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QUEER RIGHTS AND CONSTITUTIONAL MORALITY: A CRITICAL ANALYSIS OF INDIAN JURISPRUDENCE

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Abstract

The recognition of queer rights in India represents a significant development in constitutional jurisprudence, particularly in the interpretation of equality, dignity, privacy, individual autonomy, and constitutional morality. Despite constitutional guarantees of liberty and non-discrimination, LGBTQ+ persons have historically encountered legal exclusion, social stigma, and institutional discrimination. The judicial decisions in *National Legal Services Authority v. Union of India* (2014), *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), and *Navtej Singh Johar v. Union of India* (2018) established important foundations for the constitutional protection of gender identity, sexual orientation, privacy, and consensual same-sex relationships. However, the Supreme Court's decision in *Supriyo @ Supriya Chakraborty v. Union of India* (2023), which declined to judicially recognise a right to marry for queer couples or rewrite the Special Marriage Act to include them, exposed continuing tensions between constitutional equality and legislative discretion.

This article critically examines the development of queer rights through Indian constitutional jurisprudence, focusing on constitutional morality as a counterweight to prevailing social morality. It adopts a doctrinal and socio-legal methodology, analysing constitutional provisions, judicial precedents, and the relationship between law and social attitudes. The article argues that constitutional morality requires more than the removal of criminal sanctions: it demands meaningful protection against discrimination, coercion, and unequal access to legal and social institutions. It concludes that judicial recognition must be accompanied by legislative reform, effective institutional implementation, and sustained social sensitisation to realise substantive equality for queer persons.

Keywords: Queer Rights, Constitutional Morality, LGBTQ+, Transformative Constitutionalism, Fundamental Rights, Judicial Activism, Same-Sex Marriage, Indian Jurisprudence.

1. Introduction

The Constitution of India promises equality, liberty, dignity, and justice to all persons. Nevertheless, the lived experiences of lesbian, gay, bisexual, transgender, queer, and other sexual and gender minorities have frequently been shaped by discrimination, social exclusion, and legal invisibility. Their struggle illustrates a fundamental constitutional question: should the meaning of fundamental rights be determined by prevailing social attitudes, or should constitutional principles guide society towards greater equality?

Constitutional morality provides an important framework for addressing this question. Unlike conventional morality, which may be influenced by social traditions, religious beliefs, or dominant cultural expectations, constitutional morality requires public institutions to remain faithful to constitutional values, including liberty, equality, fraternity, dignity, and individual autonomy. It is particularly significant when the rights of minorities conflict with the preferences of the majority.

Indian constitutional jurisprudence concerning queer rights has developed through several landmark decisions. In *National Legal Services Authority v. Union of India*, the Supreme Court recognised the rights of transgender persons to self-identify their gender and affirmed constitutional protection for gender minorities.[1] In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Court recognised privacy as a fundamental right, reinforcing the importance of personal autonomy and intimate decision-making.[2] Subsequently, *Navtej Singh Johar v. Union of India* partially invalidated Section 377 of the Indian Penal Code, 1860, insofar as it criminalised consensual sexual conduct between adults.[3]

However, decriminalisation did not automatically secure equal access to marriage, adoption, family recognition, inheritance, or other legal benefits. The Supreme Court's 2023 judgment in *Supriyo @ Supriya Chakraborty v. Union of India* brought this limitation into sharp focus.[4] The judgment acknowledged the constitutional significance of queer relationships but declined to judicially extend marriage recognition through the requested interpretation of existing legislation.

This article argues that the constitutional protection of queer rights must be understood as an evolving commitment to substantive equality rather than a limited prohibition against

criminalisation. It examines the relationship between constitutional morality and judicial interpretation, evaluates the contribution and limitations of landmark judgments, and identifies the reforms necessary to translate constitutional promises into lived equality.

2. Research Objectives and Methodology

The principal objectives of this article are:

1. To examine the constitutional foundations of queer rights in India.
2. To analyse the development of constitutional morality in LGBTQ+ jurisprudence.
3. To critically evaluate landmark judicial decisions concerning gender identity, sexual orientation, privacy, and same-sex marriage.
4. To identify the gap between judicial recognition and the socio-legal realities experienced by queer persons.
5. To suggest legal and institutional reforms that promote substantive equality.

The article adopts a doctrinal and socio-legal research methodology. It analyses constitutional provisions, Supreme Court judgments, relevant statutory frameworks, and scholarly debates concerning constitutional interpretation. The socio-legal dimension considers how legal recognition interacts with social stigma, family structures, institutional practices, and access to remedies. The study is primarily qualitative and analytical; it does not claim to be based on original fieldwork or empirical survey data.

3. Constitutional Foundations of Queer Rights

3.1 Article 14: Equality before the Law

Article 14 guarantees equality before the law and equal protection of the laws.[5] Its protection extends to all persons, including those whose sexual orientation or gender identity differs from socially dominant expectations.

The significance of Article 14 lies not merely in requiring identical treatment but also in preventing arbitrary state action and unjustified legal classifications. A legal framework that disadvantages queer persons because their identities or relationships do not conform to conventional norms raises serious questions of constitutional equality.

Formal equality, however, may be insufficient where historically marginalised groups face structural barriers. Substantive equality requires the State to recognise these barriers and take appropriate measures to ensure that legal protections are effective in practice.

3.2 Article 15: Prohibition of Discrimination

Article 15 prohibits discrimination against citizens on specified grounds, including sex.[6] In NALSA and Navtej Singh Johar, the Court adopted an inclusive understanding of equality and discrimination in relation to gender identity and sexual orientation. The Navtej judgment recognised that discrimination based on sexual orientation cannot be detached from constitutional protections against sex-based discrimination.[3]

This interpretation challenges the assumption that constitutional equality is confined to conventional categories of gender. It recognises that stereotypes about masculinity, femininity, sexuality, and family life can operate as mechanisms of exclusion.

Nevertheless, constitutional interpretation must be accompanied by effective anti-discrimination measures in employment, education, housing, healthcare, and public services. Without accessible remedies, the promise of equality risks remaining largely declaratory.

3.3 Article 19: Freedom of Expression and Identity

Article 19(1)(a) protects freedom of speech and expression, while Article 19(1)(c) protects the right to form associations, subject to constitutionally permissible restrictions.[7] These freedoms are relevant to the ability of queer persons to express their identities, participate in public debate, organise collectively, and advocate for legal reform.

Expression is not limited to spoken or written words. Personal appearance, community participation, public identification, and the expression of identity may also be relevant to the exercise of constitutional freedoms, depending on the circumstances.

Where queer expression is restricted merely because it challenges dominant social expectations, constitutional scrutiny becomes essential. The State cannot automatically equate social disapproval with a constitutionally sufficient justification for restricting fundamental rights.

3.4 Article 21: Life, Liberty, Dignity and Autonomy

Article 21 protects life and personal liberty.[8] Its judicial interpretation has expanded beyond mere physical existence to encompass dignity, privacy, autonomy, and meaningful personal choice.

For queer persons, these principles are particularly important because decisions concerning intimate relationships, sexual orientation, gender identity, and personal association are closely connected with individual identity. A legal order that permits individuals to exist but denies them equal respect for their intimate choices offers only an incomplete conception of liberty.

Read together, Articles 14, 15, 19, and 21 establish a constitutional framework for examining discrimination against queer persons. These provisions do not eliminate every disagreement over the scope of particular rights, but they require state action and legal classifications to be justified by constitutional principles rather than prejudice or majoritarian discomfort.

4. Constitutional Morality: Meaning and Significance

Constitutional morality is a principle that requires constitutional institutions to uphold the values and limitations embodied in the Constitution, even when these conflict with popular opinion. It rejects the proposition that the preferences of the majority should automatically determine the rights of minorities.

The concept has particular relevance in a diverse society such as India, where social practices and moral expectations vary across communities. If legal protection depended exclusively on social acceptance, individuals whose identities challenge established norms could be permanently denied equal citizenship.

Constitutional morality should not be understood as hostility towards culture or tradition. Rather, it requires traditions and social practices to coexist with constitutional guarantees. Cultural beliefs may inform public discussion, but they cannot independently justify the infringement of fundamental rights.

In *Navtej Singh Johar*, the Supreme Court placed constitutional morality above prevailing social morality while examining the constitutionality of Section 377.[3] The Court recognised that social prejudice could not justify criminalising consensual intimacy between adults. The judgment consequently established an important distinction between conduct that society disapproves of and conduct that the Constitution permits the State to punish.

The principle also has implications beyond criminal law. Constitutional morality requires courts and public authorities to examine whether legal arrangements unfairly exclude individuals from social and civil institutions. Nevertheless, the principle does not automatically determine the outcome of every constitutional dispute. Its application must be supported by constitutional text, precedent, reasoned interpretation, and attention to institutional competence.

5. Landmark Judicial Decisions on Queer Rights

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

The Delhi High Court's judgment in *Naz Foundation v. Government of NCT of Delhi* marked

an important early stage in the constitutional challenge to Section 377 of the Indian Penal Code.[9] The Court read down the provision insofar as it criminalised consensual sexual acts between adults in private, emphasising dignity, privacy, and equality.

The decision challenged the idea that the criminal law could legitimately regulate private consensual intimacy merely because it departed from conventional sexual morality. It also demonstrated the importance of reading fundamental rights in a manner responsive to the experiences of marginalised groups.

However, the Supreme Court reversed this decision in *Suresh Kumar Koushal v. Naz Foundation* (2013).[10] That reversal illustrated the fragility of judicially recognised minority rights when courts adopt a narrow understanding of constitutional injury and defer substantially to legislative authority.

The eventual overruling of *Koushal* in *Navtej Singh Johar* represented a significant shift towards a more inclusive constitutional interpretation.

5.2 National Legal Services Authority v. Union of India (2014)

In *NALSA v. Union of India*, the Supreme Court recognised transgender persons as a constitutionally protected group and affirmed their right to self-identify their gender.[1] The judgment connected gender identity with dignity, personal autonomy, and the fundamental rights guaranteed by Articles 14, 15, 16, 19, and 21.

Its importance extends beyond formal recognition. Legal identity affects access to education, employment, healthcare, public services, and other opportunities. Exclusion from official recognition can prevent individuals from accessing rights that are nominally available to everyone.

The judgment also acknowledged the need for affirmative measures to address historical disadvantage. It therefore advanced an understanding of equality that includes the removal of structural barriers rather than merely prohibiting explicit discrimination.

Nevertheless, transgender persons continue to face implementation challenges. Administrative difficulties, stigma, violence, and unequal access to essential services demonstrate that judicial declarations require effective institutional follow-through.

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

The nine-judge Bench in *Justice K.S. Puttaswamy (Retd.) v. Union of India* unanimously recognised privacy as a fundamental right under the Constitution.[2] The judgment established privacy as an essential component of liberty, dignity, and personal autonomy.

For queer rights, the decision was especially important because it recognised that sexual orientation forms part of an individual's identity and that intimate decisions cannot be subjected to arbitrary state interference merely because they are unpopular.

Privacy, however, should not be reduced to secrecy within the home. It also protects the individual's ability to make personal decisions and develop relationships without unjustified coercion. A person should not have to conceal their identity to enjoy constitutional protection. The judgment laid an important foundation for *Navtej Singh Johar*. It demonstrated that constitutional rights protect individual autonomy independently of majoritarian approval and strengthened the argument that consensual same-sex intimacy should not be criminalised.

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

The Supreme Court's judgment in *Navtej Singh Johar* partially invalidated Section 377 of the Indian Penal Code, 1860, to the extent that it criminalised consensual sexual conduct between adults.[3] It marked a decisive rejection of the criminalisation of consensual same-sex intimacy.

The Court's reasoning drew upon equality, dignity, privacy, liberty, and constitutional morality. It recognised that criminalisation not only exposed queer persons to legal punishment but also reinforced stigma and social exclusion.

The judgment is significant for three principal reasons. First, it recognised sexual orientation as an integral aspect of personal identity. Second, it rejected the proposition that prevailing social morality could justify the suppression of fundamental rights. Third, it affirmed that constitutional protections extend to minorities even when their choices lack widespread social acceptance.

The decision also illustrates the relationship between judicial review and transformative constitutionalism. The Constitution was interpreted not simply as a document preserving existing social arrangements but as a framework capable of challenging unjust hierarchies.

However, decriminalisation did not create a comprehensive statutory framework prohibiting discrimination on the grounds of sexual orientation or ensuring equal access to all relationship-related legal benefits. The judgment was therefore a foundational achievement, not the conclusion of the struggle for substantive equality.

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

The Supreme Court's decision in *Supriyo @ Supriya Chakraborty v. Union of India* addressed petitions seeking legal recognition of marriage between queer couples, including challenges

concerning the Special Marriage Act, 1954.[4] The Constitution Bench declined to recognise a fundamental right to marry that would require the Court to extend the statutory marriage framework to same-sex couples through judicial interpretation.

The judgment must be understood with precision. It did not erase the constitutional protections recognised in Puttaswamy and Navtej. Rather, it distinguished the freedom to form an intimate relationship from a legal entitlement to have that relationship recognised as marriage under a particular statutory framework.

The decision exposed a central tension in constitutional jurisprudence: how can the judiciary protect minority rights while respecting the separation of powers? The Court expressed concern that rewriting the statutory scheme would involve complex legislative choices affecting marriage and related laws. The judgment also acknowledged the significance of queer unions and the need to protect individuals against coercion and discrimination.[4]

Critically, the absence of marriage equality has consequences beyond symbolic recognition. Marriage can provide access to a network of statutory entitlements and institutional recognition concerning inheritance, maintenance, family status, and other matters. The precise availability of these benefits depends on the applicable legislation.

The Supriyo decision therefore illustrates the limits of judicial intervention when existing statutory structures do not accommodate a marginalised group. It also strengthens the case for legislative deliberation and comprehensive legal reform.

6. A Critical Socio-Legal Analysis

6.1 The Gap Between Legal Recognition and Social Reality

Judicial recognition is essential, but it cannot independently eliminate prejudice. Queer persons may continue to encounter rejection within families, discrimination at educational institutions, workplace exclusion, housing difficulties, and hostility in public spaces.

These experiences reveal the distinction between formal and substantive equality. Formal equality protects individuals against legally unjustified distinctions; substantive equality asks whether individuals can actually access opportunities, institutions, and remedies on equal terms.

A constitutionally inclusive legal system must therefore address both discriminatory rules and the social conditions that prevent rights from being exercised.

6.2 Family, Marriage and Social Legitimacy

In India, family structures often play a central role in social identity, economic security, and personal decision-making. Queer persons may face pressure to enter heterosexual marriages or conceal their relationships to preserve family acceptance.

The legal recognition of relationships matters because it can influence access to protections and benefits associated with family status. Nevertheless, marriage equality should not be treated as the only measure of queer liberation. Protection against violence, discrimination, coercion, and arbitrary interference is equally important.

The challenge is to develop a legal framework that respects diverse family arrangements while ensuring that constitutional protections do not depend upon conformity with a single model of family life.

6.3 Intersectionality and Unequal Access to Rights

The experiences of queer persons are not uniform. Caste, class, gender, disability, religion, geography, and economic dependence may affect an individual's ability to assert constitutional rights.

For example, a financially independent person living in a large city may have greater access to legal assistance and supportive networks than someone dependent on family members in a socially restrictive environment. Transgender persons may encounter additional barriers concerning identity documents, healthcare, education, and employment.

A socio-legal analysis must therefore avoid treating the LGBTQ+ community as a homogeneous group. Effective legal reform requires attention to overlapping forms of disadvantage and accessible remedies for individuals with limited resources.

6.4 Judicial Activism and Separation of Powers

The judiciary has played a crucial role in dismantling discriminatory legal arrangements. At the same time, courts must operate within the constitutional allocation of powers. The debate following *Supriyo* demonstrates that judicial restraint and protection of minority rights can come into tension.

Judicial intervention is justified when state action violates fundamental rights. However, comprehensive reform involving interconnected statutory entitlements may require legislative amendment and administrative implementation.

The solution is not to treat judicial and legislative action as competing alternatives. Courts should enforce constitutional guarantees, while Parliament and state legislatures should

examine gaps in existing law and enact reforms that provide clear, workable protections.

7. Challenges and the Way Forward

1. Comprehensive anti-discrimination legislation. Parliament should consider an enforceable framework addressing discrimination based on sexual orientation and gender identity in employment, education, housing, healthcare, and access to public services. Such legislation should provide accessible complaint mechanisms and effective remedies.
2. Legal protection for queer relationships. Legislative reform should examine the consequences of excluding queer couples from marriage and related legal benefits. Pending broader reform, lawmakers should consider practical protections concerning medical decision-making, inheritance, maintenance, housing, and protection from coercion, while ensuring that such measures are legally enforceable.
3. Institutional sensitisation. Police officers, judicial officers, healthcare professionals, educators, and public officials require appropriate training concerning constitutional rights, confidentiality, gender identity, and sexual orientation. Complaints of harassment and violence should be investigated without prejudice.
4. Legal identity and access to public services. Transgender persons should be able to access education, healthcare, employment, and administrative services without arbitrary barriers. Existing statutory protections must be implemented effectively rather than remaining confined to judicial declarations.
5. Constitutional morality in public decision-making. Government policies should be assessed against equality, dignity, autonomy, and non-discrimination. Public institutions must not treat popular disapproval as sufficient justification for denying constitutional protection.
6. Public education and participation. Sustained public education and consultation with LGBTQ+ communities are essential. Queer persons should participate meaningfully in the development of policies that affect their lives. Legal reform is more likely to be effective when it responds to the experiences of the people it seeks to protect.

8. Conclusion

The evolution of queer-rights jurisprudence in India demonstrates the transformative potential of constitutional interpretation. From the recognition of transgender identity in NALSA to the

affirmation of privacy in Puttaswamy and the decriminalisation of consensual same-sex intimacy in Navtej Singh Johar, the Supreme Court has progressively strengthened the constitutional protection of sexual and gender minorities.

These decisions affirm that dignity, liberty, and equality cannot depend upon conformity with dominant social expectations. Constitutional morality requires the State to protect individual autonomy and prevent the exclusion of minorities merely because their identities or relationships challenge conventional norms.

Nevertheless, the decision in Supriyo reveals that constitutional recognition does not automatically secure equal access to marriage or the full range of legal benefits associated with family relationships. It highlights the continuing distinction between protection against criminalisation and recognition within civil and social institutions.

The principal limitation of Indian queer-rights jurisprudence is therefore not the absence of constitutional principles but the incomplete translation of those principles into comprehensive legal protection. Decriminalisation is indispensable, yet it cannot independently eliminate discrimination, family coercion, institutional prejudice, or unequal access to social and economic opportunities.

A meaningful commitment to constitutional morality requires coordinated action by the judiciary, legislature, executive, and civil society. Courts must continue to protect fundamental rights; legislatures must address statutory gaps; public institutions must implement existing protections; and society must recognise the equal dignity of queer persons.

Ultimately, constitutional morality is not merely an interpretative doctrine invoked in landmark judgments. It is an ongoing constitutional commitment to ensuring that every individual can live with dignity, exercise personal autonomy, and participate in society without fear of discrimination. The measure of India's constitutional democracy will depend substantially on its ability to transform these commitments into lived equality for LGBTQ+ persons.

Footnotes

1. National Legal Services Authority v. Union of India, (2014) 5 SCC 438.
2. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
3. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
4. Supriyo @ Supriya Chakraborty v. Union of India, 2023 INSC 920, judgment dated 17 October 2023.
5. Indian Const. art. 14.
6. Indian Const. art. 15.

7. Indian Const. art. 19(1)(a), (c).
8. Indian Const. art. 21.
9. Naz Foundation v. Government of NCT of Delhi, 160 DLT 277 (Del. HC 2009).
10. Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1.
11. Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (recognising the constitutional significance of individual choice in matters of marriage and personal relationships).
12. Shakti Vahini v. Union of India, (2018) 7 SCC 192 (addressing individual choice in marriage and the illegitimacy of honour-based interference).
13. The Constitution of India, arts. 14, 15, 19, 21 and 32.
14. The Transgender Persons (Protection of Rights) Act, 2019.
15. The Special Marriage Act, 1954.

