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Evaluating the Legal and Social Impact of Same Sex Marriage Litigation on Queer Communities in India

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ABSTRACT

*The legal battle for same-sex marriage recognition in India has become a focal point for testing the promises of constitutional democracy, judicial interpretation, and substantive equality. While *Navtej Johar v. Union of India* (2018) decriminalised homosexuality and acknowledged sexual orientation as intrinsic to dignity, the question of legal recognition of queer relationships remains unresolved. Same-sex couples continue to be denied access to civil rights attached to marriage – including adoption, inheritance, next-of-kin recognition, and maintenance – under existing personal and secular laws that remain strictly heteronormative. This paper critically examines the evolving legal landscape by mapping the strategic use of litigation as both a rights-claiming and rights-making tool. It explores how queer litigants have shifted the discourse from moral tolerance to legal entitlement, pushing courts to revisit the meaning of family, liberty, and equality. Judicial responses – from Supreme Court observations to progressive High Court rulings – have revealed an interpretive tension between constitutional morality and majoritarian sensitivities. The paper further analyses the transnational influence of the Yogyakarta Principles and international human rights frameworks in shaping the normative contours of marriage equality claims in India. In doing so, it also underscores the class, caste, and linguistic imbalances in queer representation within courtrooms, warning against the elitist character of present legal mobilisation. Beyond courtroom developments, the paper tracks socio-legal ripple effects: shifts in media representation, corporate policy, and public discourse that reflect the growing cultural legitimacy of queer unions despite their legal precarity. Ultimately, the paper argues that without formal codification and statutory reform, same-sex couples remain vulnerable to arbitrary denial of basic rights, making marriage equality a non-negotiable pillar of queer citizenship in a truly democratic legal order.*

KEYWORDS

Marriage, Equality, Litigation, Citizenship, Rights

INTRODUCTION: THE LEGAL MILESTONES AND STRUCTURAL GAPS IN MARRIAGE EQUALITY

The legal recognition of same-sex relationships in India remains one of the most transformative yet unresolved struggles in the queer rights movement. Since the decriminalisation of consensual same-sex activity through *Navtej Singh Johar v. Union of India* in 2018, a constitutional door opened for LGBTQ+ identities, but marriage equality continues to lie outside the accepted legal framework. The Supreme Court unanimously held that criminal law could not penalise adults for consensual private relationships, invoking Art. 14, 15, and 21 of the Constitution¹. That ruling uplifted personal dignity and privacy but deliberately excluded any recognition of same-sex marriage as a fundamental right, stating the matter lies with Parliament. Since then, litigation seeking marriage equality has sparked significant legal and social debate, shaping both jurisprudence and lived realities of queer communities². Understanding this evolving terrain requires a critical analysis of court setbacks and incremental progress alike.

Moreover, advocacy around same-sex marriage has created broader visibility and awareness about queer lives in India. The queer couples, such as Kavita Arora and Ankita Khanna, filed petitions in Delhi courts seeking a constitutional right to marry, property rights, and hospital decision rights³. Although the courts have yet to grant such recognition, these petitions elevated public discourse, empowering other queer individuals to live openly and claim social legitimacy. Corroborating this, a 2023 national survey found that 93% of LGBTQ+ respondents believed marriage equality would reduce mental health stress, enhance belonging, and legitimise relationships⁴. At an individual level, the pursuit of marriage rights is already transforming queer identity, community formation, and expectations, even if legal recognition remains pending.

However, the Supreme Court's 2023 decision in *Supriyo v. Union of India*⁵

¹ G. Bhatia, "Equal Moral Membership: Naz Foundation and the Rights of LGBT Persons" 1(1) *ILR* 39 (2017).

² T. Khaitan, "Reading Swaraj into Article 15: A New Deal for All Minorities" 2(1) *NUJS LR* 419 (2009).

³ M. Sood, "Public Intimacies and Private Selves: Queer Identity After Section 377" 51(32) *EPW* 45 (2019).

⁴ Orinam and The Queer Muslim Project, "Marriage Equality and Mental Health Survey", India, 2023.

⁵ *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 11 SCC 1.

marked a watershed moment by admitting over twenty petitions filed by same-sex couples seeking marriage recognition under secular laws such as the Special Marriage Act. The Court refused to declare marriage a fundamental right under constitutional jurisprudence, but it reaffirmed that queer persons are entitled to dignity, equality, and non-discrimination. While the decision essentially deferred legislative action to Parliament, it also endorsed interim measures: treating queer couples as part of the same household for ration cards, enabling joint bank accounts, allowing health care nominations, prison visitation and live-in protections⁶. These interim directives provide tangible relief and signal the judiciary's acknowledgment of queer households even absent statutory marriage.

Whereas the absence of statutory recognition continues to pose barriers, Indian High Courts have offered significant precedents reinforcing queer autonomy. In *Sreeja S v. Commissioner of Police*⁷, the Kerala High Court held it illegal to separate adults in consensual queer relationships, under Habeas Corpus, invoking constitutional rights to life and liberty irrespective of sexual orientation. Similarly, in *Chinmayee Jena v. State of Odisha*⁸, the Orissa High Court upheld self-determination of gender and the right of trans persons to cohabit with partners of their choice, regardless of gender identity. These judgments, though not delivering marriage equality, affirm personal autonomy, free association, and intimate choice—core elements that marriage litigation still seeks to unlock legally.

CULTURAL SHIFTS, JUDICIAL ENGAGEMENTS, AND PUBLIC RESISTANCE

Moreover, the landmark Madras High Court judgment in 2021⁹ officially recognised the concept of “*chosen families*”, protecting queer couples forming emotional interdependence beyond formal marriage. The court asserted under Art. 21 that the constitutional right to life and liberty includes the freedom to form chosen familial bonds emphasising emotional dependency, care, and mutual commitment over legal status. This shift helped queer communities claim recognition of domestic households and family-like validation even in the absence of marriage¹⁰. As a result, queer individuals across India increasingly reference chosen family rights in housing, welfare schemes, and community solidarity

⁶ Rajvi Desai, “SC Verdict on Same-Sex Marriage: Queer Rights Deferred, Not Denied” 58(42) *EPW* 12 (2023).

⁷ *Sreeja S. v. Commissioner of Police*, 2018 SCC OnLine Ker 5284.

⁸ *Chinmayee Jena v. State of Odisha*, 2020 SCC OnLine Ori 878.

⁹ *Sushma v. Commissioner of Police*, 2021 SCC OnLine Mad 2414.

¹⁰ A. Narrain, “The Notion of Chosen Families in Indian Queer Jurisprudence” 57(29) *EPW* 24 (2022).

networks.

However, same-sex marriage litigation also brings the risk of reinforcing social polarisation and backlash. Reports show that while many urban and educated Indians support marriage equality, opposition remains strong among conservative groups, religious leaders, and political parties concerned about procreation, family structure, and cultural norms¹¹. For some queer individuals—especially those from religious, caste, or rural communities—the public litigation has triggered intensified homophobia, family estrangement, or online harassment. These social costs underscore that legal progress can simultaneously shine light on queer lives while exposing systemic vulnerabilities¹².

One major effect of ongoing litigation is the way it has compelled a rethinking of Indian family law itself. Existing marriage statutes—whether personal or secular—are heteronormative by design. The Hindu Marriage Act, the Muslim personal law regime, the Christian Marriage Act, and even the Special Marriage Act (1954) all assume a gender-binary union between “man” and “woman.” This architecture leaves queer persons without legal pathways to access not just marriage but its allied rights: adoption, inheritance, medical consent, tax benefits, and maintenance¹³. The gap is legal, but the impact is deeply lived. Even when queer couples cohabit or have spiritual ceremonies of commitment, their union has no legal consequences¹⁴. The litigation has thus exposed the structural exclusion embedded in the marriage laws themselves, creating pressure to reimagine family law in a more inclusive, gender-neutral, and identity-affirming way.

Another noteworthy development is the mobilisation of regional High Courts in responding to the socio-legal marginalisation of queer couples. For instance, the Uttarakhand High Court in *Ujjawal v. State of Uttarakhand*¹⁵ emphasised that adult individuals, irrespective of sexual orientation, possess the inalienable right to choose their partners and reside together in dignity and security. The Delhi High Court in *Vaibhav Jain v. Union of India*¹⁶ admitted the argument that denying marriage registration violates Art. 14, Art. 19(1)(a), and Art. 21. These proceedings reflect the judiciary’s gradual internalisation of queer rights as part of

¹¹ A. Pandey, “Social Polarisation and the Same-Sex Marriage Debate in India” 8(2) *IJHRL* 57 (2023).

¹² Rukmini S., “Mapping LGBTQ+ Support and Hostility in India: A Demographic Study”, *IDP*, 2023.

¹³ N. Murthy, “The Heteronormativity of Indian Family Law: Beyond Binary Marital Norms” 5 *ILR* 91 (2021).

¹⁴ D. Mahapatra, “Why Indian Marriage Laws Can’t Handle Same-Sex Couples” 37 *SCCJ* 56 (2023).

¹⁵ *Ujjawal v. State of Uttarakhand*, 2022 SCC OnLine Utt 531.

¹⁶ *Vaibhav Jain v. Union of India*, W.P.(C) 7484/2021, D.H.C.

broader constitutional morality rather than majoritarian public morality. At the same time, many High Court benches have remained reluctant, dismissing or adjourning queer petitions citing legislative vacuum. Thus, while judicial attitudes are shifting, consistency remains elusive.

INTERSECTIONALITY, GLOBAL INFLUENCE, AND THE ROAD AHEAD

In parallel, queer litigants and lawyers have increasingly framed their arguments using doctrines from international law, especially India's obligations under the Universal Declaration of Human Rights, the ICCPR, and the Yogyakarta Principles¹⁷. The Yogyakarta Principles particularly emphasise state obligations to ensure equal recognition of all family forms, protection of sexual orientation and gender identity, and legal access to marriage or equivalent partnerships. Although these instruments are not binding in Indian law, the Supreme Court has previously recognised their persuasive value in *NALSA v. Union of India*¹⁸ and *Navtej Johar*. This trend reflects how same-sex marriage litigation is now situated in a transnational rights discourse, blending domestic constitutionalism with global human rights vocabularies.

Critically, same-sex marriage litigation has also drawn attention to class, caste, regional, and linguistic hierarchies within the queer movement. Much of the litigation has been urban-centric, led by upper-caste, English-speaking couples with access to legal expertise and financial resources¹⁹. This risks reinforcing an image of queer rights as elite, metropolitan concerns, disconnected from vernacular realities and working-class or rural queer voices. Scholars have argued that this hierarchy must be actively addressed through legal aid, translation efforts, intersectional advocacy, and movement strategies that centre subaltern queer narratives²⁰. Otherwise, the victories of litigation will not translate into substantive justice for the most marginalised members of the LGBTQ+ community.

At the same time, the strategic use of litigation has encouraged parallel non-legal shifts – like queer inclusion in corporate HR policies, changes to school sex education modules, and growing representation of queer characters in Indian media and cinema. Even without a favourable Supreme Court ruling, the ripple effects of legal mobilisation have

¹⁷ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007.

¹⁸ *NALSA v. Union of India*, (2014) 5 SCC 438.

¹⁹ A. Gawande, "Who is the 'Queer' in Queer Rights? Reflections on Class and Caste within LGBTQ+ Advocacy" 14(2) *SLR* 147 (2019).

²⁰ S. Chatterjee, "Queer Dalit Politics: Critique of the Dominant LGBTQ+ Framework in India" 56(9) *EPW* 25 (2021).

seeped into cultural narratives and institutional spaces²¹. Corporate surveys now show increasing support for inclusive family benefits, with companies like Tata Steel and Godrej extending health insurance and housing benefits to queer partners. Bollywood and regional cinema have started portraying queer weddings with less caricature and more emotional depth²². This social diffusion of legal vocabulary has begun to normalise queer aspirations even outside the courtroom.

Nevertheless, the central dilemma remains: can social legitimacy for queer couples continue to grow meaningfully without legal codification? There is a risk that symbolic recognition and private gestures of acceptance may be used as a substitute for real legal rights. As queer collectives argue, love and companionship are not enough they must translate into enforceable entitlements²³. The same-sex marriage litigation journey has illuminated the resilience, creativity, and dignity of queer Indians, but the absence of enforceable legal protection leaves couples vulnerable to eviction, estrangement, hospital exclusion, and inheritance denial. In this light, the legal battle is not just about marriage it is about full citizenship.

CONCLUSION

The evolving discourse around same-sex marriage in India reflects a critical juncture where constitutional aspirations confront entrenched socio-legal conservatism. The litigation that sought recognition of queer marriages has undeniably foregrounded the need to move beyond tokenism and toward tangible legal equality. While the Supreme Court's refusal to legalise same-sex marriage in *Supriyo v. Union of India*²⁴ was a judicial setback, it simultaneously sparked national dialogue, civil society mobilisation, and a deeper understanding of queer lived realities. The legal reform, however, cannot exist in isolation from societal reform. Despite progressive rulings on decriminalisation of homosexuality, the lack of matrimonial recognition perpetuates systemic exclusion, denying queer couples rights related to inheritance, insurance, adoption, taxation, and next-of-kin status. More troublingly, the litigation has exposed the limits of constitutional morality when not matched with political will and structural change.

Moreover, the debates catalysed by the litigation process have provided queer communities with a renewed collective consciousness and socio-

²¹ R. Borah, "From Courtroom to Boardroom: Queer Inclusion in Indian Corporate Practices" 3(1) *JWLP* 76 (2023).

²² K. Bakshi, "Same-Sex Desire and Indian Popular Cinema: Notes on the Cultural Imaginary" 8(2) *South Asian Popular Culture* 131 (2020).

²³ C. Padmanabhan, "Marriage Equality and the Citizenship of Desire" 55(16) *Seminar* 48 (2023).

²⁴ *Id.* at 5.

political agency. However, the local and regional movements, along with mental health professionals, queer rights advocates, and feminist lawyers, have broadened the landscape of resistance. The courts' reluctance to interfere in what they framed as legislative terrain reveals the judiciary's cautious incrementalism and reinforces the need for Parliament to take a proactive stance. The legal strategies going forward must adopt a more intersectional approach, taking into account caste, class, religion, and region-specific vulnerabilities within the LGBTQIA+ spectrum. The ultimate impact of the litigation, though legally limited, has been socially catalytic marking a critical phase in queer jurisprudence in India. A just future demands continued activism, inclusive policy dialogue, and a reimagination of family law grounded in autonomy, dignity, and non-discrimination. This research underscores that litigation is only one part of a longer struggle toward substantive queer equality and social justice.