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# Same-Sex Marriages, its Legality, and Social Justice in India

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## ABSTRACT

*This study critically investigates the complex relationship between same-sex marriages, legal recognition, and social justice in India, situating it within the country's cultural, historical, and legal framework. While the legalization of homosexuality under Section 377 in 2018 was an important step forward, the campaign for marital equality remains divisive and unresolved. Same-sex couples in India continue to endure systematic legal and societal limitations, such as a lack of marriage recognition, adoption rights, inheritance, and access to other spousal benefits. This denial feeds a culture of exclusion, weakening the constitutional guarantees of equality, dignity, and personal liberty.*

*The study adopts a doctrinal approach, examining a diverse range of secondary sources including legal texts, scholarly publications, and international frameworks. It examines the historical influences of colonial laws that stigmatized homosexual relationships and compares them to India's ancient traditions, which demonstrated a more inclusive understanding of gender and sexuality. This paper highlights the relevance of the Supriyo case and evaluates the Supreme Court's nuanced decision, which maintained same-sex couples' rights to cohabit and live without prejudice while deferring recognition of same-sex marriages to legislative action.*

*The study places India's problems in a global framework by citing initiatives like the United Nations Free & Equal campaign and the Yogyakarta Principles. It demonstrates how international viewpoints emphasize the need for human rights protections regardless of sexual orientation, while also acknowledging the challenges of establishing uniformity across varying legal and cultural contexts.*

*Further, the paper contends for marriage equality as a pillar of social justice, underlining that legalizing same-sex marriage is not just a matter of individual rights, but also a societal necessity. It contends that accepting varied family structures helps promote an equal and inclusive democracy. By eliminating legal and social impediments, India may move toward a future in which all individuals' dignity and rights, regardless of sexual orientation, are protected.*

**Keywords:** *Same-Sex Marriage, Social Justice, Section 377, Supriyo Case.*

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## **I. INTRODUCTION**

As social justice in India develops, acceptance of same-sex marriage is becoming a crucial issue. India, one of the most populous and diverse countries in the world, is currently at a crossroads where it must balance the growing need for modern egalitarian principles with its rich heritage of traditional practices. The movements for the legalization of same-sex marriage represent a larger equality movement and the opportunities and challenges that come with living in a society that is changing quickly.

The abbreviation "LGBTQ" refers to a broad spectrum of people whose identities and experiences transcend conventional heterosexual standards and binary gender conceptions. Lesbian, gay, bisexual, transgender, and queer are what it stands for, and the plus sign ("+") denotes the inclusion of a wider range of identities than just those that are stated explicitly. "Transgender" refers to people whose gender identification is different from the sex given to them at birth, whereas "lesbian," "gay," and "bisexual" relate to sexual orientations. This phrase encompasses both aspects of sexuality and gender identity. A more accepting term for a range of non-heteronormative and non-cis normative identities is "queer." In order to represent the diversity of human experiences with regard to gender and sexuality, the word also incorporates additional identities such as intersex and asexual. The LGBTQ+ community strives to acknowledge and celebrate their unique identities within the larger spectrum of gender and sexuality, challenging the conventional heteronormative standards in the process.

The recognition of same-sex marriage has gained momentum in numerous developing nations when it comes to considerations of human and civil rights, indicating notable advancements in social progress. But the battle for equality is far from ending. For instance, a great deal of prejudice against women and people of all gender identities still occurs, and as a result, many of them must fight stubbornly for their rights. To guarantee that same-sex partnerships have the same legal recognition and protection as heterosexual ones, legislative action is necessary. One of the fundamental human rights that is gaining international recognition is the right to marry, yet there are still disparities in its application, particularly for transgender individuals.

Although the LGBTQ+ population has gained significant social acceptance worldwide, there is still inconsistent legal recognition, particularly concerning marriage rights.

The journey towards LGBTQ+ rights in India has been difficult, characterized by a protracted battle inside the legal system. Historically, same-sex partnerships were illegal under Section

377 of the Indian Penal Code<sup>2</sup>, which was influenced by British colonial legislation and classified such activities as "unnatural offenses." This law encouraged a culture of fear, discrimination, and violence against LGBTQ+ people, which was supported by both the police and the general public. The historic decision of the Apex Court to overrule Section 377 marked a significant advancement in the recognition of sexual minorities' rights and provided a vital framework for their safety. The court determined that Section 377 violated the fundamental rights guaranteed by Articles 14, 19, and 21 of the Indian Constitution since it criminalized consensual sexual contacts between same-sex individuals and discriminated against them just on the grounds of their sexual orientation.

Despite this development, the pursuit of equal rights remains ongoing. Seeking legal recognition and equal rights for their partnerships, LGBTQIA+ couples petitioned the Supreme Court in 2020 to change the legislation to allow same-sex marriage under the SMA<sup>3</sup>. But on October 17, 2023, the Court decided against legalizing same-sex marriage and adoption in a close 3:2 ruling, which caused a range of emotions.<sup>4</sup> While some saw this as a major setback for LGBTQ+ rights, others saw it as a reaffirmation of traditional values.

Although there has been significant progress in the legal recognition of transgender people as a "third gender," the laws about their rights have come under heavy criticism for not adequately meeting their requirements. People who identify as transgender frequently face systematic discrimination, which includes being denied access to jobs and social structures, as well as not having the legal ability to marry, procreate, or adopt children. Social rights, such as marriage equality for same-sex couples, are still elusive even after same-sex partnerships were decriminalized. Assuring these rights is a crucial next step in helping the LGBTQ+ community live a normal, egalitarian life, but there are still significant obstacles to overcome due to steadfast government hostility.

The paper explores the legal, social, and cultural aspects of the complex relationship between same-sex marriage and social justice in India. This study attempts to shed light on the way towards a more inclusive legal system that acknowledges and defends the rights of every person, regardless of their sexual orientation, by looking at the Supriyo case and its ramifications. By doing this, it advances the conversation on equality, human rights, and the role of the state in promoting a just and equitable society.

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<sup>2</sup> Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

<sup>3</sup> The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

<sup>4</sup> Supriyo @ Supriya Chakraborty & Anr. v. Union of India, Writ Petition (Civil) No. 1011 of 2022.

**(A) Research Objectives:**

1. To explore the broader implications of marriage equality for social justice and equality in India.
2. To understand the historical and cultural contexts shaping current attitudes and legal frameworks regarding same-sex marriage in India.
3. To examine the significance of the *Supriyo* case in the context of the ongoing debate about marriage equality in India.

**(B) Research Questions:**

1. How did colonial laws and indigenous traditions impact LGBTQ+ rights in India?
2. What were the key legal arguments and outcomes of the *Supriyo* case?
3. How does the denial of marriage rights affect the social and economic well-being of same-sex couples?

**(C) Methodology:**

Using a doctrinal approach, this study mostly uses secondary sources. A vast range of books, journals, essays, and lectures by distinguished legal academics from India and around the world have been reviewed by us. In order to accomplish the goals of our research and collect the necessary data, we employed the following techniques:

1. Reviewing the available research literature.
2. Examining primary and secondary sources from books and journals.
3. Conducting Internet searches.
4. Examining different government publications.

**II. INTERNATIONAL PERSPECTIVE**

Across national boundaries, national policies have played a major role in the global growth of LGBTQ rights, as opposed to broad supranational agreements. Through a number of campaigns and projects, the United Nations (UN) has actively pushed conversations and activities aimed at eliminating stigma and discrimination against the LGBTQ population, even in the absence of a special treaty dedicated to LGBTQ rights. One prominent instance is the United Nations Free & Equal campaign, which promotes equitable treatment and equal rights for LGBTQ people worldwide. In spite of the lack of a legally binding international agreement, the UN is committed to encouraging acceptance and increasing knowledge, as demonstrated by this

campaign.

Achieving worldwide uniformity has been extremely difficult due to the member states' disparate legal and cultural perspectives on LGBTQ rights. Same-sex relationships are illegal in many nations, and offenders may face harsh punishments like the death penalty or even life in prison. It is challenging for the UN to create a unified, broadly applicable strategy for LGBTQ rights because of the huge variations in acceptance and legal frameworks.

An important project that addressed the rights of the LGBTQ community was launched in Yogyakarta, Indonesia, in 2006 in response to the urgent need for a comprehensive framework. The Yogyakarta Principles were drafted by a coalition of well-known non-governmental organizations, famous campaigners, and academic professionals who came together for this gathering. In terms of sexual orientation, gender identity, gender expression, and sex characteristics, this historic declaration lays forward several principles intended to preserve and defend human rights. The Yogyakarta Principles set forth several rights for members of the LGBTQ community, as well as duties on the part of the states to carry out and uphold these rights.

In 2017, the Yogyakarta Principles underwent a review and expansion in recognition of the dynamic nature of LGBTQ issues and the continuous demand for all-encompassing safeguards. The revised Yogyakarta Principles plus 10, which adds more rights and obligations for states, is the product of this endeavour. The revised guidelines aim to strengthen the state's ability to defend LGBTQ people against prejudice and guarantee they get respect and dignity. With this updated framework, the LGBTQ community will have a more comprehensive and practical set of standards to ensure that they receive equal treatment and fundamental human rights across the globe.

With the help of these initiatives, the Yogyakarta Principles and their later update represent a noteworthy attempt to tackle the intricate human rights problems that the LGBTQ community faces. They provide a strong, albeit non-binding, set of guidelines that advance equality and confront discriminatory practices worldwide.

### **III. HOMOSEXUALITY IN THE INDIAN PERSPECTIVE**

Romantic or sexual attraction between people of the same sex is referred to as homosexuality. In many parts of the world, same-sex partnerships are still controversial despite tremendous advancements in our understanding of human sexuality. Particularly, there is still a lot of moral and social aversion to having sex with LGBT partners. A great deal of scientific research has been done to try and figure out where sexual orientation came from. According to results from

biological research, a person's sexual orientation is influenced by both hereditary and environmental variables during pregnancy. These findings suggest that sexual orientation is not a decision or something that can be changed at whim, but rather a normal variance in human behavior.

Even in the twenty-first century, homosexuality is still heavily stigmatized in India due to ingrained historical and cultural prejudices that still see it as taboo. Marriage is frequently defined by traditional personal laws as a holy union between two people of different sexes who are seen as "pure" and complementary. As a result, homosexuality is commonly denounced as immoral and against social, cultural, and religious standards. Mainstream culture frequently rejects same-sex unions and sees them as an insult to the traditional institution of marriage, which is strongly influenced by religious beliefs. Many Indians ignore the rich history of different sexual behaviours and gender identities within their cultural heritage, viewing homosexuality as a corrupting influence from Western society.

There are many examples of same-sex partnerships and transgender identities in Indian history and classical literature, despite the general notion that homosexuality is a bad thing. Texts and artefacts from antiquity reveal a complex view of gender and sexuality. For instance, the term "Vikriti Evam Prakriti," which translates to "what seems unnatural is also natural," appears in the Rig Veda, one of Hinduism's oldest texts, and suggests an early acceptance of a variety of sexual orientations.<sup>5</sup>

Additional evidence of the acceptance of homosexual relationships and gender fluidity can be found in the epics and sacred texts of ancient India. This diversity is evidenced by the narrative of King Bhagirathi, who was born of the union of two women, and by the sensual sculptures found in the Khajuraho temples<sup>6</sup>, the Sun Temple in Konark, the Ellora caves in Maharashtra, which depict same-sex encounters. Furthermore, Vatsyayana's Kama Sutra explores a wide range of topics related to sexuality and erotic fulfilment, including same-sex relationships.<sup>7</sup> This indicates that the ancient Indian society held a more nuanced and comprehensive understanding of human sexuality than is generally accepted today.

These historical examples demonstrate that ancient Indian society recognized and debated the concepts of gender fluidity and sexuality in addition to their existence. Given this rich history,

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<sup>5</sup> S Ray, *Indian Culture Does Recognise Homosexuality, Let Us Count the Ways*, THE QUINT (September 11, 2018) <https://www.thequint.com/voices/opinion/homosexuality-rss-ancient-indian-culture-section-377> .

<sup>6</sup> Vikas Pandey, *Why Legalising Gay Sex in India Is Not a Western Idea*, BBC News, December 31, 2018, <https://www.bbc.com/news/world-asia-india-46620242>.

<sup>7</sup> The topic of gay males and oral sex is mentioned in the chapter "Auparishtaka." Men who identify as homosexual were called "mukhebhaga" or "asekya" and were expected to play a submissive role.

it appears that modern perceptions of homosexuality as alien or immoral are a relatively new phenomenon, frequently shaped more by Victorian morality and legal frameworks from the colonial era than by traditional Indian ideas about sexuality.

The same-period Islamic literature also reveals a sophisticated interpretation of same-sex attraction. The Mughal Emperor Babur's autobiography, the Baburnama, mentions same-sex inclinations.<sup>8</sup> Sufi poets like Sarmad Kashani and Bulleh Shah also explored the themes of same-sex love and desire, demonstrating how these ideas were present in various religious and cultural contexts throughout the region.<sup>9</sup>

Social and legal provisions around sexuality underwent a dramatic change when the British Empire arrived in India in the 19th century. The Christian Church's teachings greatly affected the more orthodox and anglicized view of sexuality that was imposed by British Victorian morality and legal structures. As a result, homosexuality became illegal when Section 377 of the Indian Penal Code, which was written by Lord Macaulay in 1860, was added. By classifying same-sex relationships as "unnatural offenses," this law essentially eliminated earlier, more liberal viewpoints and imposed a morality based on religious beliefs of life and death.

The legal imposition was accompanied by a parallel change in social attitudes that resulted in the criminalization and stigmatization of homosexuality as the new moral norms were woven into the fabric of society. Morality, entwined with the teachings of religion, started to dominate both public and private conversation, robbing those who have same-sex partners of their humanity and dignity.

India retained the oppressive Section 377 of the British-influenced Indian Penal Code even after obtaining independence in 1947. Although homosexuality was made legal in Britain in 1967, India's fight against the effects of colonialism lasted for many years. The decriminalization of consensual same-sex relationships by the Supreme Court of India took place in 2018, which is a significant but long-overdue step towards the restoration of the cultural and social acceptance that was formerly prevalent in Indian society.<sup>10</sup>

Examples of historically liberal and inclusive attitudes towards human sexuality in India can be seen in the works of Khajuraho, Konark, and Ellora, as well as in references found in Islamic and Sufi literature. The aforementioned highlights the lasting influence of colonialism on

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<sup>8</sup> Ziya Us Salam, *An Emperor with Foibles*, THE HINDU, (February 15, 2014, 08:25 AM) <https://www.thehindu.com/books/books-columns/an-emperor-with-foibles/article5692770.ece>.

<sup>9</sup> Haroon Khalid, *From Bulleh Shah and Shah Hussain to Amir Khusro, Same-Sex References Abound in Islamic Poetry*, SCROLL.IN (June 17, 2016, 05:30 PM) <https://scroll.in/article/810007/from-bulleh-shah-and-shah-hussain-toamirkhusro-same-sex-references-abound-in-islamic-sufi-poetry>.

<sup>10</sup> Navtej Singh Johar v. Union of India thr. Secretary Ministry of Law and Justice, AIR 2018 SC 4321.



current perspectives on sexuality in India, particularly in comparison to the restricted laws and societal attitudes imposed during British rule, which imposed a moralistic framework that lasted long after independence.

#### IV. SAME-SEX MARRIAGE IN INDIA

The way the Indian government views the LGBTQ community has changed throughout time, especially in relation to the movement for gay rights, which originated with challenges to laws from the colonial era. When the Indian Penal Code's Section 377 was added in 1861, same-sex relationships became illegal, putting the LGBTQ population behind societal and legal barriers. For more than a century, this law remained a source of controversy—efforts to challenge Section 377 acquired momentum in the early 2000s. In a 2001 appeal to the Delhi High Court, made by an NGO, the Naz Foundation, dedicated to HIV/AIDS and sexual health—argued that the statute was unconstitutional and demanded that consensual same-sex partnerships be decriminalized.<sup>11</sup> The Delhi High Court initially rejected the petition in 2003 ruling that the Naz Foundation lacked standing because the law did not directly affect it.

The Naz Foundation persisted and took the case all the way to the Supreme Court. In the *Naz Foundation v. Government of the NCT of Delhi*<sup>12</sup>, it was claimed that Section 377 was unconstitutional under Article 21<sup>13</sup>, which protects the fundamental rights to life, personal liberty, and dignity. Additionally, arguing that "sex" includes sexual orientation, the petitioners claimed that the statute violated Articles 14<sup>14</sup> and 15<sup>15</sup>, which guarantee equality before the law and forbid discrimination based on sex. As a step towards more acceptance and official legal recognition, this ruling represented a major success for LGBTQ rights in India.

But it was only a temporary win. Section 377 was reinstated in 2013 when the Delhi High Court's ruling was overturned by the Supreme Court in the case of *Suresh Kumar Koushal v. Naz Foundation*.<sup>16</sup> The Supreme Court contended that the LGBTQ community was a "minuscule fraction" of the population and did not justify judicial involvement, claiming that the government, not the judiciary, should be responsible for changing the legislation. Many people opposed this decision and saw it as a step backward in the struggle for LGBTQ rights.

A private member's bill to decriminalize consenting same-sex relationships was introduced by Member of Parliament Shashi Tharoor in 2015 in response to the Supreme Court's verdict. But

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<sup>11</sup> *Naz Foundation v. Govt. of NCT of Delhi*, 2010 CRI. L. J. 94.

<sup>12</sup> *Ibid.*

<sup>13</sup> INDIA CONST. art. 21.

<sup>14</sup> INDIA CONST. art. 14.

<sup>15</sup> INDIA CONST. art. 15.

<sup>16</sup> *Suresh Kumar Kaushal v. Naz Foundation*, Civil Appeal No. 10972 of 2013.

the Lok Sabha turned down the bill.

The LGBTQ community and its allies continued to advocate, resulting in the filing of various petitions in 2016 challenging the constitutionality of Section 377. The petitioners contended that the statute infringed upon fundamental rights, such as the freedom to select a partner, the right to privacy, and the right to a dignified life.

These efforts resulted in the landmark 2018 Supreme Court decision in *Navtej Singh Johar v. Union of India*.<sup>17</sup> The court unanimously decided to repeal Section 377, which had made adult consent to sexual activity illegal. According to the ruling, this kind of criminality breached both Article 21<sup>18</sup> (which protects individual privacy and dignity) and Article 14 (which guarantees equality before the law). This verdict upheld fundamental rights and significantly altered Indian law by affirming that the right to choose a spouse is inextricably attached to the right to life and liberty.

## V. CURRENT SCENARIO

Legal acknowledgment of partnerships between same-sex couples as marriages is still lacking. They do, however, have the right to live together and be protected from discrimination and harassment. The decision emphasizes the necessity of passing legislation to close the legal loophole and establish guidelines for identifying and defending same-sex couples' rights. The decision by the Indian Supreme Court followed a protracted legal dispute about same-sex marriage recognition. Chief Justice D.Y. Chandrachud and Justices S.K. Kaul, S. Ravindra Bhat, Hima Kohli, and P.S. Narasimha made up the five-judge Constitution Bench that heard the case.<sup>19</sup> The petitioners contended for the legal recognition of same-sex marriages under several personal laws, citing the Indian Constitution's principles of equality, dignity, and freedom.

The majority ruling maintained that same-sex marriages are not recognized by the current legal framework. The Court underlined that Parliament, not the courts, has the authority to provide the legislative framework necessary for such recognition. Legislative action would therefore be required for any changes to the marriage laws to accommodate same-sex couples. The Court declined to redefine the legal definition of marriage through judicial intervention, which means that same-sex couples do not yet have the right to marry under Indian law.

It was unanimous among the justices that same-sex couples should have constitutional

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<sup>17</sup> *Navtej Singh Johar v. Union of India* thr. Secretary Ministry of Law and Justice, AIR 2018 SC 4321.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.* at 2.

protections. They are protected from harassment and discrimination in their right to cohabit and establish personal relationships. There was disagreement over whether Article 21 covers the right to marry. Some justices contended that the right to life and personal liberty are inextricably linked to marriage. In contrast, others believed that the legislature should have the last say on whether same-sex couples are entitled to this privilege.

The Court stated that although the courts have a duty to uphold fundamental rights, legislation is the most effective way to resolve the complicated socio-legal concerns surrounding same-sex marriage recognition. The decision emphasizes the importance of the separation of powers and the Court's unwillingness to encroach on legislative duties. As an alternative legal framework that may provide same-sex couples with specific legal rights without changing the conventional meaning of marriage, some justices proposed the creation of civil unions.

There was no consensus on this issue, hence there was no final decision about civil unions. The decision recognized how public perceptions of homosexual relationships are changing. Although the Court did not order an instant change in the legal status of marriages, it acknowledged the necessity of incremental legal reforms to guarantee the rights of LGBTQIA+ people are respected and protected.

The decision highlights the importance of democratic processes and societal growth in bringing about change, reflecting the judiciary's cautious approach to social reform through legal adjudication. It is believed that the legalization of same-sex unions will take time and will need both governmental support and increased popular acceptability.

The Supreme Court's decision on same-sex marriage reflects a complex position that strikes a compromise between individual rights acknowledgment and judicial restraint. It upholds the freedom of same-sex couples to live together and receive constitutional safeguards against discrimination, even though it does not provide same-sex marriages legal recognition. The ruling, which reflects the intricate interaction between changing social norms and legal principles, highlights the necessity of legislative action to address the legal recognition of same-sex relationships.

## **VI. INJUSTICE FACED BY SAME-SEX COUPLES AS A PART OF SOCIETY**

### **(A) Lack of Legal Recognition for Same-Sex Marriages**

Same-sex marriages are not recognized by any of India's current marriage laws, including the Hindu Marriage Act, the Special Marriage Act, and others. According to these regulations, a man and a woman's union is the traditional definition of marriage. The Supreme Court declared

that marriage laws are still the purview of the legislature during its consideration of petitions asking for the recognition of same-sex unions.<sup>20</sup> Parliament will have the final say on any modifications to the definition of marriage, as the court upheld its inability to define it to include same-sex couples. Same-sex couples are unable to utilize marital benefits such as joint adoption, inheritance rights, tax advantages, and spousal rights in relation to legal and medical concerns if they are not legally recognized.

### **(B) Absence of Civil Union Laws**

Civil unions and domestic partnerships, which could give same-sex couples some legal status and rights as an alternative to marriage, are not legally recognized in India. Many nations provide civil unions or similar agreements that give same-sex couples legal rights and protections without formally recognizing them as married.<sup>21</sup> These rights frequently cover property ownership, medical decision-making, and inheritance. Until same-sex marriages can be legally recognized, there is continuous advocacy for the introduction of civil union laws in India to close the legal loopholes for LGBTQ+ couples.

### **(C) Adoption Rights**

In India, adoption policies, such as those overseen by the CARA<sup>22</sup>, generally give preference to adoptions by heterosexual married couples. Legal obstacles prevent same-sex couples from adopting children together since their relationships are not recognized. In the process of adopting a child, even single LGBTQ+ people may encounter prejudice and scrutiny that hinders their capacity to give needy children a home<sup>23</sup>. In order to ensure that same-sex couples and single LGBTQ+ people have equal opportunity to adopt, advocates are campaigning for changes to adoption laws that are inclusive of varied family arrangements.

### **(D) Discrimination and Social Acceptance**

LGBTQ+ people and couples continue to face substantial social stigma and prejudice in spite of legal advancements. Everything from public safety to workplace inclusiveness and service access is impacted in their day-to-day existence. LGBTQ+ people frequently experience prejudice and marginalization due to discrimination in public services, housing, and the workplace. It is imperative to challenge cultural stereotypes and advance inclusivity by promoting education and knowledge about LGBTQ+ rights and identities.

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<sup>20</sup> *Id.* at 2.

<sup>21</sup> BBC NEWS, <https://www.bbc.com/news/world-43822234>, (last visited 15 June 2024).

<sup>22</sup> Central Adoption Resource Authority, (CARA), Government of India.

<sup>23</sup> §5(3) of Adoption Regulations, 2022.

## VII. VIOLATION OF FUNDAMENTAL RIGHTS

In many nations, including India, the LGBTQ community has historically had limited rights because of social and legal restrictions that have long oppressed this minority. Despite recent legal advances, considerable hurdles remain, and the fight for equal rights faces opposition. The battle for LGBTQ rights in India is influenced by several important articles of the Indian Constitution, including Articles 14, 15(1)<sup>24</sup>, 19(1)(a)<sup>25</sup>, and 21, which protect essential rights that LGBTQ people are frequently denied.

### **(A) Right to Equality (Article 14)**

Every person has “the right to equal protection under the law and equality before the law”, according to Article 14 of the Indian Constitution. It requires the state to treat all citizens equally and without bias. Unfortunately, because of social preconceptions, this community in India has always been denied this right. LGBTQ people, especially transgender people, have historically been marginalized from society's standards and legal recognition because they are perceived as immoral and evil.

Because they are not accorded the same recognition and respect as other citizens, the right to equality is frequently infringed. They have frequently experienced prejudice in a variety of spheres of life, including work, education, and healthcare, and they have been denied the freedom to openly express their gender identity. While equal protection is guaranteed by law in theory, in practice inequality has been sustained by societal norms and laws, such as the former Section 377. Even if homosexuality is no longer illegal according to recent rulings, the community still has a long way to go before it is fully accepted and equal.

### **(B) Right Against Discrimination (Article 15(1))**

“Discrimination on the basis of religion, race, caste, sex, or place of birth” is forbidden by Article 15(1). In order to advance equality and shield people from discriminatory actions, this paper is essential. The *NALSA v. Union of India*<sup>26</sup> case set a precedent for the recognition of transgender people as a third gender by the Supreme Court in 2014. This ruling recognized that transgender persons should have the same rights as other citizens, including the capacity to self-identify as their gender identity, and that discrimination based on gender identity is unlawful. Despite legal recognition, discrimination still exists. LGBTQ people still encounter obstacles while trying to use public services, find work, and engage in social and political life. The

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<sup>24</sup> INDIA CONST. art. 15, § 1.

<sup>25</sup> INDIA CONST. art. 15, §1, cl. a.

<sup>26</sup> National Legal Services Authority v. Union of India, Writ Petition (Civil) No.400 of 2012.

constitutional restriction against discrimination is frequently broken by the social stigma attached to non-normative gender identities and sexual orientations, which results in marginalization and exclusion.

**(C) Right to Freedom of Speech and Expression (Article 19(1)(a))**

The “freedom of speech and expression”, which includes the freedom to openly express one's identity and opinions, is assured under Article 19(1)(a) of the Constitution. This includes the freedom of LGBTQ people to express their gender identity and sexual orientation without worrying about social reaction or repression. In reality, though, this right is routinely infringed upon as LGBTQ individuals are regularly prevented from publicly expressing who they are. This fundamental freedom is violated by restrictions on the ability to marry, social disapproval of same-sex relationships, and social and legal barriers to the expression of non-normative gender identities and sexual orientations. For example, openly expressing one's identity might result in censure, social exclusion, or even violence against LGBTQ people, so restricting their freedom of speech.

**(D) Right to Privacy and Personal Liberty (Article 21)**

The “right to life and personal liberty”, which includes the right to privacy and a dignified existence, are guaranteed by Article 21. This right includes the freedom to have consensual partnerships and live according to one's particular views and identities. The 2018 ruling upheld the fundamental right to privacy by stating that sexual orientation is an intrinsic component of privacy and that it is illegal to criminalize voluntary sexual conduct between adults. Even with these legal safeguards, many LGBTQ people still have difficulty exercising their right to privacy. Social attitudes frequently encroach on their private lives, and same-sex marriages continue to face opposition, which violates their right to a dignified existence and the freedom to choose their partners. The unwillingness of certain lawmakers and activists to acknowledge

**(E) International Obligations: UDHR and Human Rights Covenants**

India is a member of the Human Rights Council, the Office of the High Commissioner for Human Rights (OHCHR), and a signatory to the Universal Declaration of Human Rights (UDHR). India is required by these international agreements to respect and defend the human rights of everyone, including the LGBTQ community. The UDHR's inclusion of the right to sexuality highlights the fundamental human right to self-determination and the absence of discrimination based on sexual orientation. India has a history of not harmonizing its local laws and practices with international standards, especially concerning LGBTQ rights, despite its international commitments. India has to take significant action to uphold its international

obligations and guarantee that LGBTQ people have the same rights as heterosexual people: recognizing and allowing same-sex unions.

## **VIII. CONCLUSION**

The conversation in India about social justice and same-sex marriage is inextricably linked to the country's changing social, cultural, and legal environments. India has always struggled with complex views on gender and sexuality that have their roots in colonial, religious, and cultural traditions. The Supreme Court's historic legalization of homosexuality in 2018 was a turning point in the acceptance of LGBTQ+ rights. Nonetheless, there are still several obstacles in the way of same-sex marriage becoming legal.

Proponents of same-sex unions emphasize that this is an essential matter of equality and social justice. Marriage is not only a personal matter; it is a social institution that bestows numerous legal and social advantages. Denying same-sex couples the opportunity to be married feeds into a larger culture of prejudice by denying them legal recognition and the corresponding social, emotional, and economic security. Therefore, the campaign for marriage equality seeks to overthrow long-standing injustices and respect the dignity of LGBTQ+ people in addition to protecting individual liberties.

When claiming that same-sex marriage threatens conventional family structures and the social fabric, opponents frequently point to religious and traditional values. However, rather than being based on objective observations about the welfare of society, these arguments usually reveal underlying biases. Equal rights and opportunities for all people, irrespective of their sexual orientation, are important for social justice in a democratic society.

The Supriyo case also brings to light broader social justice issues, such as the necessity of an inclusive judicial system that takes into account modern socioeconomic realities and the state's duty to defend minority rights against the prejudices of the majority. Adopting marriage equality can promote more social fairness and cohesion in India as the country continues to modernize and its social fabric diversifies. It recognizes the validity of various family arrangements and conveys a commitment to protecting human rights.

The Supriyo v. Union of India case, therefore, serves as a symbol of the larger fight for social justice in India and emphasizes the critical necessity for same-sex marriage's acceptance and legitimacy. Marriage equality is a critical first step in achieving social justice, which is a prerequisite for guaranteeing that every citizen has equal legal rights. A just and equitable society is built on the pursuit of inclusion, respect, and dignity, all of which are embodied in this case.