. 25, Acts of Parliament, 1955 (India).

structures. Among these, the Hindu Marriage Act is a foundational statute that governs the matrimonial rights of over 80% of the Indian population. However, this law is framed exclusively in binary and heterosexual terms, thus rendering same-sex couples invisible within its ambit. If marriage equality is to be a real, enforceable right, this personal law must be aligned with constitutional values of equality, dignity, and non-discrimination.

Personal laws, particularly those governing Hindus, are deeply entrenched in binary and patriarchal traditions. Their current form fails to accommodate the lived realities and constitutional rights of LGBTQIA+ individuals.

The suggested amendments seek to reinterpret Hindu family law through the lens of constitutional morality and inclusive jurisprudence.

Section / Provision	Current Wording	Proposed Amendment
Section 5(iii) – Conditions for a valid Hindu marriage	“the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years”	“each party has completed the age of eighteen years”
Section 7(2) – Ceremonies of a Hindu marriage	“Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”	“Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps jointly before the sacred fire by the parties to the marriage), the marriage becomes complete and binding when the seventh step is taken.”
Section 9 – Restitution of Conjugal Rights	“Either the husband or the wife may apply...”	“Either spouse may apply...”
Section 12(2)(a)(ii)	“the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife	“The petitioner has, with full and free consent, lived with the other party to the marriage as spouses after the force had

	after the force had ceased to operate or, as the case may be, the fraud had been discovered”	ceased to operate or, as the case may be, the fraud had been discovered.”
Section 13 – Divorce grounds	“...on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party”	Use “spouse” instead of “husband” or “wife” throughout
Section 24 & 25 – Maintenance and alimony	Gendered references like “wife” claiming maintenance from “husband”	Use “a spouse” may claim maintenance from the other spouse
No Definition of “Marriage” or “Spouse”	—	Introduce new section: “Marriage means a voluntary union of two Hindus. ‘Spouse’ means either party to such a marriage, regardless of sex or gender identity.”

These changes will allow Hindu personal law to affirm equal marital rights for queer Hindus, ensuring the Constitution speaks through every family statute.

C. Adoption Law: Ensuring the Right to Form a Family

The following reforms aim to create an inclusive, gender-neutral, and equality-driven framework for adoption and guardianship in India.

Hindu Adoptions and Maintenance Act, 1956²²: Recognising Joint Parenthood

Section / Provision	Current Wording	Proposed Amendment
Section 7 – Capacity of a male Hindu to take in adoption	“Any male Hindu who is of sound mind and is not a minor has the capacity to	“Any Hindu who is of sound mind and is not a minor has the capacity to adopt a

²² No. 78, Acts of Parliament, 1956 (India).

	take a son or a daughter in adoption...”	child...”
Section 8 – Capacity of a female Hindu to take in adoption	“Any female Hindu who is of sound mind and is not a minor... and is not married, or if married, whose marriage has been dissolved...”	Merge with Section 7 into a single, gender-neutral provision stating that any person who meets the criteria can adopt, regardless of gender or marital status.
Section 9(1) – Who can give in adoption	“No person except the father or mother or guardian of a child shall have the capacity to give the child in adoption.”	“No person except a legal parent or guardian of a child shall have the capacity to give the child in adoption.”
Section 9(2)	“Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption”	“Subject to the provisions of sub-section (4), each parent, if alive, shall have an equal right to give a child in adoption.”
Section 10 – Persons who may be adopted	Refers to “he or she”, assumes binary gender	Replace with: “Any child may be adopted, regardless of gender or gender identity.”
Section 11 – Other conditions for a valid adoption	Conditions based on binary assumptions (e.g., a male adopting a female child must be older by 21 years)	Make conditions uniform and apply based on age and consent , not the binary gender of the parent or child. Use “adopter” and “adoptee” instead of gendered terms.
Section 18 & 19 – Maintenance of wife, widowed daughter-in-law, etc.	Gendered assumptions of dependency and support; e.g., only wives and widowed daughters-in-law	Extend maintenance rights to spouses (regardless of gender), dependent partners , and non-binary or same-sex

	entitled to maintenance	family members , removing assumptions of gender-based dependency.
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By recognising diverse families and ending systemic exclusion, these reforms will make Indian adoption law more child-centric and equality-compliant.

V. INTERNATIONAL HUMAN RIGHTS FRAMEWORK: ALIGNING INDIA'S CONSTITUTIONAL MORALITY WITH GLOBAL COMMITMENTS

India's legal and constitutional journey cannot be viewed in isolation from the broader international human rights framework, particularly given its role as a key player on the global stage. As a signatory to core international instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR),²³ India has committed itself to upholding the principles of equality, dignity, and non-discrimination in both letter and spirit.

A. The ICCPR and the Right to Marry and Found a Family

Article 23(2) of the ICCPR, to which India acceded in 1979, clearly recognises that “*the right of men and women of marriageable age to marry and to found a family shall be recognized.*” Though the language originally mirrored a binary framework, modern interpretations by international bodies and human rights courts have clarified that this provision must not be used to exclude same-sex couples from the institution of marriage.²⁴

The United Nations Human Rights Committee (UNHRC) has consistently held that differential treatment based on sexual orientation violates the Covenant's guarantee of equal protection (ICCPR - Article 26).

In *Toonen v. Australia*²⁵, the UNHCR held that Tasmania's laws criminalising consensual homosexual activity between adult men in private violated the ICCPR. Nicholas Toonen, an Australian gay rights activist, challenged Sections 122 and 123 of the Tasmanian Criminal Code, arguing they infringed his rights to privacy and equal protection. The Committee found that these laws arbitrarily interfered with his right to privacy under Article 17(1), read with Article 2(1) (non-discrimination), and held that “sex” under these articles includes sexual

²³ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/sites/default/files/ccpr.pdf>

²⁴ Aleardo Zanghellini, *To What Extent Does the ICCPR Support Procreation and Parenting by Lesbians and Gay Men?*, 9 Melb. J. Int'l L. 125 (2008) (Jun. 30, 2025, 07:49 PM), https://law.unimelb.edu.au/_data/assets/pdf_file/0004/1683184/Zanghellini.pdf

²⁵ Communication No. 488/1992, U.N. Human Rights Comm'n, U.N. Doc. CCPR/C/50/D/488/1992 (1994), (Jun. 30, 2025, 09:28 PM), <http://hrlibrary.umn.edu/undocs/html/vws488.htm>

orientation. Although the Committee did not find it necessary to rule on Article 26 (equality before the law), an individual member opined that it was also violated. The Committee recommended the repeal of the offending provisions, making this a landmark case in international LGBTQ+ rights jurisprudence.

Thus, India's continued denial of marriage rights to same-sex couples places it at odds with the evolving global understanding of human rights obligations under the ICCPR and similar treaties.

B. India's Global Image and Constitutional Commitments

India has long projected itself as a champion of democratic values and pluralism in global forums. As the world's largest democracy and a signatory to nearly every major human rights treaty, India's failure to legally recognise same-sex marriage undercuts its credibility on human rights advocacy, particularly at institutions such as the UN Human Rights Council, G20, and BRICS platforms.

Domestically, Indian courts have repeatedly held that international law can be used to interpret constitutional provisions, especially when they strengthen the protection of fundamental rights. In *Vishaka supra*, the Supreme Court explicitly relied on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to frame workplace harassment guidelines. Likewise, in *NALSA supra*, the Court cited international human rights jurisprudence to uphold the rights of transgender persons.

Hence, India's constitutional courts have already set a precedent for integrating international standards when the domestic legal framework is silent or exclusionary. In the context of same-sex marriage, aligning domestic law with the ICCPR and other global norms would be a continuation of this transformative constitutionalism, not a departure from it.

C. Beyond Compliance: A Leadership Opportunity

The global trend is unambiguous: nearly 38 countries, including South Africa, Taiwan, Argentina, Brazil, Canada, Germany, the United States, etc., have recognised marriage equality.²⁶ Many of these jurisdictions, like India, were once bound by colonial-era sodomy laws or deeply religious societies. Yet they have successfully integrated marriage equality into their legal systems through judicial interpretation, legislative reform, or popular mandate.

For India, embracing marriage equality is not merely a matter of legal compliance - it is a historic opportunity for global leadership. At a time when many democracies are retracting

²⁶ Human Rights Campaign, *Marriage Equality Around the World*, HRC, (Jun. 28, 2025, 09:54 AM), <https://www.hrc.org/resources/marriage-equality-around-the-world>

human rights protections, India can set a powerful example by advancing inclusive reforms grounded in constitutional morality, social justice, and global human rights standards.

VI. CONCLUSION: FROM CONSTITUTIONAL SILENCE TO AFFIRMATIVE JUSTICE

The denial of same-sex marriage in India is not a benign legislative gap - it is a grave constitutional omission. It enforces a second-class citizenship upon queer individuals, denying them not only legal rights but also the affirmation of their identities, relationships, and humanity. While the *Supriyo* judgment recognized queer existence, it failed to confer queer rights, reinforcing the cruel paradox of recognition without remedy.

But the Constitution does not exist merely to reflect societal consensus - it exists to transform it. In *Navtej*, the Supreme Court rightly declared that “...*constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view.*” That morality, grounded in liberty, dignity, equality, and fraternity, demands the recognition of same-sex marriages, not as a matter of public charity, but as a matter of justice.

Justice Indu Malhotra’s words still echo: “*History owes an apology to this [LGBTQIA+] community and their families*”, but apologies are insufficient without action. The best apology the Indian State can offer is not words of regret, but deeds of reform. It must move from tolerance to inclusion, from empathy to equality, from symbolism to substance.

Marriage is not merely a ritual or contract; it is a gateway to citizenship in its fullest sense. To deny it to some is to diminish the democracy of all. Legalising same-sex marriage is not about the rights of a few - it is about the soul of the Republic. A nation that prides itself on its constitutional vibrancy cannot allow love to be filtered through the lens of gender conformity.

The Constitution demands it. Humanity demands it. The time is now.
