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RIGHTS OF SEXUAL MINORITIES IN THE SHADOW OF TRADITION: A CRITICAL ANALYSIS OF SAME-SEX MARRIAGE LAW IN INDIA

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Abstract:

The discussion surrounding same-gender marriage within India has gathered notable traction in recent times. Although the Constitution assures liberty, dignity, and equality, personal marital legislations continue to mirror cultural and religious traditions. This study investigates the constitutional dimensions of same-sex unions, centering on Articles 14, 15, 19, and 21 of the Indian Constitution. It cites important cases such as (*Navtej Singh Johar v. Union of India*, 2018), (*National Legal Services Authority v. Union of India and Others*, 2014) and (*Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, 2018) which expanded acknowledgment of LGBTQ+ rights. Yet, despite these landmark rulings, homosexual partners still face challenges in securing marital recognition. The research further reviews comparative cases like (*James Obergefell v. Richard Hodges, Director, Ohio department of Health, et al.*, 2015) and (*Minister of Home Affairs and another v. Fourie and Another*, 2005), where courts validated marriage equality. Using doctrinal study and comparison, this work stresses that denying marital rights unsettles constitutional harmony and raises the issue of whether Indian society and law are prepared for such recognition.

Keywords:

Same-Sex Marriage, Sexual Minorities, Constitutional Morality, Indian Judiciary, Legislative Reform, Marriage Equality.

Introduction:

Weddings in India are regarded as more than merely a partnership between two individuals; they are deeply linked to cultural beliefs, rituals, and familial values. Traditionally, they have been perceived as sacred rites rather than contracts in Hindu law, and as a religious institution under Muslim law. The notion of same-sex unions directly questions conventional

perceptions of family and matrimony. With globalization and growing visibility of LGBTQIA+ communities, the debate on marriage equality has emerged as a major legal discourse in recent times.

In (*naz foundation v. government of NCT of Delhi and others*, 2009), the Delhi High Court annulled the criminalization of consensual same-gender intimacy by striking down Section 377, a ruling later reversed in (*Suresh Kumar Koushal and Another v. Naz Foundation and others*, 2013) . Still, the Supreme Court in (*Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, 2018) reinstated dignity and autonomy through the decriminalization of homosexuality. Nonetheless, the legal acknowledgment of same-sex matrimony is still uncertain, raising doubts about fully achieving constitutional morality.

Globally, several courts have accepted marital equality as a basic human entitlement. The U.S. Supreme Court in (*James Obergefell , et al., Petitions v. Richard Hodges, Director, Ohio department of Health, et al.*, 2015) and (*Minister of Home Affairs and another v. Fourie and Another*, 2005) determined that refusal of marital rights to same-gender couples perpetuates inequality. India currently stands at a decisive juncture, where cultural norms and constitutional mandates must be harmonized. This study considers whether Indian law can adapt to recognize same-sex marriages without disturbing traditional values.

Conceptual overview:

Research on same-sex unions in India reflects a steady transition from criminalization to constitutional recognition of LGBTQIA+ rights. The discourse began with (*naz foundation v. government of NCT of Delhi and others*, 2009), where the Delhi High Court struck down the criminalization of homosexuality under Articles 14 and 21. Scholars on SSRN observed that although this verdict was groundbreaking, genuine equality also demanded acknowledgment of family rights. A setback came in (*Suresh Kumar Koushal and Another v. Naz Foundation and others*, 2013) when the Supreme Court restored Section 377, referring to LGBTQIA+ people as a “minuscule minority.” This judgment received sharp criticism in academic writing.

The momentum shifted with (*National Legal Services Authority v. Union of India and Others*, 2014) and (*Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law*

and Justice, 2018) which stressed the principles of dignity, liberty, and equality. Studies on Shodhganga argue that these rulings laid the groundwork for family rights, underscoring that the freedom to select a partner and establish a family is central to personal liberty.

Comparative jurisprudence reinforces this outlook. In the U.S., the Supreme Court (James Obergefell, et al., Petitions v. Richard Hodges, Director, Ohio department of Health, et al., 2015) recognized marriage as a fundamental right, while South Africa's Minister of Home Affairs (Minister of Home Affairs and another v. Fourie and Another, 2005) struck down the exclusion of same-sex couples from marital status. Indian academics frequently rely on these cases to contend that constitutional morality must take precedence over majority opinion.

More recently, attention has turned to (Supriya & Supriya chakraborty & Anr. v. Union of India, 2023). Although the Court acknowledged discrimination, it deferred the question of marital recognition to Parliament. Commentators view this as judicial restraint, which weakens constitutional assurances in light of India's slow progress on legislative family law reforms.

The scholarship also draws attention to practical hurdles. In the absence of marital rights, same-sex partners face difficulties with succession, adoption, healthcare consent, and property ownership. Many note that Articles 14 and 21 provide a constitutional foundation for equality, but without statutory recognition, this equality is merely theoretical. Some writers caution that legalizing same-sex unions does not automatically bring social acceptance. A ResearchGate article notes that prejudice and cultural opposition may continue even after legislative changes, suggesting that reforms must address both the legal system and social awareness.

In summary, the literature identifies three broad themes:

1. From Decriminalization to Equality – Laws have ended criminalization of homosexuality but have not extended family rights.
2. Comparative Lessons – International rulings strengthen the case for recognition of same-sex unions.
3. Judicial vs. Legislative Divide – Courts have expanded rights yet postponed marriage recognition, leaving LGBTQIA+ individuals legally insecure.

Overall, the scholarship strongly favors legal validation of same-sex marriage in India;

however, the difficulty lies in reconciling constitutional ideals with legislative initiatives and prevailing cultural realities.

Analysis of Legal Position in India:

The legal framework for matrimony in India is mainly regulated through religion-based personal legislations and the Special Marriage Act, 1954. These laws were written with heterosexual unions in mind and exclude recognition of or allow same-gender marriages. For instance, the Hindu Marriage Act, 1955, defines marriage as a union between a “bride” and a “bridegroom,” clearly indicating a gendered perspective. Similarly, the Special Marriage Act mentions “male” and “female,” excluding any unions outside a binary framework. (Justice K.S. Puttaswamy (Redt.) and Another v. Union of India and Others, 2017).

However, India’s Constitution assures core rights concerning marital equality. Art. 14 ensures equality before the law, Art. 15 prohibits discrimination based on sex, Art. 19 protects personal freedom, and Art. 21 affirms the right to life with dignity. In (Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice, 2018) the SC decriminalized homosexuality, asserting that sexual identity is a core part of individual identity. While this ruling was a milestone, it was limited to decriminalization and did not address marital rights.

In subsequent cases, petitions for same-gender marriages have been moved in Indian courts, but the judiciary has often taken a cautious stance. In 2020, a plea was presented before Delhi HC seeking recognition of same-gender marriage within the Hindu Marriage Act and the Special Marriage Act. The government opposed it, stating that marriage in India has always been defined as a relationship between a biological male and a female. Similarly, in (Supriya & Supriya chakraborty & Anr. v. Union of India, 2023) the Supreme Court acknowledged issues encountered by queer couples but refused to legalize same-gender marriage, observing such approval needs parliamentary intervention.

This judicial restraint reveals the gap between constitutional rights and statutory laws. Courts recognize that sexual minorities have an equal right to dignity and liberty free from discrimination; however, they hesitate to extend these principles to marriage, creating a paradox where individuals can love freely but cannot legally formalize or secure their relationships.

Furthermore, existing family law provisions regarding adoption, inheritance, and maintenance are all designed based on heterosexual families. Non-recognition of same-gender marriage thus prevents couples from accessing various legal rights. This not only undermines constitutional equality but also sustains social stigma. Comparatively, countries like the U.S., South Africa, and Taiwan have recognized marriage equality either through judicial decisions or parliamentary enactments, showing that legal reform is feasible without compromising cultural identity. (James Obergefell, et al., *Petitions v. Richard Hodges, Director, Ohio department of Health, et al.*, 2015), (*Minister of Home Affairs and another v. Fourie and Another*, 2005) (*Hillary Goodridge & others v. Department of Public Health & another*, 2003)

Although Indian courts have initiated safeguards for LGBTQIA+ rights, lack of legislative recognition for same-sex marriage leaves the matter unresolved. The current situation signifies a significant tension between tradition and modern values, as well as between social morality and constitutional principles. Unless Parliament amends current laws or enacts new ones, same-sex couples in India will continue to be excluded from one of society's most fundamental institutions—marriage.

Comparative Perspective:

Across the globe, the legal stance on same-sex unions differs according to cultural, political, and constitutional factors. Some nations have embraced equal marital recognition, while others still confine matrimony to heterosexual partners. The United States provides a leading instance. In (*James Obergefell , et al., Petitions v. Richard Hodges, Director, Ohio department of Health, et al.*, 2015) , the U.S. Supreme Court held that refusing same-sex partners the ability to wed breached the Fourteenth Amendment's guarantees of liberty and equality. This judgment made same-sex unions valid nationwide, granting entitlements such as inheritance, tax concessions, and adoption rights.

In South Africa, the push for marital recognition was driven by a deep constitutional emphasis on human dignity and equality. The Constitutional Court in (*Minister of Home Affairs and another v. Fourie and Another*, 2005) declared that defining marriage solely as between a man and a woman was unconstitutional. This outcome resulted in the Civil Union Act, 2006, making South Africa the first nation in Africa to formally permit same-sex unions.

European jurisdictions have also introduced major legal reforms. The Netherlands pioneered by authorizing same-sex unions in 2001. Since then, Spain, France, Germany, and the United Kingdom (with Northern Ireland following in 2020) have extended marital protections to same-sex partners, anchored on principles of equality, privacy, and non-discrimination as outlined in instruments like the European Convention on Human Rights (*Indra Sawhney & Others v. Union of India and Others*, 1992).

In Asia, developments have been slower. Taiwan became the first Asian state to recognize same-sex unions in 2019, after its Constitutional Court held that prior legislation breached equality guarantees. In India, however, (*Supriya & Supriya chakraborty & Anr. v. Union of India*, 2023) acknowledged the rights of LGBTQ+ individuals but left the issue of marriage recognition to Parliament. Similarly, countries such as Japan and South Korea still lack full legal recognition, though courts and municipalities are gradually pushing for reforms.

These international parallels demonstrate that judicial readings of constitutional protections have been central in advancing same-sex union rights, particularly where legislatures have hesitated. Though cultural traditions and religious norms strongly influence outcomes, the global movement increasingly treats recognition of such unions as an essential element of safeguarding human rights. India, at present, stands at a decisive juncture: despite strong constitutional safeguards, legislative measures are still absent. Drawing lessons from worldwide practices may help in bridging this legal and societal divide.

Suggestions:

The acknowledgment of same-sex unions in India is a complicated matter where law, politics, and society intersect. The (*Supriya & Supriya chakraborty & Anr. v. Union of India*, 2023) affirmed the rights of queer individuals to dignity and equality but transferred the ultimate decision to Parliament. This underscores the pressing requirement for legal as well as social changes.

First, Parliament should amend the Special Marriage Act, 1954, to enable same-sex partners to officially register their marriages. A straightforward revision from gender-specific expressions like “husband and wife” to gender-neutral terms such as “spouse” or “partner” would uphold fairness without disturbing religious marriage statutes.

Second, the government could initially adopt civil unions for same-sex partners. Such unions would grant entitlements in areas like succession, adoption, maintenance, guardianship, and healthcare decisions. Countries such as Italy and Greece recognized civil partnerships prior to moving toward full marital recognition (*Oliari and Others v. Italy*, 2015).

Third, these reforms should be accompanied by campaigns aimed at spreading awareness. Legal amendments alone cannot guarantee acceptance. Educational institutions, workplaces, and other public platforms should introduce initiatives to inform people and reduce prejudice. Positive media representation can also play a role in normalizing same-sex relationships.

Fourth, the judiciary should continue safeguarding LGBTQIA+ rights. Even if full marriage recognition is not immediately achieved, High Courts have directed police authorities to shield same-sex partners from harassment (*S.Sushma and Another v. Commissioner of Police, Greater Chennai Police and Others*, 2021). Such rulings provide temporary protection and maintain rights in practice.

Finally, India can draw lessons from experiences of South Africa and Taiwan, where courts and legislatures collaborated to broaden marital rights. A similar strategy of steady but deliberate reform may help harmonize constitutional protections with India's cultural diversity.

Conclusion:

The legal evolution of sexual minorities in India shows both notable progress and continuing challenges. Starting with (*naz foundation v. government of NCT of Delhi and others*, 2009) , which first decriminalized same-sex conduct at the High Court level, and culminating in (*Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice*, 2018) where Section 377 was struck down by the Supreme Court, the judiciary affirmed that LGBTQIA+ individuals are entitled to dignity, privacy, and equality. Later, in (*National Legal Services Authority v. Union of India and Others*, 2014) the Court extended protections to transgender persons. Yet, despite these gains, formal recognition of same-sex marriages still lies beyond judicial solutions, as emphasized in (*Supriya & Supriya chakraborty & Anr. v. Union of India*, 2023).

The divide between constitutional guarantees and legislative inaction remains a pressing concern. While the judiciary has repeatedly reinforced equality under Articles 14, 15, 19, and 21, the legislature has not enacted reforms to secure marital rights for same-sex partners. This reflects a deeper clash between constitutional ideals and dominant social attitudes. Courts have stressed that constitutional values should prevail over traditional prejudices, but political reluctance continues to obstruct substantial change.

At the same time, social perceptions are gradually shifting. Judicial pronouncements, civil society movements, and growing awareness among younger generations indicate that India is inching toward wider acceptance of diversity. However, in the absence of legal validation, same-sex couples remain exposed in matters such as inheritance, adoption, healthcare consent, and property ownership.

Looking forward, a blend of legislative amendment, judicial safeguarding, and educational initiatives is crucial. The constitutional framework of India envisions equality for all, and denying marital rights to same-sex couples is inconsistent with that vision. Reconciling cultural traditions with contemporary rights is difficult, but essential. A genuine democracy is achieved only when every citizen enjoys equal dignity and status under the law, irrespective of sexual orientation.

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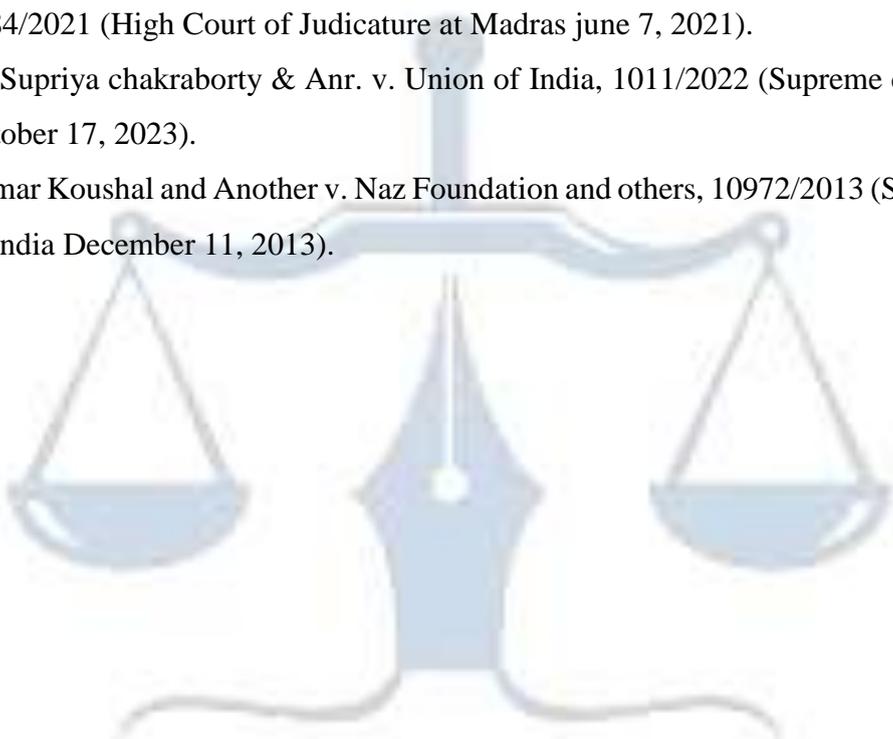
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