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INCLUSIVE EMPOWERMENT: HUMAN RIGHTS PERSPECTIVES ON SAME-SEX COUPLES AND GENDER EQUITY

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Abstract

The twenty-first century marks a decisive evolution in the understanding and enforcement of human rights, particularly in relation to gender equity and the recognition of diverse sexual orientations. The discourse surrounding same-sex couples has shifted from moral and sociocultural contestation to a constitutional and human rights imperative grounded in dignity, equality, and personal liberty. Marriage equality for same-sex couples is not merely a demand for legal legitimacy, but a struggle for full citizenship and protection against systemic discrimination. This paper critically examines the legal and constitutional challenges faced by same-sex couples in India within the broader framework of global human rights developments. It evaluates the implications of landmark judicial pronouncements such as *Navej Singh Johar v. Union of India*, (2018) 10 SCC 1, which decriminalized consensual same-sex relations, and the recent judicial stance in *Supriyo v. Union of India*, W.P. (C) No. 1011/2022 (India), wherein the Supreme Court acknowledged the rights of queer individuals while refraining from recognizing marriage equality.

The research investigates the intersection of gender equity and women's empowerment within same-sex partnerships, questioning the heteronormative assumptions embedded in legal and social institutions. It emphasizes that exclusion from the institution of marriage perpetuates psychological, social, and legal marginalization, undermining the universality of human rights. Comparative insights from jurisdictions recognizing same-sex marriage demonstrate tangible benefits including strengthened family protection, reduced stigma, and enhanced social inclusion. The paper argues that constitutional morality, rooted in Articles 14, 15, and 21 of the Constitution of India, must guide legislative and judicial reform rather than prevailing societal prejudices.

The study concludes that the recognition of marriage rights for same-sex couples is essential for achieving substantive gender equity and inclusive democratic governance in the twenty-first century. A truly progressive human rights regime demands that the state adopt a transformative role consistent with equality, dignity, and autonomy as constitutional guarantees.

Keywords: Same-Sex Marriage, Human Rights, Gender Equity, Constitutional Morality, Women's Empowerment

1. Introduction

The twenty-first century has witnessed a profound transformation in the discourse on human rights, particularly in relation to gender equity and the recognition of diverse sexual orientations. The struggle for marriage equality among same-sex couples is not merely a demand for legal recognition but a broader quest for dignity, equality, and full citizenship. In India, this debate has gained momentum following landmark judicial pronouncements that have reshaped the constitutional landscape. The decriminalization of consensual same-sex relations in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, marked a watershed moment in Indian jurisprudence, affirming that sexual orientation is an intrinsic aspect of identity protected under Articles 14, 15, and 21 of the Constitution. Yet, the refusal of the Supreme Court in *Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022 (India), to extend marriage rights to same-sex couples underscores the tension between constitutional morality and prevailing societal prejudices.

This paper situates the Indian experience within the broader global human rights framework, examining how exclusion from marriage perpetuates systemic discrimination and undermines the universality of human rights. By analysing comparative jurisprudence and international instruments, the study argues that recognition of marriage equality is essential for achieving substantive gender equity and inclusive democratic governance.

2. Literature Review

Scholarly engagement with same-sex marriage and gender equity has expanded significantly in recent decades. Early literature often framed homosexuality within moral or medical paradigms, reinforcing heteronormative assumptions embedded in law and society. However,

contemporary scholarship emphasizes the human rights dimensions of sexual orientation, situating marriage equality within the broader struggle for dignity and autonomy.

- **Indian Scholarship:** Legal scholars argue that the Supreme Court’s recognition of privacy and dignity in *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, laid the foundation for the decriminalization of same-sex relations in *Navtej Johar*. Yet, critiques of *Supriyo* emphasize the Court’s reluctance to confront entrenched heteronormativity in family law (Agarwal, 2023).
- **Global Perspectives:** Comparative studies demonstrate that jurisdictions recognizing same-sex marriage—such as South Africa (*Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC)), Canada (Civil Marriage Act, S.C. 2005, c. 33), and the United States (*Obergefell v. Hodges*, 576 U.S. 644 (2015))—have witnessed tangible benefits, including reduced stigma, enhanced family protection, and greater social inclusion.
- **Human Rights Frameworks:** International instruments such as the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, and the Yogyakarta Principles (2006) affirm that sexual orientation and gender identity are integral to human dignity.

The literature reveals a consistent theme: marriage equality is not merely a legal reform but a transformative step toward dismantling structural inequalities and achieving substantive gender equity.

3. Judicial Milestones in India

3.1 Colonial Legacy and Section 377 IPC

The criminalization of same-sex relations in India originated with Section 377 of the Indian Penal Code, enacted in 1860 under British colonial rule. The provision penalized “carnal intercourse against the order of nature,” embedding heteronormativity into Indian law for over 150 years. This colonial imposition stigmatized LGBTQ+ identities and reinforced systemic discrimination.

3.2 *Naz Foundation v. Government of NCT of Delhi* (2009)

In a landmark judgment, the Delhi High Court read down Section 377, holding that consensual sexual relations between adults in private were protected under Articles 14, 15, and 21 of the Constitution. The Court emphasized that equality and dignity are fundamental to constitutional democracy. See *Naz Foundation v. Govt. of NCT of Delhi*, 160 DLT 277 (Del HC 2009).

3.3 Suresh Kumar Koushal v. Naz Foundation (2014)

This progressive ruling was overturned by the Supreme Court, which reinstated Section 377, reasoning that only Parliament could decide on such matters. The Court minimized the impact of criminalization by describing LGBTQ+ individuals as a “minuscule fraction” of the population. See *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 SCC 1.

3.4 Justice K.S. Puttaswamy v. Union of India (2017)

The recognition of privacy as a fundamental right in *Puttaswamy* laid the groundwork for LGBTQ+ rights. The Court held that sexual orientation is an essential attribute of privacy, thereby affirming that discrimination based on orientation violates constitutional guarantees of dignity and autonomy. See *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

3.5 Navtej Singh Johar v. Union of India (2018)

This watershed judgment decriminalized consensual same-sex relations, striking down Section 377 to the extent that it criminalized private acts between consenting adults. The Court emphasized that constitutional morality must prevail over social morality, affirming that equality and dignity are non-negotiable rights. Justice Chandrachud’s opinion highlighted that the Constitution protects “the right to love and to find fulfilment in love.” See *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

3.6 Supriyo @ Supriya Chakraborty v. Union of India (2023)

In this recent case, the Supreme Court acknowledged the rights of queer individuals but refrained from recognizing marriage equality. The Court held that while queer couples are entitled to dignity and non-discrimination, the institution of marriage remains within the domain of Parliament. This decision underscores the tension between judicial recognition of rights and legislative inertia. See *Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022 (India).

3.7 Constitutional Provisions

- **Article 14:** Guarantees equality before law and equal protection of laws.
- **Article 15:** Prohibits discrimination on grounds of sex, interpreted to include sexual orientation.
- **Article 21:** Protects life and personal liberty, encompassing privacy, dignity, and autonomy.

Together, these provisions form the constitutional foundation for advancing marriage equality and gender equity in India.

4. Human Rights and Constitutional Morality

4.1 Social Morality vs. Constitutional Morality

Indian courts have consistently distinguished between *social morality*—reflecting prevailing societal norms—and *constitutional morality*—embodying the values enshrined in the Constitution. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the Supreme Court underscored that constitutional morality must prevail over majoritarian prejudice, affirming that dignity, equality, and liberty are non-negotiable rights. This principle is crucial in the context of same-sex marriage, where societal resistance often conflicts with constitutional guarantees.

4.2 International Human Rights Instruments

The universality of human rights is affirmed through global frameworks:

- **Universal Declaration of Human Rights (UDHR, 1948)**: Recognizes the right to marry and found a family as a fundamental human right. See G.A. Res. 217A (III), U.N. Doc. A/810 (1948).
- **International Covenant on Civil and Political Rights (ICCPR, 1966)**: Protects equality before the law and prohibits discrimination. See ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171.
- **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)**: Advances gender equity, extending to women in same-sex partnerships. See CEDAW, Dec. 18, 1979, 1249 U.N.T.S. 13.
- **Yogyakarta Principles (2006)**: Provide authoritative guidance on applying international human rights law to sexual orientation and gender identity.

These instruments collectively affirm that exclusion from marriage violates the universality of human rights and perpetuates systemic discrimination.

4.3 Comparative Jurisprudence

Several jurisdictions have recognized marriage equality as a constitutional imperative:

- **South Africa**: In *Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC), the Constitutional Court held that denying marriage rights to same-sex couples violated equality and dignity.

- **United States:** In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the Supreme Court recognized marriage as a fundamental right inherent in liberty, extending equal protection to same-sex couples.
- **Canada:** The Civil Marriage Act, S.C. 2005, c. 33, legalized same-sex marriage nationwide, affirming equality under the Canadian Charter of Rights and Freedoms.

These examples demonstrate that recognition of marriage equality strengthens family protection, reduces stigma, and enhances social inclusion.

4.4 Constitutional Morality as a Guiding Principle

In India, Articles 14, 15, and 21 collectively form the constitutional foundation for marriage equality. Constitutional morality requires that these provisions be interpreted in a manner that advances dignity, autonomy, and equality, rather than reinforcing heteronormative biases. The judiciary has a transformative role in ensuring that constitutional guarantees are not undermined by societal prejudice.

5. Gender Equity and Women's Empowerment in Same-Sex Partnerships

5.1 Intersectionality and Queer Women

The discourse on marriage equality often overlooks the specific experiences of queer women. Intersectionality—the overlapping of gender, sexuality, and social identity—reveals that queer women face compounded discrimination. Exclusion from marriage not only denies them legal protections but also perpetuates patriarchal assumptions that marginalize women in both heterosexual and same-sex contexts. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1991).

5.2 Psychological and Social Marginalization

Denial of marriage rights contributes to heightened psychological distress among same-sex couples. For queer women, this marginalization is intensified by gendered stereotypes that question their legitimacy as partners and caregivers. Studies show that legal recognition of same-sex unions reduces stigma and improves mental health outcomes. See Wazida Rahman, *Gender, Homosexuality and the Right to Marriage in India: A Critical Analysis*, *NUJS J. Reg. Stud.* Vol. 9 (2024).

5.3 Legal Consequences of Exclusion

Without access to marriage, queer women are denied critical legal protections such as inheritance rights, spousal benefits, adoption rights, and medical decision-making authority. This exclusion perpetuates systemic inequities, leaving queer women vulnerable in situations where legal recognition of family structures is essential. See Hindu Marriage Act, No. 25 of 1955, § 5 (India); Special Marriage Act, No. 43 of 1954 (India).

5.4 Comparative Insights

Jurisdictions that recognize same-sex marriage demonstrate tangible benefits for women's empowerment:

- **Canada:** Legal recognition under the Civil Marriage Act, S.C. 2005, c. 33, has enabled same-sex couples to access adoption and parental rights, strengthening family protection.
- **South Africa:** Constitutional recognition in *Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC), reduced stigma and enhanced social inclusion for queer women.
- **United States:** Post-*Obergefell v. Hodges*, 576 U.S. 644 (2015), same-sex couples gained equal access to spousal benefits, reinforcing economic and social security.

5.5 Human Rights Implications

The denial of marriage rights to queer women undermines the universality of human rights. It perpetuates patriarchal structures that restrict women's autonomy and reinforces heteronormative biases in family law. Recognition of same-sex marriage is therefore essential for achieving substantive gender equity and fulfilling constitutional guarantees of dignity and equality.

6. Challenges and Counterarguments

6.1 Religious and Cultural Objections

Opposition to same-sex marriage in India often stems from religious doctrines and cultural traditions that view marriage as a union exclusively between a man and a woman. Critics argue that extending marriage rights undermines traditional family structures. However, constitutional jurisprudence makes clear that personal liberty and equality cannot be curtailed by majoritarian morality. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the Supreme Court emphasized that constitutional morality must prevail over social morality, affirming that dignity and autonomy are fundamental rights.

6.2 Political Reluctance and Legislative Inertia

Despite judicial recognition of LGBTQ+ rights, Parliament has been reluctant to enact legislation recognizing same-sex marriage. Political opposition often reflects fears of backlash from conservative constituencies. In *Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022, the Supreme Court acknowledged queer rights but deferred marriage equality to Parliament, raising concerns about whether fundamental rights can be contingent on political will.

6.3 Heteronormative Assumptions in Family Law

Indian family law is deeply rooted in heteronormative assumptions. Statutes such as the Hindu Marriage Act, No. 25 of 1955, § 5, and the Special Marriage Act, No. 43 of 1954, define marriage in terms of “husband” and “wife.” These provisions exclude same-sex couples by design, reinforcing patriarchal structures and denying queer individuals’ equal access to family protections.

6.4 Counterarguments Grounded in Human Rights

- **Equality and Non-Discrimination:** Articles 14 and 15 mandate equal protection and prohibit discrimination, extending to sexual orientation.
- **Dignity and Autonomy:** Article 21 protects life and personal liberty, encompassing privacy, dignity, and autonomy. Denying marriage rights violates these guarantees.
- **Global Precedents:** Jurisdictions recognizing same-sex marriage demonstrate that inclusion strengthens family protection and social cohesion rather than undermining them (*Obergefell v. Hodges*, 576 U.S. 644 (2015); *Fourie*, 2006 (1) SA 524 (CC)).
- **Transformative Constitutionalism:** The Indian Constitution is designed to be transformative, ensuring that rights evolve to meet the demands of justice and equality in a changing society.

6.5 Addressing Concerns of Social Disruption

Opponents often argue that marriage equality will disrupt social order. However, empirical evidence from Canada, South Africa, and the United States shows the opposite: inclusion reduces stigma, enhances social stability, and strengthens democratic governance. Recognition of marriage equality affirms that diversity is not a threat but a cornerstone of constitutional democracy.

7. Comparative Jurisprudence

7.1 South Africa

South Africa stands out as one of the earliest countries to constitutionally recognize same-sex marriage. In *Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC), the Constitutional Court held that excluding same-sex couples from marriage violated the rights to equality and dignity under the South African Constitution. The Court emphasized that constitutional democracy requires protection of minority rights against majoritarian prejudice. The subsequent Civil Union Act, 2006, legalized same-sex marriage nationwide, reinforcing the transformative role of constitutionalism.

7.2 United States

In *Obergefell v. Hodges*, 576 U.S. 644 (2015), the U.S. Supreme Court recognized marriage as a fundamental right inherent in liberty, extending equal protection to same-sex couples. The Court reasoned that exclusion from marriage demeans the dignity of same-sex couples and their children, undermining the principles of liberty and equality. Post-*Obergefell*, same-sex couples gained equal access to spousal benefits, adoption rights, and healthcare protections, demonstrating the tangible impact of judicial recognition.

7.3 Canada

Canada legalized same-sex marriage through the Civil Marriage Act, S.C. 2005, c. 33, affirming equality under the Canadian Charter of Rights and Freedoms. Canadian jurisprudence emphasized that denying marriage rights perpetuates stigma and violates substantive equality. Recognition of same-sex marriage has strengthened family protection and enhanced social inclusion, particularly for queer women and marginalized communities.

7.4 European Union

Several European countries, including the Netherlands (2001), Spain (2005), and Germany (2017), legalized same-sex marriage, often through legislative reform rather than judicial intervention. These jurisdictions highlight the role of political will in advancing equality, demonstrating that legislative action can complement judicial recognition in achieving social transformation.

7.5 Lessons for India

- **Judicial Courage:** Courts in South Africa and the United States demonstrated that constitutional guarantees must prevail over societal prejudice.
- **Legislative Reform:** Canada and European jurisdictions illustrate the importance of legislative action in institutionalizing equality.
- **Social Outcomes:** Empirical evidence shows that recognition of same-sex marriage reduces stigma, strengthens family protection, and enhances democratic inclusivity.
- **Transformative Constitutionalism:** India's constitutional framework, rooted in equality, dignity, and liberty, provides a strong foundation for marriage equality.

8. Recommendations for Reform

8.1 Legislative Amendments

- **Revising Family Laws:** Statutes such as the Hindu Marriage Act, No. 25 of 1955, § 5, and the Special Marriage Act, No. 43 of 1954, should be amended to adopt gender-neutral terminology (e.g., “spouse” instead of “husband” and “wife”).
- **Civil Union Legislation:** As an interim measure, Parliament could enact a civil union law granting same-sex couples rights equivalent to marriage, including inheritance, adoption, and spousal benefits.
- **Anti-Discrimination Statutes:** Comprehensive legislation prohibiting discrimination based on sexual orientation and gender identity in employment, housing, and healthcare is essential to ensure substantive equality.

8.2 Judicial Role

- **Transformative Constitutionalism:** Courts must interpret Articles 14, 15, and 21 expansively to protect minority rights against majoritarian prejudice (*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1).
- **Progressive Interpretation:** Judicial recognition of marriage equality would align with precedents such as *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, reinforcing dignity and autonomy.
- **Guidance to Legislature:** Courts can issue directions urging Parliament to enact reforms consistent with constitutional morality, ensuring that legislative inertia does not undermine fundamental rights (*Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022).

8.3 Policy Measures

- **Awareness Campaigns:** Government and civil society should collaborate on campaigns to reduce stigma and promote acceptance of LGBTQ+ individuals.
- **Educational Reforms:** Incorporating gender and sexuality studies into curricula can challenge heteronormative assumptions and foster inclusivity.
- **Healthcare Protections:** Policies ensuring equal access to healthcare for LGBTQ+ individuals, including mental health support, are critical for empowerment.
- **Social Welfare Schemes:** Extending benefits such as pensions, insurance, and housing assistance to same-sex couples would reinforce social inclusion.

8.4 Role of Civil Society

- **Advocacy and Litigation:** NGOs and activists play a crucial role in advancing marriage equality through strategic litigation and public advocacy.
- **Community Support Networks:** Strengthening grassroots organizations can provide social and psychological support to queer individuals, mitigating marginalization.

8.5 International Engagement

- **Learning from Global Models:** India can draw lessons from jurisdictions such as South Africa (*Fourie*, 2006 (1) SA 524 (CC)), Canada (Civil Marriage Act, S.C. 2005, c. 33), and the United States (*Obergefell v. Hodges*, 576 U.S. 644 (2015)), where marriage equality has strengthened democratic inclusivity.
- **Commitment to Human Rights Treaties:** Aligning domestic law with international obligations under ICCPR, CEDAW, and the Yogyakarta Principles would reinforce India's global human rights leadership.

9. Conclusion

The trajectory of LGBTQ+ rights in India reflects both remarkable progress and persistent challenges. From the colonial imposition of Section 377 IPC to its eventual decriminalization in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the judiciary has played a transformative role in advancing dignity, equality, and autonomy. Yet, the refusal to extend marriage rights in *Supriyo @ Supriya Chakraborty v. Union of India*, W.P. (C) No. 1011 of 2022, underscores the unfinished nature of this struggle.

Marriage equality is not merely a demand for legal recognition; it is a constitutional and human

rights imperative. Exclusion from marriage perpetuates systemic discrimination, undermines psychological and social well-being, and denies queer individuals the full protections of citizenship. Comparative jurisprudence from South Africa (*Minister of Home Affairs v. Fourie*, 2006 (1) SA 524 (CC)), Canada (Civil Marriage Act, S.C. 2005, c. 33), and the United States (*Obergefell v. Hodges*, 576 U.S. 644 (2015)) demonstrates that recognition of same-sex marriage strengthens family protection, reduces stigma, and enhances democratic inclusivity.

At the heart of this debate lies the principle of **constitutional morality**. Articles 14, 15, and 21 of the Indian Constitution mandate equality, non-discrimination, and personal liberty. These provisions require expansive interpretation to protect minorities against majoritarian prejudice. A truly progressive human rights regime demands that the state adopt a transformative role, ensuring that dignity and autonomy are not compromised by societal resistance.

The recognition of marriage rights for same-sex couples is therefore essential for achieving substantive gender equity and inclusive democratic governance in the twenty-first century. India's constitutional framework provides the foundation for such reform; what remains is the courage of legislative and judicial institutions to fulfil this promise. By embracing marriage equality, India can reaffirm its commitment to universal human rights and position itself as a leader in the global struggle for justice, equality, and dignity.

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