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MARRIAGE EQUALITY VS. CIVIL UNIONS: A COMPARATIVE CONSTITUTIONAL ANALYSIS WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT

The acceptance of same-sex relationships continues to be a controversial issue across the globe. While some nations have full marriage equality, others employ the use of civil unions, which provide some rights but not the entire marriage equality. In India, this issue has actually gained great momentum recently. Landmark ruling which annulled the law against homosexuality (Navtej Singh Johar v. Union of India), and the one that held that transgender individuals are entitled to privacy, have supported individual liberty in love as well as relationships. But then Supreme Court's ruling in (Supriyo v. Union of India), which denied marriage rights to gay couples and raised a whole host of hard questions regarding fundamental rights under the constitution, whether all people are actually equal under Article 14, whether all people are treated equally under Article 15, and whether everyone has freedom and a good life under Article 21.

This paper conducts a comparative examination of marriage equality and civil unions from a constitutional perspective, inquiring whether civil unions are indeed able to act as a substitute of marriage. Through the examination of experiences in nations such as the United States, South Africa, and several European countries, it assesses whether civil unions adequately protect dignity, equality, and complete citizenship rights. The study figures out that civil unions often fail to offer the same social recognition, legal security, and symbolic affirmation as marriage. Therefore, marriage equality is a better fit with India's constitutional vision for justice – making sure everyone, no matter who they are and whom they love, can exercise their fundamental right of equality, dignity and liberty.

Keywords: Marriage equality, Fundamental rights, Comparative constitutional law, Civil unions, LGBTQ+ rights.

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INTRODUCTION

Marriage is not just a commitment between two people. It's a big deal in society and a legal thing that spells out what couples can do, what they must do, and how everyone sees them. Through marriage, couples get some legal rights like being able to inherit things, adopt kids, make medical decisions, and get benefits on taxes. But for same-sex couples, they haven't had any of that right, which means they don't get the same safety and respect as everyone else. And this exclusion is not merely symbolic— it has tangible consequences on the ability of LGBTQ+ individuals to live with dignity, security, and equality in society. Around the world, the acceptance of same-sex relationships has followed two broad approaches. The first, **marriage equality**, grants same-sex couples full marital rights, treating them on an equal footing with heterosexual couples. Jurisdictions such as the United States, following the landmark judgement “*Obergefell v. Hodges*”², and South Africa, in “*Minister of Home Affairs v. Fourie*”³, have adopted this model, recognizing that equality and dignity require full legal acceptance of same-sex unions. The second way is civil unions, which give some rights but are not the same as being married. Some countries in Europe started with this, but later went to marriage equality as societal attitudes evolved and constitutional interpretations developed.

In India, the Supreme Court has played an important role in advancing LGBTQ+ rights. In “*Naz Foundation v. Government of NCT Delhi*”⁴, the Delhi High Court decriminalized consensual same-sex relations, challenging longstanding social prejudices. This momentum continued with “*Justice K.S. Puttaswamy v. Union of India*”⁵, where the Court recognized privacy as a constitutional right, affirming that sexual orientation is intrinsic to personal dignity. These principles resulted in “*Navtej Singh Johar v. Union of India*”⁶, which decriminalized same-sex relationships nationwide and reinforced equality, liberty, and personal autonomy. Even with these advance steps, the Supreme Court, in “*Supriyo v. Union of India*”, refused to legalize same-sex marriage, emphasizing that such reform falls within the legislature’s domain. This has left a significant gap in India’s constitutional framework: whether civil unions can serve as a legally and socially adequate substitute for marriage remains unresolved.⁷

² *Obergefell v. Hodges*, 576 U.S. 644 (2015).

³ *Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC).

⁴ *Naz Foundation v. Government of NCT of Delhi*, 160 Delhi Law Times 277 (Del HC 2009).

⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁷ *Supriyo v. Union of India*, Writ Petition (Civil) No. 1011 of 2022, Supreme Court of India (2023).

This research seeks to address that gap through a comparative study of constitutional approaches in different jurisdictions. It examines whether civil unions can actually uphold the principles of equality, dignity, and justice enshrined in the Indian Constitution, or whether only marriage equality can fully secure these rights for same-sex couples. By analyzing legal frameworks, case law, and social implications across countries, this study aims to contribute to ongoing debates about law, social justice, and LGBTQ+ rights in India, highlighting the role of legal recognition in ensuring fairness, inclusion, and transformative justice for all citizens.

Hypothesis, Objectives and Research Problem

Hypothesis: Civil unions are constitutionally inadequate as a substitute for marriage; marriage equality alone can uphold the principles of dignity, equality, and transformative justice under the Indian Constitution.

Objectives

1. To trace the global development of marriage equality and civil unions.
2. To evaluate constitutional principles of equality, dignity and liberty in the context of same-sex relationships.
3. To conduct a comparative study of jurisdictions such as the United States, South Africa and Europe.
4. To critically analyze India's constitutional position after *Supriyo v. Union of India* (2023).
5. To suggest reforms consistent with the transformative vision of the Indian Constitution.

Research Problem

The central problem addressed in this paper is whether civil unions are a constitutionally sufficient substitute for marriage rights in India. Specifically, it asks:

- To what extent do civil unions provide the same legal protections, social recognition, and dignity that marriage confers? Are they truly equivalent in safeguarding the rights of same-sex couples?
- How have other constitutional democracies approached the challenge of recognizing same-sex relationships? What lessons can be drawn from jurisdictions that have implemented either civil unions or full marriage equality?

- Considering India’s constitutional principles, including the commitment to equality, liberty, and transformative justice, which model of legal recognition—civil unions or marriage equality—aligns best with the country’s moral and legal framework?

Research Methodology

This study employs a doctrinal and qualitative legal research methodology to examine the acceptance of same-sex relationships in India. It fundamentally relies on primary sources, like the Constitution of India (Articles 14, 15, 21), regulation such as the Special Marriage Act, 1954, and landmark judgements like *Navtej Singh Johar v. Union of India* (2018) and *Naz Foundation v. Government of NCT of Delhi* (2009). Secondary sources such as books, journal articles, Law Commission reports, and reliable online materials supplement the analysis.

The study involves doctrinal analysis to interpret relevant laws and judicial reasoning, comparative analysis to understand global trends in marriage equality and civil unions, and content analysis of scholarly commentaries to identify key legal, social, and policy challenges. Data collection focuses on authentic legal databases, academic literature, and official government sources.

Limitations include a primary focus on Indian law with select comparative jurisdictions and reliance on secondary data for social aspects of same-sex relationships. The methodology ensures a comprehensive, analytical, and contextual understanding of the legal and social dimensions of marriage equality versus civil unions.

Literature Review

Scholarly literature on marriage equality and civil unions consistently highlights the limitations of civil unions in providing full equality and social recognition to same-sex couples. Legal scholars have argued that while civil unions may offer a degree of legal protection, they often fall short of guaranteeing the comprehensive rights and societal validation that marriage entails. Eskridge, for instance, observes that civil unions, though symbolically important, frequently create a “second-class” status for same-sex couples.⁸ They may grant limited legal benefits but fail to challenge the entrenched social stigma and structural inequities faced by LGBTQ+ individuals, thereby perpetuating subtle forms of discrimination.

⁸ William N. Eskridge Jr., *Equality Practice: Civil Unions and the Future of Gay Rights* (Routledge 2002).

Comparative studies further underscore these limitations. Waaldijk's analysis of European jurisdictions demonstrates that civil unions, although widely adopted as an interim solution, provide only partial legal protection.⁹ In many cases, couples in civil unions continue to experience restrictions on inheritance, adoption, and spousal privileges, and the very distinction between civil unions and marriage can reinforce societal perceptions of inequality. Similarly, Yoshino's work in the U.S. context, particularly in the aftermath of *Obergefell v. Hodges* (2015), emphasizes that marriage is far more than a legal instrument. Marriage functions as a social and constitutional acknowledgment of equality, validating relationships in the eyes of both the state and society, a recognition that civil unions alone cannot fully achieve.¹⁰

In South Africa, scholars such as De Vos have highlighted the initial rationale behind civil unions, which were introduced partly to accommodate social resistance to same-sex marriage. However, the Constitutional Court in *Minister of Home Affairs v. Fourie* (2005) made it clear that civil unions were insufficient to fulfill constitutional mandates.¹¹ The Court recognized that marriage equality is essential to uphold the principles of dignity, equality, and non-discrimination enshrined in the South African Constitution, marking a decisive step toward full legal and social inclusion.

Indian scholarship similarly underscores the transformative potential of judicial intervention in advancing LGBTQ+ rights. Landmark judgments, most notably "*Navtej Singh Johar v. Union of India*"¹², established sexual orientation as an intrinsic aspect of constitutional dignity and liberty. This recognition has been celebrated as a critical milestone in affirming the rights of sexual minorities. Nonetheless, critical commentaries on *Supriyo v. Union of India* (2023) highlight the ongoing challenges faced by same-sex couples.¹³ By deferring the question of marriage rights to the legislature, the Court effectively left these couples in a state of legal uncertainty, perpetuating a gap in constitutional protection. Scholars argue that civil unions, in this context, cannot serve as a sufficient substitute for marriage, as they fail to deliver the full range of legal, social, and symbolic recognition necessary to uphold the transformative vision of equality embedded in the Indian Constitution.

⁹ Kees Waaldijk, "Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands" in Robert Wintemute and Mads Andenæs (eds), *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law* (Hart Publishing 2001) 437.

¹⁰ *Supra* note 1.

¹¹ *Supra* note 3.

¹² *Supra* note 6.

¹³ *Supriyo v. Union of India, Writ Petition (Civil) No. 1011 of 2022, Supreme Court of India* (2023).

Overall, the literature consistently suggests that while civil unions can offer partial recognition, only full marriage equality can provide the comprehensive legal rights and societal acknowledgment necessary to achieve substantive equality for same-sex couples, both internationally and within India's constitutional framework.

Research Gap: While international studies have highlighted the limitations of civil unions, there is still a lack of detailed comparative analysis specifically focused on the Indian context.¹⁴ Most existing Indian scholarship has concentrated on the decriminalization of same-sex relationships and the recognition of privacy rights. However, these studies have not systematically examined whether civil unions can offer the same constitutional protections, social recognition, and legal rights as full marriage equality for same-sex couples in India.¹⁵

Comparative Constitutional Analysis

United States

Before the nationwide recognition of same-sex marriage, several U.S. states implemented civil unions or domestic partnerships as a way to grant legal recognition to same-sex couples. While these arrangements provided certain limited legal rights—such as hospital visitation, inheritance rights, and some health benefits—they were often not recognized outside the state in which they were granted. This patchwork system left couples vulnerable to legal and financial uncertainties, particularly in areas such as taxation, inheritance, and medical decision-making. Scholars and advocates argued that civil unions created a form of “separate but unequal” status, signaling that same-sex relationships were inherently inferior to heterosexual marriages.

The transformative shift came with the landmark decision in *Obergefell v. Hodges* (2015), where the U.S. Supreme Court held that marriage is a fundamental right under the Fourteenth Amendment's Due Process and Equal Protection Clauses.¹⁶ The Court emphasized that civil unions or domestic partnerships were constitutionally insufficient because they denied same-sex couples the dignity, respect, and equality inherently associated with marriage. By recognizing marriage as a fundamental right, the Court affirmed that equality is not merely legal but also social, symbolically acknowledging the full humanity and citizenship of same-

¹⁴ Kees Waaldijk, “Civil Unions: A European Alternative to Same-Sex Marriage?” (2004) 2 *McGill Journal of Law and Health* 115.

¹⁵ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019).

¹⁶ *Supra* note 1.

sex couples.

South Africa

South Africa presents a compelling example of the judiciary's role in ensuring substantive equality. Initially, civil unions were introduced as a compromise to accommodate social and political resistance to same-sex marriage. However, in "*Minister of Home Affairs v. Fourie*", the Constitutional Court held that denying same-sex couples' access to marriage violated the Constitution's guarantees of equality and dignity under sections 9 and 10.¹⁷ The Court explicitly noted that civil unions could not substitute for marriage because they failed to provide full recognition, protection, and societal legitimacy. South Africa's approach demonstrates how constitutional guarantees can compel states to move beyond partial solutions like civil unions and embrace full marriage equality as a matter of justice and dignity.

European Nations

Several European countries, including France, Italy, and Germany, initially introduced civil unions to recognize same-sex relationships while stopping short of granting full marital rights. These civil unions provided some legal protections, such as inheritance rights, joint taxation benefits, and medical decision-making authority. Yet over time, it became evident that civil unions perpetuated social and legal inequality. The European Court of Human Rights, particularly in "*Oliari and Others v. Italy*", highlighted that states have a positive obligation to ensure legal recognition of same-sex relationships in a manner that provides substantive equality.¹⁸ The Court's judgments underscored that partial measures like civil unions are insufficient to meet constitutional and human rights standards when they fail to provide full dignity, protection, and societal acceptance.

Indian Constitutional Framework

India's Constitution offers a strong foundation for equality, liberty, and protection of personal rights, making it highly relevant to the debate on marriage equality and civil unions. The key provisions include:

1. Article 14 – Equality Before Law: Guarantees that "the State shall not deny equality to any person and ensures equal protection under the law".¹⁹

¹⁷ *Minister of Home Affairs and Another v. Fourie and Another* (2005) ZACC 19, 2006 (1) SA 524 (CC)

¹⁸ *Oliari and Others v. Italy*, App. Nos. 18766/11 & 36030/11.

¹⁹ The Constitution of India, Art. 14

2. Article 15 – Prohibition of Discrimination: “Forbids discrimination on grounds of sex, religion, caste, or place of birth, and judicial interpretation has extended this protection to include sexual orientation”.²⁰
3. Article 19 – Freedom of Expression and Association: “Safeguards personal autonomy, including the freedom to choose partners and form intimate relationships”.²¹
4. Article 21 – Right to Life and Personal Liberty: Recognized as encompassing the rights to dignity, privacy, and autonomy, particularly in matters of love, partnership, and family life.²²

The Supreme Court of India has consistently emphasized constitutional morality over majoritarian or societal morality. This principle was central in *Navtej Singh Johar v. Union of India* (2018), where the Court recognized that LGBTQ+ individuals have the right to dignity and freedom to choose their partners without interference from the State or society. The judgment reinforced that equality under the Constitution is substantive, requiring the State to actively remove barriers that hinder social and legal recognition of marginalized groups.

India’s constitutional framework, when viewed alongside global experiences, suggests that civil unions alone are unlikely to provide the full spectrum of rights, recognition, and dignity that marriage affords. The comparative approach highlights that in order to realize the transformative potential of India’s Constitution—providing equality, liberty, and social justice—complete marriage equality is not only desirable but constitutionally necessary.

Civil Unions vs. Marriage in India

Civil unions as a legal framework were created to extend some form of acknowledgment to same-sex couples through the bestowing of rights such as shared property, inheritance, and hospital visitation. These rights, though useful, are incomplete and lack the level of protection and acknowledgement that comes with marriage. Marriage is not merely an aggregate of legal rights but a long-standing social institution that possesses symbolic value and public acceptance.

Legally, marriage confers a far larger range of privileges and entitlements. These range from adoption, spousal benefits, rights of succession, tax preferences, and other prerogatives that civil unions frequently don’t provide. Beyond such material entitlements, however, marriage is

²⁰ The Constitution of India, Art. 15

²¹ The Constitution of India, Art. 19

²² The Constitution of India, Art. 21

also a signifier of equal citizenship, indicating that every couple—irrespective of sexual orientation—has the same respect, recognition, and protection under the law. In the Indian context, where social legitimacy becomes a central factor in personal and family life, the symbolic worth of marriage becomes all the more important.

By creating a separate category such as civil unions, the State risks institutionalizing inequality. Instead of leveling the playing field, such an arrangement signals that same-sex couples deserve only partial recognition, relegating them to a “second-class” status. This not only undermines the spirit of Articles 14, 15, and 21 of the Constitution, which guarantee equality, non-discrimination, dignity, and liberty, but also denies same-sex couples the transformative promise of full citizenship. Therefore, marriage equality, and not civil unions, emerges as the true constitutional safeguard of dignity and justice.

Critical Analysis and Findings

Comparative constitutional jurisprudence, as well as Indian legal developments, make it clear that civil unions cannot serve as an adequate substitute for full marriage equality. Although civil unions provide limited recognition, they fail to deliver the comprehensive legal rights and the symbolic societal status that marriage entails.

Symbolic Inequality: One of the most critical shortcomings of civil unions lies in their inability to confer equal social legitimacy. Marriage, in virtually every society, carries deep cultural, emotional, and symbolic meaning. By restricting same-sex partners to civil unions, the State reinforces the idea that their relationships are inherently different or inferior. This creates a “separate but unequal” regime, perpetuating stigma and undermining the promise of equal dignity.

Legal Gaps: In addition to symbolism, civil unions usually omit essential legal safeguards. Rights like joint adoption, inheritance benefits, spousal healthcare coverage, and survivor pensions are commonly withheld. International practice demonstrates that these gaps leave same-sex couples with substantial vulnerabilities, without the complete shield of the law in areas that impact household security and economic stability.

Constitutional gaps in India: The biggest finding of this research is the inconsistent approach by the Supreme Court towards LGBTQ+ rights. While the Court invalidated Section 377 in

Navtej Singh Johar v. Union of India upholding the dignity and equality of same-sex couples, it did not go so far in Supriyo v. Union of India to recognize marriage as a constitutional right but left it to the legislature. This juxtaposition indicates that judicial thinking is yet influenced by dominant social opinion instead of being informed by constitutional morality alone. Consequently, there is a gap in the constitution—where dignity is accepted in theory but withheld in fact.

Key Findings:

1. International jurisprudence proves that marriage equality is the best method of ensuring complete legal, social, and constitutional recognition for same-sex couples.
2. Although civil unions have occasionally been employed as a temporary solution, they are in themselves restrictive and cannot be substituted for marriage equality in the long term.
3. India's constitutional tradition, based on substantive equality and dignity, demands full recognition. Civil unions are not enough; only marriage equality can realize the transformative potential of the Constitution.

Conclusion

The comparative examination of foreign jurisdictions and India's constitutional structure clearly illustrates that civil unions are poor substitutes for marriage equality. While civil unions may grant narrow legal benefits, they do not offer the complete range of rights, safeguards, and social legitimacy that marriage does. In states like the United States, South Africa, and a number of European countries, civil unions were originally passed as a compromise, but eventually experience showed that only equality in marriage can provide both substantial legal protections such as adoption, inheritance, spousal benefits, and taxation, as well as symbolic recognition, which legitimizes the same-sex relationship within society. Civil unions, on the other hand, tend to establish a separate-but-unequal status, exposing couples to social stigma and limited legal protection.

Within the Indian legal context, Articles 14, 15, and 21 of the Constitution insure comprehensive equality, non-discrimination, and personal freedom for all citizens regardless of sexual orientation. The Supreme Court has reminded itself of the doctrine of constitutional morality, which commands that fundamental rights must be interpreted and enforced in a manner that gives effect to the Constitution rather than to contemporary societal prejudices.

Civil unions as a half-way house cannot do so. They risk institutionalizing inequality, conveying that gay couples are worthy only of incomplete recognition, not full citizenship and respect.

The evolution from *Navtej Singh Johar v. Union of India* (2018) to *Supriyo v. Union of India* (2023) reflects both improvement and fault lines in the Indian legal tradition. While the Supreme Court boldly decriminalized Section 377 and reasserted the innate dignity of LGBTQ+ individuals, its failure to accept marriage as an integral right identifies a precedence on social mores over a principled and strong constitutional understanding. In a secular and sovereign republic such as India, fundamental rights cannot be subject to majoritarian sanction. To maintain the promise of transformation inherent in the Constitution and ensure equality, liberty, and dignity for all citizens, India has no choice but to adopt marriage equality; civil unions are constitutionally short and socially deficient.

Recommendations

1. Legislative Reform: Amend the Special Marriage Act and related laws to include same-sex couples, ensuring marriage equality.
2. Adoption and Family Rights: Extend adoption, inheritance, and spousal benefits to same-sex couples.
3. Judicial Guidance: Encourage courts to interpret constitutional morality expansively, reinforcing marriage equality as a fundamental right.
4. Social Awareness: Launch sensitization campaigns to reduce societal stigma against same-sex couples and promote inclusivity.

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