EXPLORING JUDICIAL PERSPECTIVES ON LGBTQ+ RIGHTS, SAME-SEX MARRIAGE AND THEIR SOCIETAL IMPLICATIONS IN INDIA

Abstract

This article examines the evolving constitutional treatment of LGBTQ+ rights in India with particular reference to the Supreme Court's refusal to extend legal recognition to same-sex marriage and joint adoption by queer couples. Building on the landmark decisions in *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India*, the paper analyses the recent Constitution Bench judgment in *Supriyo @ Supriya Chakraborty v. Union of India*, focusing on how the Court balances the rights to equality, dignity, privacy and choice of partner against the legislature's primary role in defining the legal framework of marriage and adoption. The study critically engages with the child-welfare arguments raised by institutions such as the National Commission for Protection of Child Rights (NCPCR), and evaluates the extent to which social-science research on children raised by same-sex parents has influenced judicial reasoning. Methodologically, the article relies on doctrinal analysis of constitutional provisions, statutory schemes under the Juvenile Justice (Care and Protection of Children) Act and the Central Adoption Resource Authority (CARA) Regulations, as well as secondary literature and public opinion surveys. It argues that while the Court has robustly affirmed the fundamental rights of LGBTQ+ persons in the domains of decriminalisation, identity and privacy, its deference to the legislature on marriage and adoption leaves significant gaps in protection that must be addressed through carefully calibrated legislative and policy reform.

Keywords: LGBTQ+, same-sex marriage, adoption, child welfare, Indian Supreme Court, constitutional law

I. Introduction

Over the past decade, Indian constitutional jurisprudence has undergone a profound transformation in its approach to sexuality and gender identity. The recognition of gender identity as intrinsic to personal autonomy and dignity in *National Legal Services Authority v. Union of India*[1] and the decriminalisation of consensual same-sex relations between adults in *Navtej Singh Johar v. Union of India*[2] marked a decisive break from the criminalisation embodied in Section 377 of the Indian Penal Code. Together, these cases signalled a judicial willingness to re-examine long-standing norms relating to sexuality and citizenship through the lens of equality, privacy and human dignity.

However, the legal recognition of same-sex relationships remains incomplete. While criminal penalties for consensual same-sex conduct have been removed, same-sex couples do not yet enjoy the full range of rights associated with family life, including marriage, joint adoption, succession and spousal benefits. This gap became especially visible in the litigation culminating in *Supriyo @ Supriya Chakraborty v. Union of India*[3], in which the petitioners sought recognition of a right to marry under the Special Marriage Act and related entitlements flowing from that status.

A central strand of opposition to the extension of marriage and adoption rights to queer couples has been framed in terms of child welfare and societal impact. Institutions such as the National Commission for Protection of Child Rights (NCPCR) have argued that joint adoption by same-sex couples could adversely affect the psycho-social development of children. At the same time, sections of civil society and religious organisations have invoked notions of the "Indian family unit" and cultural tradition in resisting legal reform.[4]

This article seeks to situate these debates within a doctrinal framework. It asks how the Supreme Court has conceptualised the rights of LGBTQ+ persons in relation to marriage and family, how it has treated child-welfare arguments, and what implications this has for future legislative and policy choices. The analysis proceeds through a close reading of constitutional text, statutory schemes and leading judgments, supported by select social-science literature and opinion data. The aim is not to endorse or reject any particular policy position in the abstract, but to evaluate the coherence of the existing legal framework with the constitutional commitments articulated by the Court itself.

[1] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India)

[2] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

[3] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

[4] Unpacking Indian Supreme Court's Verdict on SameSex Marriage, AL JAZEERA (Oct. 2023)

II. Constitutional and Statutory Framework on LGBTQ+ Rights

A. Constitutional Guarantees

The constitutional foundation for LGBTQ+ rights in India lies primarily in Articles 14, 15, 19 and 21 of the Constitution. Article 14 guarantees equality before the law and equal protection of the laws, prohibiting arbitrary and unreasonable classifications. Article 15(1) forbids discrimination on grounds including sex, a term that the Supreme Court has interpreted in a broad and purposive manner to include sexual orientation and gender identity.[5] Article 19(1) protects various freedoms, including the freedom of expression and association, while Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.

In *Justice K.S. Puttaswamy v. Union of India*,[6] the Supreme Court recognised the right to privacy as an intrinsic part of the right to life and personal liberty, grounding it in dignity, autonomy and the ability to make intimate decisions free from unwarranted state interference. This understanding of privacy provided an important basis for the subsequent recognition of sexual orientation and gender identity as aspects of personal autonomy that merit constitutional protection. It also reinforced the idea that choices about intimate relationships and partners fall within a protected private sphere, subject only to reasonable, proportionate limitations.

B. From Criminalisation under Section 377 to Decriminalisation

Section 377 of the Indian Penal Code, a colonial-era provision, penalised "carnal intercourse against the order of nature" with imprisonment. For much of independent India's history, this provision was used to stigmatise and criminalise consensual same-sex relations. After a protracted litigation trajectory involving the *Naz Foundation* case in the Delhi High Court[7] and the Supreme Court's decision in *Suresh Kumar Koushal v. Naz Foundation*,[8] the matter was finally settled in *Navtej Singh Johar*.[9]

In *Navtej Singh Johar*, a Constitution Bench unanimously held that Section 377 was unconstitutional in so far as it criminalised consensual sexual conduct between adults in private. The Court grounded its reasoning in Articles 14, 15 and 21, emphasising the intrinsic worth of every individual, the right to choose a partner and the impermissibility of criminal law being used to enforce majoritarian morality upon minorities. Importantly, the judgment acknowledged that sexual orientation is an innate attribute of identity and that denying LGBTQ+ persons the ability to form intimate relationships on equal terms was incompatible with constitutional morality.[10]

---

[5] Nat'l Legal Servs. Auth., (2014) 5 S.C.C. at 493 ¶ 72 (India).

[6] Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

[7] Naz Found. v. Gov't of NCT of Delhi, 2009 S.C.C. OnLine Del. 1762, 160 (2009) 111 D.L.T. 1 (India)

[8] Suresh Kumar Koushal v. Naz Found., (2014) 1 S.C.C. 1 (India).

[9] Navtej Singh Johar, (2018) 10 S.C.C. 1 (India)

[10] Id. (discussing constitutional morality under arts. 14, 15 & 21)

C. Statutory Schemes on Child Protection and Adoption

While the criminal law has been reoriented towards decriminalisation, the statutory framework governing child protection and adoption remains more cautious in its approach to non-traditional family forms. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) establishes a comprehensive regime for the care, protection and adoption of children in need. Adoption under the JJ Act is operationalised through regulations framed by the Central Adoption Resource Authority (CARA), which set out eligibility criteria for prospective adoptive parents, procedures, and safeguards.[11]

CARA's regulations historically differentiated between married couples and single individuals, reflecting an assumption that the "ideal" adoptive environment is a heterosexual marital household. Certain provisions, such as restrictions on single males adopting girl children, have been justified on the ground of minimising risk and ensuring the best interests of the child. With the emergence of openly queer individuals and couples seeking to adopt, questions have arisen as to whether regulatory distinctions that disadvantage them are compatible with Article 14 and the anti-discrimination mandate in Article 15.[12]

Institutions like NCPCR have intervened in litigation to argue that recognising joint adoption rights for same-sex couples would be premature in the Indian socio-cultural context and could endanger children's development. These submissions draw on select social-science studies and on broader concerns about the level of social acceptance of non-heteronormative families. The Supreme Court's recent jurisprudence on marriage equality has had to grapple with these questions in determining the contours of constitutional protection.[13]

---

[11] The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016 (India); Central Adoption Resource Authority (CARA) Regulations, 2022 (India)

[12] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India) (discussing CARA Reg. 5(3) and art. 14).

[13] Nat'l Comm'n for Protection of Child Rights, Intervention Petition in Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

III. The Supreme Court's Jurisprudence on Same-Sex Relationships and Marriage

A. Recognition of Gender Identity and Sexual Orientation

In *National Legal Services Authority v. Union of India*,[14] the Supreme Court recognised that transgender persons have a right to self-identify their gender and directed the State to treat them as a socially and educationally backward class for the purposes of reservations and affirmative measures. The Court held that gender identity forms an integral part of personal autonomy and dignity under Articles 14, 15, 16 and 21. This judgment marked the first time that the Court explicitly acknowledged that constitutional guarantees extend beyond the gender binary of male and female as traditionally understood.

The reasoning in NALSA laid important groundwork for *Navtej Singh Johar*, where the Court held that discrimination on the basis of sexual orientation violates Articles 14, 15 and 21. In *Navtej*, the judges stressed that the Constitution protects the rights of sexual minorities irrespective of prevailing social attitudes, and that constitutional morality must prevail over popular morality. The judgment also underscored the link between sexual autonomy, privacy and the ability to form intimate relationships with a partner of one's choice.[15]

B. Choice of Partner and the Right to Marry

Even before the specific issue of same-sex marriage arose, the Supreme Court had recognised the centrality of choice of partner to personal liberty and dignity. In *Shakti Vahini v. Union of India*,[16] the Court held that adult individuals have a right to choose their life partners and that any attempt by community bodies, such as khap panchayats, to interfere with such choices is unconstitutional. Similarly, in *Lata Singh v. State of Uttar Pradesh*[17] and *Arumugam Servai v. State of Tamil Nadu*,[18] the Court condemned honour-based violence directed at inter-caste and inter-community couples and affirmed that the State has a duty to protect such unions.

These judgments conceptualise marriage and intimate partnership as domains in which the individual's autonomy to choose a life partner must be respected, subject only to narrowly tailored limitations. However, they arose in contexts where the couples were otherwise eligible to marry under existing personal or statutory law. The question in the marriage equality litigation was whether this line of reasoning extends to couples who are structurally excluded from marriage by the definition of the institution itself.[19]

C. The Marriage Equality Judgment

---

[14] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India).

[15] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

[16] Shakti Vahini v. Union of India, (2018) 7 S.C.C. 192 (India).

[17] Lata Singh v. State of Uttar Pradesh, (2006) 5 S.C.C. 475 (India)

[18] Arumugam Servai v. State of Tamil Nadu, (2011) 6 S.C.C. 405 (India)

[19] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

In *Supriyo @ Supriya Chakraborty v. Union of India*,[20] a Constitution Bench considered a batch of petitions seeking legal recognition of same-sex marriage, primarily through an interpretation of the Special Marriage Act. The petitioners argued that denying same-sex couples access to civil marriage violated their rights to equality, non-discrimination, dignity, privacy and choice of partner.

They contended that once the Court had recognised LGBTQ+ persons as full rights-bearing citizens, excluding them from marriage amounted to an impermissible constitutional under-classification.

A majority of the Bench declined to read same-sex couples into the Special Marriage Act or to otherwise grant them a fundamental right to marry. The judges emphasised that defining and restructuring the institution of marriage implicated complex policy choices, including questions of personal law, and lay primarily within the domain of Parliament and the State legislatures. While affirming that queer persons are entitled to form stable relationships and cohabit without fear of criminal sanction, the Court held that it could not, through judicial interpretation, create a parallel legal regime of same-sex marriage.[21]

At the same time, the Court examined the regulatory framework on adoption, including CARA's provisions that permitted single individuals, but not unmarried couples, to adopt. Some members of the Bench took the view that excluding unmarried couples in general—and queer couples in particular—from joint adoption lacked a rational nexus with the best interests of the child, especially given the absence of empirical evidence demonstrating that only married heterosexual couples can provide stability. Others accepted the need for caution and deferred to the executive in designing an adoption framework that takes into account child-welfare considerations in a holistic manner.[22]

The result was a judgment that strongly reiterated the fundamental rights of LGBTQ+ persons while stopping short of granting them marital or joint adoption rights. The Court left the matter to the democratic process, urging the Union and States to consider appropriate legislative and policy measures to address the concerns raised.[23]

---

[20] Id

[21] Id. (majority op. distinguishing between eligibility under existing marriage law and structural exclusion)

[22] Id. (Chandrachud C.J. op.) (holding CARA Reg. 5(3) indirectly discriminates against queer couples).

[23] Id. (leaving recognition of marriage to Parliament and State legislatures).

IV. Child Welfare, Adoption by Queer Couples, and Societal Concerns

A. NCPCR's Submissions and Child-Welfare Arguments

In the course of debates on same-sex marriage and adoption, the National Commission for Protection of Child Rights has played a prominent role in articulating reservations about recognising joint adoption by same-sex couples. The Commission has contended that, in the present socio-cultural environment, children raised by such couples may face difficulties in terms of gender-role identification, social acceptance and psychological adjustment. It has also suggested that existing adoption frameworks, including provisions that treat single male adoptive parents differently from others, could be destabilised if joint adoption by same-sex couples is permitted without careful consideration.[24]

These submissions are grounded in the principle that the best interests of the child should be the paramount consideration in any adoption decision. The NCPCR has argued that, given the absence of long-term Indian data on outcomes for children raised by same-sex parents, it may be risky to extend adoption rights without further study. Such positions reflect a cautious approach that emphasises potential risks and calls for gradualism in reform.

B. Empirical Research on Children with Same-Sex Parents

Internationally, social-science research on children raised by same-sex parents has produced varied findings. Some studies suggest that, when controlling for socio-economic and family stability factors, children of same-sex parents do not differ significantly from those of different-sex parents on measures such as educational achievement and mental health. Other studies have claimed that there may be higher rates of certain difficulties, such as depression or family instability, among individuals who have spent part of their childhood in households headed by a same-sex couple.[25]

Many of these studies have been subject to methodological debate, including concerns about sample size, selection bias, and the difficulty of isolating the effect of parental sexual orientation from broader factors such as family disruption, stigma and economic insecurity. In the Indian context, robust, large-scale empirical research on the outcomes of children raised by queer parents is still limited, which complicates reliance on foreign studies conducted in very different social and legal environments. Against this backdrop, courts and policymakers must be careful to interpret empirical claims with appropriate caution, neither ignoring them nor treating them as conclusively determinative.[26]

C. Public Opinion and Societal Acceptance

Public attitudes towards homosexuality and same-sex relationships in India have shifted significantly over the past few decades, but remain heterogeneous. Longitudinal survey projects

---

[24] Nat'l Comm'n for Protection of Child Rights, supra note 13.

[25] Paul Sullins, Invisible Victims: Delayed Onset Depression Among Adults with SameSex Parents, 2015 DEPRESSION RES. & TREATMENT 1; AM. ACAD. OF PEDIATRICS, TECHNICAL REPORT: COPARENT OR SECONDPARENT ADOPTION BY SAMESEX PARENTS, 109 PEDIATRICS 339 (2002)

[26] See supra note 25

such as the World Values Survey and national-level youth attitude surveys indicate a decline in the proportion of respondents who view homosexuality as "never justifiable" and an increase, albeit modest, in those who believe same-sex relationships should be accepted by society. At the same time, large segments of the population continue to express discomfort or opposition, especially when questions are framed in terms of marriage or parenting.[27]

These mixed attitudes are relevant because they inform the social context in which LGBTQ+ persons live, raise families and seek legal recognition. Lack of social acceptance can itself be a source of vulnerability for children in queer households, quite apart from any inherent issues with family structure. From a constitutional perspective, however, the fact that a minority is unpopular or misunderstood does not, by itself, justify differential treatment. The challenge for lawmakers is to design frameworks that protect vulnerable children while ensuring that constitutional guarantees are not subordinated to prevailing prejudices.[28]

D. Assessing the Justification for Differential Treatment

From the standpoint of equality under Article 14, any legal distinction between heterosexual and queer couples in the domain of adoption must satisfy the tests of intelligible differentia and rational nexus to a legitimate objective. Protecting the best interests of the child is undoubtedly a legitimate objective. The question is whether blanket exclusions of certain categories of prospective parents are a proportionate means of achieving that objective, particularly in light of evolving evidence and jurisprudence affirming the dignity and capabilities of LGBTQ+ persons.[29]

One possible approach is to shift the focus from status-based exclusions to individualised assessments. Instead of categorically barring certain types of couples from adopting, authorities could evaluate each application on case-specific criteria related to stability, caregiving capacity and the particular needs of the child. This would allow genuine child-welfare concerns to be addressed without presuming that all queer couples are, as a class, less capable of providing a nurturing environment. Such a shift would also be more consistent with the Supreme Court's broader jurisprudence, which emphasises individual dignity, autonomy and non-stereotyping.[30]

At the same time, it is legitimate for legislators and regulators to proceed with care, especially in the absence of extensive domestic empirical data. The balance to be struck is between necessary caution and unjustified delay. Courts, for their part, can continue to scrutinise adoption and family-law frameworks to ensure that distinctions drawn are based on evidence and constitutional principles rather than on generalised fears or moral disapproval.[31]

[27] WORLD VALUES SURVEY ASS'N, WORLD VALUES SURVEY, WAVE 7: 2017–2022, INDIA COUNTRY DATA (2022),

[28] Navtej Singh Johar, (2018) 10 S.C.C. at 121–22 (India) (holding constitutional morality must prevail over popular morality)

[29] E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India); Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India)

[30] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (Chandrachud C.J. op.) (endorsing individualised, nonstereotypical assessment in adoption)

[31] Id. (recognising that marriage law reform is primarily for the democratic process, subject to judicial review)

V. Conclusion

The trajectory of Indian constitutional jurisprudence on LGBTQ+ rights reveals a complex interplay between recognition and restraint. On the one hand, judgments such as NALSA and *Navtej Singh Johar* have firmly established that sexual orientation and gender identity are integral aspects of personhood protected under the Constitution. They affirm that LGBTQ+ persons are entitled to live with dignity, free from criminalisation and arbitrary discrimination. On the other hand, the Supreme Court's decision in *Supriyo @ Supriya Chakraborty* demonstrates a marked reluctance to extend this recognition into the domain of civil marriage and joint adoption, reflecting concerns about institutional competence and democratic legitimacy.[32]

Child welfare has emerged as a central axis in this debate. Institutional actors like NCPCR, along with segments of civil society, argue that India should be cautious in reshaping family law, particularly where children are concerned. While these concerns cannot be dismissed, they must be evaluated in light of both available evidence and constitutional commitments to equality and non-discrimination. Blanket exclusions of queer couples from adoption or marriage-based entitlements risk entrenching stigma and denying children and adults alike the benefits of family stability and legal protection.[33]

Going forward, meaningful progress will likely depend on a combination of judicial vigilance and legislative initiative. Parliament and State legislatures are best placed to conduct detailed consultations, commission context-specific research and craft nuanced reforms to the JJ Act, CARA regulations and marriage-related statutes. Courts, meanwhile, can continue to ensure that such frameworks conform to constitutional principles, rejecting classifications that rest on stereotypes or unsubstantiated assumptions.[34]

Ultimately, the question is not whether Indian law should replicate foreign models of marriage equality, but how it can evolve in a manner that honours the Constitution's guarantees while taking seriously the welfare of children and the realities of Indian society. A carefully calibrated, evidence-informed approach to recognising diverse family forms—including those formed by LGBTQ+ persons—offers the most promising path towards reconciling these imperatives.

---

[32] Supriyo @ Supriya Chakraborty v. Union of India, 2023 S.C.C. OnLine S.C. 1506 (India)

[33] See Navtej Singh Johar, (2018) 10 S.C.C. 1 (India); Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India).

[34] Supriyo @ Supriya Chakraborty, 2023 S.C.C. OnLine S.C. 1506 (India) (directing Union and States to consider appropriate legislative and policy measures)