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JUDICIAL TRENDS IN INDIA REGARDING SAME-SEX COUPLES' RIGHTS

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Abstract

Over the last two decades, the legal status of same-sex relationships in India has changed remarkably. What was once treated as a criminal offence under colonial law has gradually been recognised by courts through the lens of dignity, privacy, and equality. The judiciary has played a crucial role in this shift by interpreting constitutional rights in a more inclusive manner. This paper examines the changing judicial approach towards same-sex couples, with particular focus on key decisions such as Justice K.S. Puttaswamy v. Union of India, Navtej Singh Johar v. Union of India, and Supriyo v. Union of India.

Although these judgments have strengthened constitutional protections for LGBTQ+ individuals, the courts have not yet recognised same-sex marriages in law. The paper analyses the constitutional framework, judicial reasoning, and the limits of judicial intervention. It concludes that while the judiciary has taken progressive steps, true equality for same-sex couples will ultimately depend on legislative action.

1. Introduction

The issue of rights for same-sex couples in India is deeply connected with constitutional values, human rights principles, and prevailing social attitudes. For a long time, same-sex relationships were not only socially disapproved but also legally penalised under Section 377 of the Indian Penal Code, a colonial-era law that treated such relationships as unnatural. This provision created an environment of fear and stigma, forcing individuals to hide their identities and relationships.

However, the legal position has evolved significantly over the years. With growing awareness and activism, Indian courts have gradually shifted their approach from viewing same-sex

relationships through a criminal lens to recognising them as a matter of personal dignity and individual freedom. Judicial decisions have increasingly focused on protecting fundamental rights, especially under Articles 14, 15, 19, and 21 of the Constitution. This shift reflects the judiciary's reliance on constitutional morality, which prioritises individual rights and freedoms over majoritarian social norms.

Despite this progress, the recognition of rights for same-sex couples is still partial. While courts have affirmed the right to privacy, identity, and consensual relationships, they have been cautious when it comes to granting full legal recognition in areas such as marriage, adoption, and inheritance. This gap highlights the limitations of judicial intervention, particularly when broader legal and social frameworks are involved.

This research paper aims to examine how Indian courts have interpreted constitutional provisions to expand the rights of same-sex couples. It also seeks to analyse whether these judicial developments are enough to ensure real and meaningful equality, or whether further legislative action is necessary to bridge the existing gaps.

2. Historical Background: Section 377 and Criminalisation

Section 377 of the Indian Penal Code, introduced during the colonial period, criminalised what it described as “carnal intercourse against the order of nature.” Although the provision did not explicitly mention homosexuality, it was widely used to target and penalise same-sex relationships. For decades, this law contributed to the marginalisation of LGBTQ+ individuals, exposing them to social stigma, harassment, and legal vulnerability. Many people were forced to conceal their identities due to fear of prosecution and discrimination.

The constitutional challenge to Section 377 gained momentum with the case of *Naz Foundation v. Government of NCT of Delhi*¹. In this landmark judgment, the Delhi High Court held that consensual same-sex relations between adults should not be criminalised. The Court reasoned that such criminalisation violated fundamental rights, including equality, dignity, and personal liberty. This decision was widely seen as a progressive step towards recognising the rights of sexual minorities in India.

¹ *Naz Foundation v. Government of NCT of Delhi*, (2009) 160 DLT 277 (Delhi High Court).

However, this progress was short-lived. In *Suresh Kumar Koushal v. Naz Foundation*, the Supreme Court overturned the Delhi High Court's judgment and reinstated Section 377. The Court observed that only a "minuscule fraction" of the population was affected, and therefore the matter should be addressed by the legislature rather than the judiciary. This decision faced significant criticism for disregarding the fundamental rights of LGBTQ+ individuals and for adopting a narrow interpretation of constitutional protections².

The real shift in judicial thinking emerged later through a broader constitutional reinterpretation, particularly with an emphasis on fundamental rights such as privacy, dignity, and autonomy³. Courts began to move away from a restrictive and moralistic approach towards a more inclusive understanding of individual freedoms. This change laid the foundation for the eventual decriminalisation of same-sex relations and marked a crucial turning point in India's legal history concerning LGBTQ+ rights.

3. Constitutional Foundations of Same-Sex Rights

The protection of rights for same-sex couples in India is largely rooted in the interpretation of fundamental rights guaranteed under the Constitution. Over time, Indian courts have relied on key constitutional provisions to expand the scope of protection available to LGBTQ+ individuals. These provisions—Articles 14, 15, 19, and 21—have collectively shaped the legal framework through which issues of equality, dignity, and personal freedom are addressed⁴:

- **Article 14** of the Constitution ensures equality before the law and equal protection of the laws. Courts have interpreted this provision to mean that any law or state action that unfairly targets a particular group must have a reasonable basis. In the context of LGBTQ+ rights, the judiciary has recognised that denying equal treatment to individuals based on their sexual orientation is arbitrary and inconsistent with the principle of equality. This understanding has helped dismantle discriminatory legal practices that treated same-sex relationships differently from heterosexual ones.
- **Article 15** prohibits discrimination on specific grounds such as religion, race, caste, sex, or place of birth. Although the term "sex" was traditionally understood in a narrow sense, courts have gradually broadened its meaning to include sexual orientation. This

² *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1 (Supreme Court of India).

³ Supreme Court of India, interpretation of right to privacy and dignity in *Puttaswamy* (2017).

⁴ Constitution of India, Articles 14, 15, 19, and 21.

interpretation has been crucial in recognising that discrimination against LGBTQ+ persons is a form of sex-based discrimination, thereby bringing it within the constitutional prohibition.

- **Article 19**, which guarantees freedom of expression, has also played an important role. The courts have acknowledged that the ability to express one's identity, including sexual orientation, is an essential aspect of personal freedom. This includes the right to openly express one's relationships and choices without fear of state interference or societal backlash⁵.

Perhaps the most significant provision in this context is Article 21, which guarantees the right to life and personal liberty. The judiciary has interpreted this right expansively to include the right to live with dignity, privacy, and autonomy. It has been recognised that choosing a partner and forming intimate relationships are deeply personal decisions that fall within the scope of individual liberty. This interpretation has provided a strong constitutional basis for protecting same-sex relationships.

Together, these provisions form the backbone of judicial reasoning in cases related to LGBTQ+ rights. The courts have consistently emphasised that constitutional morality must guide their decisions, rather than societal morality, which may be influenced by prejudice or majoritarian views. Constitutional morality focuses on the values of justice, equality, and individual dignity, ensuring that even minority groups receive full protection under the law.

This shift towards a rights-based and inclusive interpretation of the Constitution has been instrumental in advancing the legal recognition of same-sex relationships in India. While challenges remain, the constitutional framework has provided a strong foundation for further progress in securing equal rights for all individuals, regardless of their sexual orientation.

4. Right to Privacy and Autonomy: The Puttaswamy Judgment (2017)

The judgment in Justice K.S. Puttaswamy v. Union of India marked a turning point in Indian constitutional law, particularly in relation to individual freedoms and LGBTQ+ rights. In this case, the Supreme Court unanimously recognised the right to privacy as a fundamental right

⁵ Judicial observations on equality and identity in *Navtej Singh Johar* (2018).

under the Constitution, placing it within the ambit of Article 21. This decision significantly broadened the understanding of personal liberty and dignity⁶.

The Court clarified that privacy is not limited to physical space but extends to personal choices and individual autonomy. It includes aspects such as bodily integrity, decisional freedom, and the right of a person to make intimate choices without unnecessary interference from the State. Importantly, the judgment recognised that the choice of a life partner is a deeply personal decision and falls within the protected zone of privacy.

A key contribution of this judgment was its explicit acknowledgment that sexual orientation is an inherent part of an individual's identity. The Court observed that denying protection to such an essential attribute would amount to a violation of fundamental rights. This recognition played a crucial role in shifting the legal discourse from moral disapproval to constitutional protection.

Although the case did not directly deal with Section 377, its reasoning effectively weakened the foundation of earlier judgments such as *Suresh Kumar Koushal v. Naz Foundation*. By affirming dignity, autonomy, and identity as core constitutional values, the Court paved the way for a fresh examination of laws criminalising same-sex relationships. This judgment thus became a cornerstone for subsequent developments in LGBTQ+ rights jurisprudence in India.

5. Decriminalisation and Recognition: Navtej Singh Johar (2018)

A major breakthrough in India's LGBTQ+ rights movement came with *Navtej Singh Johar v. Union of India*. In this landmark decision, the Supreme Court struck down Section 377 to the extent that it criminalised consensual same-sex relations between adults. This judgment brought an end to a long period of legal discrimination and fear faced by the LGBTQ+ community⁷.

The Court held that penalising consensual same-sex relationships violated fundamental rights guaranteed under Articles 14, 15, 19, and 21 of the Constitution. It recognised that such laws were not only discriminatory but also an infringement on personal dignity and freedom.

⁶ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁷ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

Importantly, the judgment affirmed that LGBTQ+ individuals are entitled to the same constitutional protections as any other citizen.

Justice Indu Malhotra, in her opinion, observed that society had long wronged the LGBTQ+ community and that an apology was overdue. The judgment strongly emphasised values such as dignity, identity, and individual autonomy.

This decision marked a significant shift in legal thinking, moving away from treating homosexuality as abnormal or deviant, and instead recognising it as a natural and valid expression of human identity.

6. Expansion of Family and Relationship Rights

After the decision in *Navtej Singh Johar v. Union of India*, Indian courts began to move beyond decriminalisation and gradually address the broader question of relationship and family rights for same-sex couples. This phase reflects a more inclusive understanding of personal relationships, where dignity and autonomy are given greater importance than rigid social norms.

6.1 Recognition of Chosen Families

One of the important developments has been the recognition that the idea of “family” is not confined to traditional structures such as marriage or blood relations. Courts have increasingly accepted that individuals may form meaningful relationships based on choice, affection, and mutual support. In this context, same-sex couples have been acknowledged as part of “chosen families.” This recognition is significant because it validates non-traditional relationships and affirms that such bonds deserve respect, protection, and legal consideration. It also reflects a broader shift towards understanding family as a flexible and evolving concept⁸.

6.2 Right to Cohabitation

Another key development is the recognition of the right of same-sex couples to live together. Courts have repeatedly affirmed that consenting adults have the freedom to cohabit without interference from the State or society. This right flows directly from Article 21 of the Constitution, which protects personal liberty and the freedom to make intimate choices. By

⁸ Evolving concept of “chosen family” in Indian judicial discourse on LGBTQ+ rights.

upholding this principle, the judiciary has made it clear that individuals cannot be forced to conform to societal expectations when it comes to their personal relationships.

6.3 Protection from Harassment

In several cases, High Courts across India have intervened to protect same-sex couples facing threats, harassment, or violence, often from their own families or communities. Courts have directed police authorities to ensure the safety of such couples, reinforcing the idea that the right to life and dignity must be actively protected. These orders highlight the judiciary's role in safeguarding individuals against social hostility and ensuring that constitutional rights are meaningful in practice⁹.

Overall, these developments indicate a gradual but clear expansion of legal recognition for same-sex relationships. While full legal equality has not yet been achieved, the judiciary has taken important steps towards acknowledging the legitimacy of diverse forms of family and companionship.

7. Judicial Recognition vs. Legal Recognition: The Marriage Debate

Despite a series of progressive judgments supporting the rights of LGBTQ+ individuals, the question of same-sex marriage in India still remains unsettled. While courts have recognised the importance of dignity, identity, and personal relationships, they have drawn a line when it comes to granting formal legal recognition to such unions. This distinction between recognising rights and conferring legal status is at the centre of the current debate.

7.1 Supriyo v. Union of India (2023)

The issue came directly before the Supreme Court in *Supriyo v. Union of India*, where petitioners sought recognition of same-sex marriages under the Special Marriage Act. The Court acknowledged that same-sex couples have the right to form relationships, live together, and enjoy dignity and privacy under the Constitution. It also accepted that such relationships deserve respect and protection¹⁰.

However, the Court ultimately declined to legalise same-sex marriage. The majority opinion held that extending marriage rights would require changes in existing laws, which fall within the domain of the legislature. According to the Court, creating a new legal framework for

⁹ Various High Court judgments granting protection to same-sex couples under Article 21 (Right to Life and Personal Liberty).

¹⁰ *Supriyo v. Union of India*, Writ Petition (Civil) No. 1011 of 2022, Supreme Court of India.

marriage equality would go beyond the scope of judicial interpretation and amount to law-making, which is the responsibility of Parliament.

7.2 Judicial Limitations

This judgment highlights an important pattern in Indian constitutional law. Courts have shown a willingness to expand and protect individual rights, especially in matters relating to dignity, privacy, and autonomy. At the same time, they have been cautious about stepping into areas that require comprehensive policy decisions or legislative reform.

This approach reflects the principle of separation of powers, where each branch of government has a defined role. While the judiciary can interpret and enforce rights, it generally avoids creating entirely new legal structures¹¹. As a result, although same-sex relationships are now recognised in principle, full legal equality—particularly in the form of marriage—remains dependent on legislative action.

8. Emerging Judicial Trends

A close reading of recent case law shows that the Indian judiciary has followed a clear and evolving pattern while dealing with LGBTQ+ rights. Rather than making abrupt changes, the courts have adopted a gradual and balanced approach, expanding protections step by step.

8.1 Shift from Criminalisation to a Rights-Based Approach

One of the most significant changes has been the movement away from treating same-sex relationships as a criminal issue. Earlier, the law focused on punishment and control. Today, courts recognise LGBTQ+ individuals as equal citizens who are entitled to constitutional protections. This shift reflects a broader understanding of human rights and personal liberty.

8.2 Emphasis on Constitutional Morality

Another important trend is the growing reliance on constitutional morality. Judges have repeatedly stated that decisions must be guided by the values of the Constitution rather than by popular opinion or social prejudice. This approach ensures that minority rights are protected even when they may not align with prevailing societal views.

8.3 Recognition of Identity and Dignity

¹¹ Supreme Court reasoning on separation of powers in *Supriyo v. Union of India* (2023).

Courts have also acknowledged that sexual orientation is an essential part of a person's identity. It is no longer seen as a matter of choice or behaviour, but as something inherent to an individual. By placing this understanding within the framework of Article 21, the judiciary has reinforced the idea that dignity and self-expression are central to the right to life.

8.4 Incremental Progress

Judicial development in this area has been gradual rather than sudden. The process has moved from decriminalising same-sex relations in 2018, to recognising the legitimacy of relationships, and then expanding the idea of family to include non-traditional forms. However, full legal recognition, particularly in the form of marriage equality, is still pending.

8.5 Judicial Activism with Restraint

While the courts have played an active role in protecting rights, they have also shown restraint. They have avoided entering areas that require detailed legislation, such as marriage laws. This reflects a conscious effort to respect the boundaries between the judiciary and the legislature, while still ensuring that constitutional rights are meaningfully protected.

9. Comparative Perspective

Across the world, several countries have moved towards recognising same-sex marriage, often through judicial intervention. A well-known example is *Obergefell v. Hodges* in the United States, where the Supreme Court affirmed marriage equality as a constitutional right. Such decisions reflect a more direct and assertive role of the judiciary in shaping social change¹².

In comparison, the Indian judiciary has adopted a more cautious and measured approach. While it has developed strong constitutional reasoning to protect dignity, privacy, and equality, it has generally avoided stepping into areas that require detailed legislative action. This approach is influenced by India's diverse social structure and the need to maintain institutional balance. As a result, the courts have advanced rights without overstepping their constitutional role.

10. Challenges and Gaps

Despite noticeable progress in recognising LGBTQ+ rights, several important challenges still exist in India.

¹² *Obergefell v. Hodges*, 576 U.S. 644 (2015).

10.1 Lack of Marriage Rights:

Same-sex couples are still not granted legal recognition as married partners. Because of this, they are denied important rights such as inheritance, adoption, and access to spousal benefits like insurance and medical decision-making. This creates a clear gap in legal protection.

10.2 Social Stigma:

Even though courts have taken progressive steps, societal acceptance has not kept pace. Many individuals continue to face discrimination, pressure from families, and social exclusion, which limits the real impact of legal developments.

10.3 Legislative Inaction:

Another major issue is the lack of legislative reform. While the judiciary has expanded certain rights, the absence of clear laws has slowed overall progress and left many areas unregulated.

10.4 Fragmented Protection:

Currently, rights such as privacy, dignity, and the freedom to live together are recognised, but these protections are not comprehensive. The absence of a complete legal framework means that same-sex couples still face uncertainty in many aspects of life.

11.Future Directions

For achieving true equality for same-sex couples in India, a few important steps need to be taken.

11.1 Legislative Reform:

The most crucial requirement is the enactment of clear laws by Parliament that recognise same-sex unions or marriages. Without legal recognition, many rights will remain incomplete.

11.2 Anti-Discrimination Laws:

There is also a strong need for comprehensive laws that specifically prohibit discrimination based on sexual orientation. Such protections should cover key areas like employment, housing, education, and healthcare.

11.3 Judicial Continuity:

The judiciary must continue its progressive approach by interpreting constitutional rights in an inclusive manner. Courts play a vital role in ensuring that fundamental rights are applied equally to all individuals.

11.4 Social Awareness:

Alongside legal reforms, a change in societal mindset is equally important. Greater awareness, education, and open discussions can help reduce prejudice and promote acceptance, making legal rights more effective in everyday life.

12. Critical Analysis

The Indian judiciary has undeniably played a transformative role in advancing LGBTQ+ rights. However, its approach reflects a balance between activism and restraint.

On one hand, judgments like *Navtej Johar* demonstrate bold constitutional interpretation. On the other, decisions like *Supriyo* reveal institutional limitations.

This dual approach raises an important question:

Can equality be achieved without full legal recognition of relationships?

The answer appears to be no. While dignity and privacy are essential, legal recognition is necessary for substantive equality.

13. Conclusion

Judicial trends in India regarding same-sex couples' rights reflect a journey from exclusion to partial inclusion. The courts have successfully decriminalised homosexuality, recognised identity and dignity, and expanded the understanding of relationships and family.

However, the absence of marriage equality and comprehensive legal recognition remains a significant gap.

The judiciary has laid a strong constitutional foundation, but the final step towards equality lies with the legislature. Until then, same-sex couples in India remain equal in principle but not in practice.

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