
Marriage, Identity, and Equality: The Unfinished Constitutional Promise for LGBTQ+ Community

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Abstract

The constitutional promise of equality, dignity, liberty, and personal autonomy remains an unfinished project for the LGBTQ+ community in India, particularly in relation to marriage and identity rights. This paper examines the evolving legal and constitutional position of LGBTQ+ persons in India, with particular emphasis on the relationship between gender identity, sexual orientation, marriage, and substantive equality. It traces the historical and legal development of LGBTQ+ rights from the criminalization of consensual same-sex relations under Section 377 of the Indian Penal Code to its partial decriminalization in *Navtej Singh Johar v. Union of India*, while examining the transformative significance of *National Legal Services Authority v. Union of India* (NALSA) in recognizing gender identity as an essential component of dignity, autonomy, and constitutional citizenship. The paper further analyses the constitutional dimensions of Articles 14, 15, 19, and 21 and evaluates the extent to which recognition of self-identified gender can facilitate access to marriage and associated civil rights. Particular attention is given to *Arun Kumar v. Inspector General of Registration*, which recognized the validity of a marriage involving a transgender woman under the Hindu Marriage Act, and *Supriyo @ Supriya Chakraborty v. Union of India*, wherein the Supreme Court declined to constitutionally recognize same-sex marriage and emphasized the role of the legislature in determining the legal institution of marriage. The paper highlights the continuing gap between recognition of identity and realization of substantive marital rights, including inheritance, adoption, succession, and family-related entitlements. It also examines international approaches to LGBTQ+ marriage and identity rights through the legal frameworks of South Africa, New Zealand, Argentina, Thailand, and the United States. The study argues that recognition of gender identity, although constitutionally significant, cannot by itself ensure complete equality unless accompanied by comprehensive legislative reform. It recommends gender-neutral marriage laws, stronger protection against discrimination and violence, institutional sensitization, social awareness, and inclusive legal frameworks governing marriage, adoption, inheritance, succession, and divorce. The paper concludes that the constitutional commitment to equality can be meaningfully fulfilled only when LGBTQ+ relationships and identities receive substantive legal protection and equal recognition within the framework of dignity, autonomy, and constitutional citizenship.

Keywords:

LGBTQ+ Rights; Marriage Equality; Gender Identity; Sexual Orientation; Constitutional Equality; Article 14; Article 15; Article 21; Transgender Rights; NALSA Judgment; Navtej Singh Johar; Supriyo v. Union of India; Same-Sex Marriage; Right to Dignity; Right to Privacy; Personal Autonomy; Marriage Rights; Constitutional Law; Judicial Intervention; Legal Reform.

1. INTRODUCTION

Constitutional promises of equality and dignity remain incomplete when examined through the lived realities of LGBTQ community in matters of marriage and identity. This community in India has been the victim of long, painful and exploitive journey since historical times¹. The Supreme Court of India came to their rescue in 2014 wherein in its landmark judgment titled *National Legal Services Authority v. Union of India*², the court recognized transgender people as 'third gender' and declared gender identity as a crucial part of dignity, personal liberty and autonomy. The existence and status of transgenders rose from merely being the subject of welfare schemes to being the rights-bearing citizens. This was followed by partial decriminalization of consensual same sexual acts between consenting adults in 2018³. Despite these two well-intentioned steps, the deeper currents of suffering continued to flow. Providing legal recognition to their identity didn't automatically open floodgates of the associated rights. Marriage in India is not only a social institution but is a gateway to many other legal privileges like inheritance, adoption etc. In wake of this, denial of marital rights has far-reaching consequences. The problem persists because majority of the Indian Marriage laws have been drafted on the assumption that marriage is a union between a male and a female⁴. When it was time to make their lives easier, an unexpected blow was inflicted wherein Supreme Court in *Supriyo @ Supriya Chakraborty v. Union of India*⁵, withheld constitutional recognition from same-sex marriage. The decision rekindled the debate pertaining to the marriage rights of transgender persons and homosexual couples. The legal discourse on LGBTQ+ rights reveals a continuing tension between constitutional ideals of equality and traditional definitions of marriage. The aim of the research paper is to examine the legal evolution of marriage, identity, and equality for LGBTQ community in India and analyze whether constitutional recognition of self-identified gender extends to the right to marry in accordance with self affirmed identity.

2. MEANING OF LGBTQ+, GENDER IDENTITY AND GENDER EXPRESSION

2.1 Difference between sex and gender

Sex is more about biology whereas gender is about roles, identity and social expression. Sex is related to the biological classification of individual based on one's physical and physiological characteristics like chromosomes, reproductive organs, anatomy and hormones⁶. Sex is generally assigned at the time of person's birth as male, female or intersex⁷. The social, cultural and personal understanding of one's identity as well as the roles, expectations and behaviors associated with being characterized as a man, woman or other is regarded as gender⁸. Person's gender identity may differ from their biological sex as in the case of transgenders.

¹ Martha C. Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (Oxford University Press, 2010).

² (2014) 5 SCC 438.

³ (2018) 10 SCC 1.

⁴ Ruth Vanita, *Love's Rite: Same-Sex Marriage in India and the West* (Penguin Viking, New Delhi, 2005).

⁵ 2023 SCC OnLine SC 1348.

⁶ National Academies of Sciences, Engineering, and Medicine, "Introduction and Background" in *Measuring Sex, Gender Identity, and Sexual Orientation* (National Academies Press, Washington D.C., 2022), available at: <https://www.ncbi.nlm.nih.gov/books/NBK581050/> (last visited on June 21, 2026).

⁷ Paisley Currah, *Sex Is as Sex Does: Governing Transgender Identity* (New York University Press, 2022).

⁸ Dillon E. King, "The Inclusion of Sex and Gender Beyond the Binary in Toxicology" 4 *Frontiers in Toxicology* 929219 (2022), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9355551/> (last visited on June 21, 2026).

2.2 Meaning of gender identity and gender expression

Gender identity is one's inner knowledge of one's own gender. The external portrayal of person's gender is regarded as gender expression. This includes dressing style, behavior, hairstyle, voice or other bodily characteristics⁹. It is the way a person chooses to represent one's gender to the outside world. Everyone has gender identity¹⁰. If one's gender identity aligns with the gender assigned to one at birth, then the person is regarded as 'cisgender'. On the contrary if there is discordance between gender assigned at birth and gender identity, the person is regarded as 'transgender'¹¹.

2.3 Meaning of transgender

The OHCHR defines transgenders as, "Transgender (or trans) is an umbrella term used to describe people whose sense of their own gender is different to the sex that they were assigned at birth."¹² The National Centre for Transgender Equality states, "Transgender is a broad term that can be used to describe people whose gender identity is different from the gender they were thought to be when they were born. "Trans" is often used as shorthand for transgender."¹³ Thus, a person is regarded as a transgender when there is a conflict between the status of person's gender assigned at birth and one's conception of one's gender.

2.4 Sexual Orientation and its types

While gender identity reflects one's own perception of one's gender, sexual orientation on the other hand is dependent on the type of person one is sexually, romantically and emotionally attracted to¹⁴. Thus, sexual intercourse is not the sole criteria but holding hands, kissing, providing emotional support and other ways of non-sexual physical interaction are some of the key determinants in figuring out one's sexual orientation¹⁵. There are many types of sexual orientation. When a person is sexually, emotionally and physically attracted towards people of opposite gender, one is regarded as heterosexual. Having the above-stated attraction towards same gender as one's own, the one is called Gay or lesbian¹⁶. Bisexuality refers to sexual orientation in which a person experiences the said attraction with both the people of same and opposite sex. Asexual describes individuals who have little or no sexual interest in others¹⁷. Though devoid of sexual interest such individuals may sometimes yearn for close emotional, romantic or intimate relationship. Aromanticism is a type of sexual orientation wherein a person has little or no romantic attraction towards others¹⁸. The aromantic person may form deep friendships or emotional bonds but generally do not develop romantic relationships. Another distinct sexual orientation is demisexuality, in

⁹ Office of the United Nations High Commissioner for Human Rights, "Intersex People", available at: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/intersex-people> (last visited on June 21, 2026).

¹⁰ Vern L. Bullough & Bonnie Bullough, *Cross Dressing, Sex, and Gender* (University of Pennsylvania Press, 1993).

¹¹ Michael J. Hove and Steven A. Martinez, "Sex, Gender, and Sexual Orientation" in *Biological Psychology* (Revised Edition), available at: <https://rotael.pressbooks.pub/biologicalpsychology/chapter/6-5-sex-gender-and-sexual-orientation/> (last visited on June 21, 2026).

¹² Office of the United Nations High Commissioner for Human Rights, "Transgender People", available at: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity/transgender-people> (last visited on June 21, 2026).

¹³ National Center for Transgender Equality, "Understanding Transgender People: The Basics" (July 2016), available at: <https://transequality.org/issues/resources/understanding-transgender-people-the-basics> (last visited on June 21, 2026).

¹⁴ Wendy Wisner, "What to Know About Sexual Orientation", *Verywell Mind*, updated Jan. 22, 2026, available at: <https://www.verywellmind.com/what-is-sexual-orientation-5183134> (last visited on June 21, 2026).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ William J. Hall, "Sexual Orientation", *Encyclopedia of Social Work* (Mar. 2019), available at: <https://doi.org/10.1093/acrefore/9780199975839.013.127> (last visited on June 21, 2026).

¹⁸ *Ibid.*

which the development of a strong emotional bond serves as a prerequisite for experiencing sexual attraction¹⁹. A demisexual person may further identify as heterosexual, gay, lesbian, bisexual, pansexual, or another orientation depending on the gender to whom they get attracted. Pansexuality, is yet another type of sexual orientation, in which gender is a non-determining factor in attractions. Pansexual persons can get attracted towards people irrespective of whether they are male, female, non-binary, transgender or others²⁰.

2.5 Relationship between transgender identity and sexual orientation

The transgender status of a person has no role to play in determination of one's sexual orientation. As in the case of cisgender individuals, transgender individuals can also identify themselves as heterosexual, gay, lesbian, bisexual, asexual or any other sexual orientation. For instance, a transgender woman who is attracted to men may identify as heterosexual, while a transgender woman attracted to women may identify as lesbian²¹. Similarly, a transgender man may be heterosexual, gay, bisexual, or have any other sexual orientation.

2.6 LGBTQ+ and Transgenders

LGBTQ+ is an umbrella term used to describe diverse gender identities and sexual orientations. LGBTQ stands for Lesbians, Gay, Bisexuals, Transgenders and Queer. The '+' sign denotes other gender identities and sexual orientations, like intersex, asexual, pansexual etc²², that have not been specifically mentioned. It is noteworthy to mention that transgenders hold a relatively stronger legal position within the LGBTQ+ community in terms of legal recognition and rights as compared to others.

3. LGBTQ+ COMMUNITIES IN INDIA: HISTORICAL STATUS

Homosexuality is not a new concept but has been in existence in India since time immemorial. Various scriptures and temples of Hindus illustrate homosexuality in one form or the other. Here's a brief overview of the status of transgender and homosexuality during Hindu Rule, Muslim empire and British Empire.

3.1 Hindu Scriptures

Hinduism is replete with examples of homosexuality²³. Paintings and Scriptures of women seducing other women and men showing their private parts to other men could be seen in the temples of Khajuraho²⁴. Even the text of Ramayana bears testimony to the fact that Lord Shiva appeared in the nightmare of two widowed queens and asked them to love each other. Later, one of the queens was blessed with a child named Bhagiratha²⁵. There is a mention of transgender warrior in Mahabharat as well. In Puranas also, there is illustration of homosexuality but they didn't approve this practice. The Manusmriti and Kautilya's Arthashastra advocate for penalizing homosexual acts²⁶. Thus, though the ancient texts didn't approve homosexuality openly but they did acknowledge that homosexuality existed.

¹⁹ *Supra* note 9.

²⁰ *Supra* note 11.

²¹ Emilia Skrzypczak, Katarzyna Grunt-Mejer & Justyna Ziolkowska, "The Meaning of Sexual Orientation in the Lives of Transgender People: Systematic Review of Qualitative Studies", 26(3) *International Journal of Transgender Health* 544-563 (2025).

²² Arvind Narrain & Alok Gupta (eds.), *Law Like Love: Queer Perspectives on Law* (Yoda Press, 2011).

²³ Ruth Vanita, "Homosexuality and Hinduism", in Arvind Sharma (ed.), *The World's Religions after September 11* (Praeger, 2009).

²⁴ Prabhaskar K. Dutta, "Homosexuality in Ancient India: 10 Instances", *India Today*, July 10, 2018, available at: <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10> (last visited on June 21, 2026).

²⁵ Ruth Vanita, "Homosexuality and Hinduism", in Arvind Sharma (ed.), *The World's Religions after September 11* (Praeger, 2009).

²⁶ *Ibid*.

3.2 Muslim Rule

In the time of Mughal Empire, numerous laws from the Delhi Sultanate period were compiled in the *Fatawa-e-Alamgiri*, wherein same-sex relations were declared as zina and were penalized with punishments extending even upto death penalty by stoning²⁷.

3.3 British Rule

The Britishers criminalized homosexuality and made it an offence under section 377 of the Indian Penal Code, 1860. Even in the Independent India homosexuality remained an offence for about 70 years, until Section 377 was read down in 2018²⁸.

4. INSTITUTION OF MARRIAGE AND STATUTORY FRAMEWORK IN INDEPENDENT INDIA

Marriage is necessarily regarded as a union between two persons as partners in a personal relationship. In Indian society, marriage from the historic times is seen as a union between male and female. Indian statutory laws are cisnormative and employ heteronormative language. Same sex marriage has not got legal recognition in India. In Hindus, marriage involves a conjugal union between man and woman. However, the Hindu Marriage Act, 1955 does not clearly define 'male' or 'female.' Section 5 of the Act provides, "A marriage may be solemnized between any two Hindus..."²⁹, the words "bride" and "bridegroom" used in the Act assumes gender-specific roles. The law does not deal with non-binary or self-identified gender or utilize gender-neutral language³⁰.

However, the position is different in case of Muslims. Muslim texts explicitly recognize marriage as contract between male and female, and prohibits same sex marriage. The verse "And He created the pairs— male and female"³¹ and "those who guard their chastity. except with their wives or their (bondwomen) in their possession, for then they are free from blame, but whoever seeks beyond that are the transgressors."³² The verses depict that a Muslim male can have sexual intercourse only with his wives and bondwomen, prohibiting all other forms of sexual relationships like same sex relationships.

As far as The Special Marriage Act, 1954 is concerned, Section 4 of the Act provides, "a marriage between any two persons may be solemnized under this Act..."³³. The conceptual framework of the act employs a neutral language and doesn't specifically use binary gender language. However, Section 5 demands 'male party' to be at least 21 years and the 'female party' at least 18 years³⁴. Again, causing a hindrance in their path.

The Transgender Persons (Protection of Rights) Act, 2019 unequivocally forbids discrimination in crucial areas like education, employment, public services and healthcare³⁵ but does not mention anything about marriage and adoption.

Thus, the analysis of the above-mentioned statutes reveal significant gaps in the Indian statutory framework pertaining to the marital rights of LGBTQ+ community.

²⁷ Mustafa Umar, "Clarifying the Boundaries for Same Gender Relationships in Islam", *About Islam*, Jan. 18, 2022, available at: <https://aboutislam.net/counseling/ask-the-scholar/family/clarifying-the-boundaries-for-same-gender-relationships-in-islam/> (last visited on June 21, 2026).

²⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s. 377.

²⁹ The Hindu Marriage Act, 1955 (Act 25 of 1955), s. 5.

³⁰ Dhanush C.K. & Ajay Krishna, "The Legal Pathway for Transgender Marriage and Adoption Rights in India: A Constitutional and Comparative Analysis" 6(7) *Indian Journal of Legal Review* 510-517 (2026).

³¹ The Holy Qur'an, Surah An-Najm (53:45).

³² The Holy Qur'an, Surah Al-Mu'minun (23:5-7).

³³ The Special Marriage Act, 1954 (Act 43 of 1954), s. 4.

³⁴ The Special Marriage Act, 1954 (Act 43 of 1954), s. 5.

³⁵ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019), s.3.

5. CONSTITUTIONAL RIGHTS OF TRANSGENDERS

5.1 Right to Equality and Non-discrimination (Article 14 and Article 15)

Article 14 of the Indian Constitution guarantees equality before law and equal protection of law to every citizen³⁶. Time and again, the apex court has interpreted Article 14 to encompass substantive equality. The equality based on the fundamentals that equals should be treated equally and unequal unequally. The court in the landmark judgment of *NALSA*³⁷, held that the scope of the term 'sex' mentioned in Article 15 and 16 is not restricted to biological sex but includes 'gender identity'. This verdict has significant implications when read in relation to marriage rights. As discussed earlier, marriage laws in India employ binary gender categories that create barriers for transgender persons. Since the application of such words create hindrance in the peaceful exercise of marital rights by the transgender on the basis of gender identity, there is discrimination on the grounds of 'sex' which is particularly prohibited by Article 15. Regarding sexual orientation and gender identity as 'natural and inherent' characteristic of an individual, the court in *Navtej Singh Johar v Union of India*³⁸ held that discrimination on these grounds amounts to violation of Article 15.

5.2 Right to Dignity (Article 21)

Article 21 of the Constitution of India guarantees right to life and personal liberty and at the same time safeguards the protection against the arbitrary intervention of the state. In India, marriage extends beyond legal recognition, to being a social institution that provides framework for establishing and regulating the most intimate relationships. The Supreme Court in *Shafin Jahan v. Asokan KM*³⁹, succinctly held that right to choose one's partner is a core component of Article 21. In wake of this, denying the legal capacity to marry to transgender persons takes from them the core aspects of demonstrating and preserving their intimate relationships. Furthermore, in *KS Puttuswamy v. Union of India*⁴⁰, three core dimensions of privacy were articulated: personal autonomy, dignity and informational privacy. The issue of transgenders' marriage involves all three. The personal autonomy incorporates within it the right to choose and form a family. Forbidding the transgender people from marrying violates their dignity.

6. JUDICIAL JOURNEY

6.1 Decriminalization of Homosexuality by Delhi High Court and its subsequent re-criminalization by Supreme Court

In *Naz Foundation versus Government of NCT of Delhi*⁴¹, the Delhi High Court decriminalized homosexuality and held that Section 377 of the Indian Penal Code, 1860 violated Article 14 and 21 when applied in case of consensual sexual acts between adults. However, in 2013 the above ruling was challenged in Supreme Court in the case titled *Suresh Kumar Koushal v. Naz Foundation*⁴², wherein the court reversed the ruling and upheld s.377 stating that changing a law falls in the domain of Parliament and not judiciary.

6.2 The Gender Identity as a Fundamental Right: The NALSA judgment (2014)

A writ petition was filed by National Legal Services Authority of India under Article 32 of the Constitution seeking legal recognition of the people falling outside the binary gender categories of 'male/female', including the ones who identify themselves as 'third gender.' The Court in the pertinent case

³⁶ The Constitution of India, 1950, art. 14.

³⁷ (2014) 5 SCC 438.

³⁸ (2018) 10 SCC 1.

³⁹ (2018) 16 SCC 368.

⁴⁰ (2017) 10 SCC 1.

⁴¹ 160 (2009) DLT 277 (Del.).

⁴² (2014) 1 SCC 1.

had opportunity to discuss in length whether the non-recognition of gender identity to non-binary gender breach fundamental freedoms provided by the Constitution of India⁴³. The “Expert Committee on Issues Relating to Transgender” was also referred to by the court⁴⁴. The court categorically provided legal recognition to “third gender” or transgender for the very first time. It was held that the third gender is entitled to the fundamental rights enshrined in the Constitution as well as under international law⁴⁵. The directions were also given to the state governments to develop framework to secure and achieve the rights of transgenders. The right of every individual to self-identify their gender was also confirmed. It was declared that hijrahs and eunuchs can also identify themselves as ‘third gender’⁴⁶. The term ‘dignity’ in Article 21 was given wider interpretation to include within it the diversity in self-expression that enable a person to live a dignified life. One’s Gender Identity was placed within the scope of fundamental right to dignity under Article 21. Additionally, the attention was brought to the fact that the constituent assembly drafted right to equality and freedom of expression in gender neutral terms. As a result, these rights extend to transgenders as well.

In relation to Article 15 and 16, the court held the term ‘sex’ is not limited to biological attributes but also brings in ‘gender’⁴⁷. Thus, the court ruled that discrimination on the basis of sex includes ‘discrimination on the basis of gender identity’ also.

In a nutshell, the court declared that transgender persons are entitled to fundamental rights under Article 14, 15, 16, 19 (1)(a) and 21. The directions were also given to central and state government to take pro-active steps so as to realize the rights of transgenders.

6.3 Consequence of NALSA Judgment

Following the NALSA judgment, the legal position that follows is if the person, whose sex is male, identifies as a ‘woman’, the State needs to recognize that identity. Now, a question arises if a transgender woman is recognized as woman and a transgender man is recognized as man can they marry under Special Marriage Act and Hindu Marriage Act to man and woman respectively. The direct implication of NALSA judgment should answer the question in affirmative. Thus, some transgender couple, unlike same sex couples may fit in the existing framework of marriage laws in India.

6.4 Right to Privacy includes sexual orientation (2017)

The landmark verdict in *Justice K.S. Puttaswamy v. Union of India*⁴⁸ marks a watershed moment in the Indian Constitutional journey wherein the 9-judge bench held recognized privacy as a fundamental right and declared that sexual orientation is a core component of identity and dignity of an individual. The court ruled that discrimination on the grounds of sexual orientation violates constitutional rights of the individuals. The judgment paved the way for subsequent decriminalization of consensual same sex relations.

6.5 Partial struck down of Section 377: Navtej Singh Johar v. Union of India

In the pertinent case, the court partially struck down s.377 of the Indian Penal Code to the extent to which it dealt with consensual sexual activities between adults. The judgment confirmed right to equal treatment under the law, individual autonomy and acknowledgement for each other’s inherent dignity.

⁴³ (2014) 5 SCC 438.

⁴⁴ *Ibid*, para 9.

⁴⁵ *Ibid*, para 129.

⁴⁶ *Ibid*.

⁴⁷ *Supra* note 43.

⁴⁸ (2014) 5 SCC 438.

Though the case didn't directly deal with marriage rights of LGBTQ+ couples, it did support family rights of this group indirectly⁴⁹. The ruling allowed the LGBTQ+ individuals to live openly without the fear of arrest.

6.6 Implementation of The Transgender Persons (Protection of Rights) Act, 2019

In accordance with the guidelines issued in the case of NALSA, the Parliament came up with the Transgender Persons (Protection of Rights) Act, 2019⁵⁰. The Act makes clear provisions forbidding discrimination in the fields of public goods, health care, education and jobs⁵¹. The act enables the people to get IDS which will identify the individual's affirmed gender identity⁵². Notwithstanding the anti-discrimination feature of the Act, it is criticized on the fact that it is silent on the marital and adoption rights. Further, the act places formal recognition at the forefront of real substantive equality⁵³. It is argued that requiring a District Magistrate's approval for a transgender person to have their gender legally recognized is inconsistent with the Supreme Court's decision in NALSA.

6.7 Arun Kumar v. Inspector General of Registration (2019)

This is the first case wherein marriage of a transgender person was legally held valid under the Hindu Marriage Act, 1955 by the Madras High Court. The case revolved around the interpretation of the term 'bride' mentioned under Section 5 of the Act and concluded that a transwoman is included in the definition of the term 'bride'⁵⁴. The court further held that right to marry is included under Article 21 of the Constitution. Since the judgment was rendered by a High Court, its binding effect is confined to the State of Tamil Nadu.

Therefore, as far as the legal position relating to transgender rights until the Arun Kumar judgment is concerned, the status is that the transgenders have been successful to get recognition as 'third gender', Section 377 had been partially decriminalized and transgenders have in some cases got legal right to marriage. Consensual same sex acts between adults no longer attract penal provisions and LGBTQ+ communities can live openly without fear of arrest. The trend showed that the inclination was towards providing equal rights in all respects. It was expected that sooner the absolute marital rights will also be given to LGBTQ+ community but the subsequent advancements created a tangled web marked by complications and ambiguities.

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

This is the case that significantly undermined the marital rights of LGBTQ+ community. The case stems from the petition filed by Supriya Chakraborty and Abhay Dang seeking recognition of same sex marriages under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969. The petition was filed on behalf of twenty-one same sex couples. The case was referred to a 5 judge Constitution bench. The prominent question involved in the case was whether the privacy and dignity of queer couples is violated when state denies their right to marry⁵⁵.

The court by 3:2 majority held that judiciary cannot by its own expand the legal definition of marriage. Fundamental rights do protect the freedom to choose one's partner but at the same time it doesn't provide

⁴⁹ (2018) 10 SCC 1.

⁵⁰ The Transgender Persons (Protection of Rights) Act, 2019.

⁵¹ The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019), s. 3.

⁵² The Transgender Persons (Protection of Rights) Act, 2019 (Act 40 of 2019), s. 5,6,7.

⁵³ Yash Sonkar, "Identity on Trial: Why India's New Transgender Law is Facing Backlash", *The Times of India*, Mar. 31, 2026, available at: <https://timesofindia.indiatimes.com/india/identity-on-trial-why-indias-new-transgender-law-is-facing-backlash/articleshow/129926777.cms> (last visited on June 22, 2026).

⁵⁴ AIR 2019 Mad 265.

⁵⁵ 2023 SCC OnLine SC 1348.

an absolute right to marry anyone under any circumstances. The Parliament and not the judiciary has the power to provide legal recognition to the same-sex marriage⁵⁶.

The dissenting opinion delivered by Justice DY Chandrachud and Justice S. K. Kaul expressed their disagreement with the majority judgment. The minority view stood for recognition of right to form union being inherent part of Article 19 and 21⁵⁷.

6.9 Aftermath of Supriyo Case

It is noteworthy to mention here that the court had not overruled the NALSA judgment. This creates certain thought-provoking constitutional situation. Same sex marriage remains unrecognized but gender identity remains constitutionally protected. Even the existing marriage statutes remains gendered.

While Supriyo declined to constitutionalize same-sex marriage, it did not diminish the constitutional protection afforded to transgender identity under NALSA. Consequently, transgender people possess a stronger constitutional claim to marriage recognition within existing statutory frameworks than same-sex couples, although significant legal ambiguities continue to exist.

This stance has been supported by Madras High Court as seen in *Arun Kumar v. Inspector General of Registration*⁵⁸. Even in NALSA Case also, the right of the transgender person to marry was recognised. Paragraph No.119 of the said Judgment read as follows:

“119. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on.”⁵⁹

7. INTERNATIONAL LAW PERTAINING TO LGBTQ+ RIGHTS

7.1 The Universal Declaration of Human Rights (UDHR)

The most important international document containing rights of the transgenders is Universal Declaration of Human Rights. Article 16 of the UDHR states that every man and woman has right to marry and to dissolve the same out of their own free will⁶⁰. Though the text uses binary gender language, it has been progressively interpreted as equally allowing both the sexes to marry instead of stipulating that they need to marry person of opposite sex⁶¹.

Many United Nations human rights frameworks have time and again encouraged all the member states to give legal recognition to same sex unions, either by providing absolute right to solemnize same sex marriage or by allowing alternative arrangements like civil partnership with equal benefits and protections⁶².

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ 2023 SCC OnLine SC 1348.

⁵⁹ (2014) 5 SCC 438, para. 119.

⁶⁰ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948), art. 16.

⁶¹ Office of the United Nations High Commissioner for Human Rights, “Universal Declaration of Human Rights at 70: 30 Articles on 30 Articles – Article 16”, Nov. 25, 2018, *available at*: <https://www.ohchr.org/en/press-releases/2018/11/universal-declaration-human-rights-70-30-articles-30-articles-article-16> (last visited on June 22, 2026).

⁶² *Ibid.*

7.2 European Convention on Human Rights (ECHR)

Article 12 of European Convention on Human Rights provides, “men and women of marriage age have the right to marry.”⁶³ This Convention has been signed by 46 member states of Council of Europe⁶⁴. The judicial interpretations have extended the right to transgender or transexual individuals⁶⁵. Such individuals are legally permitted to solemnize same sex marriage and start a family.

7.3 Yogyakarta Principles 2006

Yogyakarta Principles 2006 is a soft law instrument on human rights. Human rights experts adopted set of 29 principles in 2006 demystifying application of existing international human rights law to the issues of sexual orientation and gender identity. Principle 24 (E) calls upon the states to provide legal recognition to same sex marriage and grant it the same status as given to heterosexual marriages⁶⁶. India is a signatory to these Principles. Despite being non-enforceable, these principles serve as a guide for all the signatory states.

8. INTERNATIONAL FRAMEWORK

8.1 South Africa

The Alteration of Sex Description and Sex Status Act, 2003⁶⁷ allows people of South Africa to change their sex description as recorded on their birth certificates after gender reassignment or in cases where the perceived gender is distinct from biological sex. After the alteration is duly recorded, an individual is regarded as an individual of entirely new sex for all the reasons including marriage. This statute of South Africa demonstrates that recognition of gender identity alone doesn't grant ensure equality unless rights extending up to marriage are given. As far as same sex marriage is concerned, South Africa has even allowed that. Just like India, in this country procreation was considered as the main purpose of marriage. Since LGBTQ+ relationships do not at all times permit procreation, neither the transgender nor the same sex marriage was allowed. But the situation improved with the decision of Constitutional court in 2005 in *Minister of Home Affairs v. Fourie*⁶⁸. The court delivering the historical verdict held that non-heterosexuals must be in parity with heterosexuals when it comes to marriage rights. Following this judgment, National Assembly passed the *Civil Union Act, 2006* to empower and permit same sex marriage⁶⁹.

8.2 New Zealand

New Zealand is one such nation wherein the same-sex marriage got legal recognition through the legislative efforts. In 1994, the New Zealand court declined marital rights to same-sex couples and transgenders⁷⁰. This ruling adversely impacted human rights of LGBTQ+ group. To undue the wrong done by the court, the legislature of New Zealand brought the *Civil Union Act*⁷¹ in 2004. The act permitted both the same sex and opposite sex couples to enter into civil union. Civil Unions provide almost same legal rights as

⁶³ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Nov. 4, 1950, ETS No. 5, art. 12.

⁶⁴ Council of Europe, “46 Member States”, available at: <https://www.coe.int/en/web/portal/46-members-states> (last visited on June 21, 2026).

⁶⁵ Christine Goodwin v. United Kingdom, Application No. 28957/95, European Court of Human Rights, Judgment of July 11, 2002.

⁶⁶ The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 24(E) (2007).

⁶⁷ The Alteration of Sex Description and Sex Status Act, 2003 (Act No. 49 of 2003) (S. Afr.).

⁶⁸ Minister of Home Affairs v. Fourie, 2006 (1) SA 524 (CC) (S. Afr.).

⁶⁹ Burnett Attorneys & Notaries, “Same-Sex Marriages in South Africa: Traversing the Legal Landscape”, Jan. 10, 2024, available at: <https://www.burnett-law.co.za/same-sex-marriages-in-south-africa/> (last visited on June 22, 2026).

⁷⁰ Quilter v. Attorney-General, [1998] 1 NZLR 523 (C.A.) (N.Z.).

⁷¹ Civil Union Act 2004 (N.Z.).

associated with marriage but is considered one level low. Finally, the New Zealand Parliament passed the *Marriage (Definition of Marriage) Amendment Act 2013*⁷² which re-interpreted marriage as the union of two people irrespective of sex, sexual orientation, or gender identity. Thereafter, same-sex couples have the same right to marry as heterogenous sex couples. Overseas same-sex marriages are also recognized under New Zealand law in applicable circumstances. The country belongs to the group of progressive countries that has provided equal rights to every type of people.

8.3 Argentina

Argentina serves as a role model for all the other countries in addressing the issues of same sex marriage. *Gender Identity Law*⁷³ of Argentina provides every person with the right to recognize one's gender identity and to acquire identity documents portraying one's self-identified gender. The civil and criminal laws of Argentina employ gender neutral languages. Same sex marriage has been legalized by the *Equal Marriage Law*⁷⁴ passed by the Argentine Congress in July 2010. This law amended the Civil code and have used the term 'spouse' instead of 'husband and wife' so as to permit same sex marriage without any legal hindrance⁷⁵.

With this, the Argentina has become the first Latin American country to allow same sex marriage.

8.4 Thailand

The first Southeast Asian country to legalize same sex marriage is Thailand. *The Marriage Equality Act*⁷⁶ had successfully been through Upper House of Parliament of Thailand in 2024 and received royal approval. The Act amends gender specific terms like 'male and female', 'husband and wife' to gender neutral terms like 'marriage partners' and 'individuals'⁷⁷. The enforcement of the Act has opened the floodgates of marital rights to LGBTQ community of Thailand.

8.5 United States of America

In 2003, United States Supreme court delivered a historic judgment on LGBTQ+ rights. The Court ruled that criminalization of consensual same-sex activities is unconstitutional⁷⁸. Thus, the same-sex consensual activities have been decriminalized in USA since 2003.

This was followed by legal recognition of same sex marriage in 2015 by the US Supreme Court in *Obergefell v. Hodges*⁷⁹. The court held that same-sex couples have right to marry⁸⁰.

9. SUGGESTIONS AND RECOMMENDATIONS

Recognition of gender identity is only the first step and not the complete solution to the problems faced by LGBTQ+ community. In India, legal recognition of self-perceived gender identity has eased the lives of transgenders to some extent. Notably, the transgender community is better placed as compared to other members of LGBTQ+ group. The recognition of gender identity, when interpreted broadly in context of marital laws, grant transgenders the right to marry as acknowledged by the Madras High Court. Though the judiciary through its verdicts and legislature through the legislations have made some attempt to ease their lives, the ground reality is still harsh to them. They continue to face societal disapproval and discrimination. Some of the reforms that could be adopted to empower and reform LGBTQ+ status are as follows

⁷² Marriage (Definition of Marriage) Amendment Act 2013 (N.Z.).

⁷³ Gender Identity Law (Law No. 26,743), 2012 (Arg.).

⁷⁴ Equal Marriage Law (Law No. 26,618), 2010 (Arg.).

⁷⁵ Equal Marriage Law (Law No. 26,618), 2010 (Arg.), art. 42.

⁷⁶ Marriage Equality Act (Civil and Commercial Code Amendment Act (No. 24), B.E. 2567 [2024]) (Thai.).

⁷⁷ *Ibid.*

⁷⁸ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁷⁹ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁸⁰ Leila J. Rupp, *A Desired Past: A Short History of Same-Sex Love in America* (University of Chicago Press, 1999).

9.1 Comprehensive Legislative Reforms

The crucial need of the hour is to amend all the existing marriage and personal laws and incorporate gender neutral terms. The Hindu Marriage Act, 1955, The Special Marriage Act, 1954 as well as the Transgender Persons (Protection of Rights) Act, 2019 should be broadened to include gender inclusive terms in relation to marriage, adoption, inheritance, succession and divorce. This will ensure substantive equality and open the path for same-sex marriage.

9.2 Social Awareness and Elimination of Stigma

Legal recognition coupled with slew of efforts is required to deal with social prejudice and homophobia. Public awareness campaigns, reforms in education and positive media representation can facilitate social acceptance of people of LGBTQ+ community and their relationships. This will help to eradicate discrimination and social exclusion from the society⁸¹.

9.3 Protection and Inclusion of Homosexual and Transgender Couples

Until full legal equality is achieved, the State must provide effective protection to transgender couples against harassment, violence, and social stigma. Courts, police authorities, and administrative bodies should ensure their safety and uphold their fundamental rights. Same needs to be done in case of homosexual couples once same-sex marriage is allowed.

9.4 Sensitization of the Justice System and Institutions

Judges, lawyers, police officers, and other public officials should receive training on gender diversity and transgender rights. Educational institutions, judicial academies, and law-enforcement agencies have a crucial role in promoting a more inclusive and rights-based approach.

9.5 Grassroots and International Support

Sustainable change requires acceptance at both local and international levels. Community institutions, religious bodies, and local administrations should actively support transgender inclusion. Simultaneously, international organizations should strengthen advocacy efforts and encourage states to adopt progressive laws protecting LGBT rights.

10. CONCLUSION

Sexual orientation and gender identity are not choices but inherent aspect of person's identity. The issues of marriage, identity, and equality for the LGBTQ+ community highlight the ongoing gap between constitutional ideals and lived reality. The orthodox and homophobic attitude towards LGBTQ+ community has exacerbated their problems. By granting legal recognition to self-perceived gender identity and decriminalizing consensual homosexual acts between adults, India has taken one step towards safeguarding the personal autonomy of this community. However, this is just the beginning India needs to tread a long path in order to provide substantive equality. The gender inclusive terms need to be incorporated in the marriage laws so as to smoothen their path to marriage, which will in turn usher in tide of related rights. The True constitutional fulfilment lies in recognizing LGBTQ+ relationships as equal and valid expressions of love, commitment, and dignity. Only then can the promise of equality move beyond principle into practice, ensuring that all individuals, regardless of sexual orientation or gender identity, are fully included within the fabric of constitutional citizenship.

⁸¹ Diksha Gupta & Devinder Singh Anand, "Article 14 and 21 in Action: Ensuring Marriage and Adoption Rights for Transgender Citizens in India", 13(10) *International Journal of Creative Research Thoughts* a122-a131 (2025), available at: <https://ijcrt.org/papers/IJCRT2510017.pdf> (last visited on June 23, 2026).