

Marriage Equality under Hindu Marriage Law: A Constitutional and Personal Law Perspective on Same-Sex Marriage in India

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ABSTRACT

Marriage has long been regarded as a fundamental social institution that forms the basis of family life and social organization. In India, marriage is not merely a contractual relationship but is deeply rooted in religious, cultural, and personal laws. Hindu marriage, traditionally understood as a sacramental union between a man and a woman, is governed primarily by the Hindu Marriage Act, 1955. However, evolving constitutional values, changing societal attitudes, and the global recognition of LGBTQ+ rights have intensified the debate over the legal recognition of same-sex marriage under Hindu law. While the decriminalization of consensual same-sex relations through the landmark judgment of the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) marked a significant advancement in protecting the rights of sexual minorities, the subsequent decision in *Supriyo v. Union of India* (2023) clarified that the legal recognition of same-sex marriage falls within the legislative domain.

This article critically examines the possibility of extending marriage equality to same-sex couples under the Hindu Marriage Act, 1955, through the lens of constitutional principles and Hindu personal law. It analyses the interaction between Articles 14, 15, 19, 21, and 25 of the Constitution of India and the traditional framework of Hindu marriage. The article further explores judicial interpretations concerning dignity, equality, privacy, autonomy, and non-discrimination, alongside the historical development of Hindu marriage as a sacramental institution. By comparing Indian legal developments with international practices in jurisdictions that recognize same-sex marriage, the article evaluates the challenges posed by constitutional morality, religious freedom, and legislative competence.

KEYWORDS: Marriage Equality, Same-Sex Marriage, Hindu Marriage Act.

1. INTRODUCTION

Marriage is universally acknowledged as one of the oldest and most enduring social institutions. Across civilizations, it has served not only as a means of regulating interpersonal relationships but also as the foundation for family, inheritance, legitimacy, and social order. In India, marriage occupies an especially significant position because of its religious, cultural, and legal dimensions. Among Hindus, marriage has historically been regarded as a sacred sacrament (*Sanskara*) rather than merely a civil contract. It symbolizes a lifelong spiritual union intended to fulfil religious duties, preserve family lineage, and contribute to social stability.

The enactment of the Hindu Marriage Act, 1955, represented a major milestone in the codification of Hindu personal law. While the Act introduced significant reforms concerning divorce,

monogamy, maintenance, restitution of conjugal rights, and judicial separation, it retained the traditional understanding of marriage as a union between a biological man and a biological woman. Consequently, the statutory framework does not expressly recognize marriages between persons of the same sex.

During the past two decades, however, Indian constitutional jurisprudence has undergone remarkable transformation concerning the protection of individual liberty and the rights of sexual minorities. The Supreme Court has progressively expanded the scope of fundamental rights through landmark judgments emphasizing dignity, equality, privacy, autonomy, and constitutional morality. These developments have fundamentally altered public discourse surrounding the legal recognition of same-sex relationships.

A watershed moment occurred in 2018 when the Supreme Court, in *Navtej Singh Johar v. Union of India*, declared that consensual sexual relations between adults of the same sex could no longer be criminalized under Section 377 of the Indian Penal Code. The judgment affirmed that members of the LGBTQ+ community possess equal constitutional rights and that sexual orientation forms an intrinsic component of individual identity protected under Articles 14, 15, 19, and 21 of the Constitution.

Despite this significant advancement, legal recognition of same-sex marriage remains absent in India. Same-sex couples continue to face substantial legal disadvantages relating to inheritance, adoption, maintenance, succession, pension, taxation, medical decision-making, insurance, and spousal benefits. These disabilities arise because numerous legal rights remain contingent upon the existence of a legally recognized marriage.

The constitutional challenge to the exclusion of same-sex couples from marriage reached the Supreme Court in *Supriyo v. Union of India* (2023). Petitioners argued that denying marriage rights solely on the basis of sexual orientation violated the guarantees of equality, liberty, dignity, and non-discrimination embodied in the Constitution. Although the Court acknowledged the discrimination faced by LGBTQ+ individuals and reaffirmed their constitutional rights, it concluded that recognition of same-sex marriage requires legislative intervention rather than judicial interpretation of existing marriage statutes.

The decision generated extensive academic and constitutional debate. Many scholars argue that constitutional guarantees of equality cannot be meaningfully realized unless marriage laws become gender-neutral. Others contend that personal laws reflect religious traditions deserving constitutional protection under Article 25 and that fundamental alterations should be undertaken only by Parliament after extensive democratic deliberation.

The debate becomes particularly complex within Hindu law because Hindu marriage occupies a dual character. On one hand, it is governed by statutory legislation enacted by Parliament. On the other, it derives considerable legitimacy from religious customs and traditional Hindu jurisprudence. This raises difficult constitutional questions regarding the relationship between fundamental rights and religious freedom, the extent of judicial review over personal laws, and the role of constitutional morality in interpreting social institutions.

International developments further intensify this debate. Countries such as the Netherlands, Canada, South Africa, the United States, Australia, Germany, Taiwan, and numerous European nations have extended marriage rights to same-sex couples through constitutional adjudication or legislative

reform. These jurisdictions increasingly recognize marriage equality as an essential component of human dignity and equal citizenship. India, despite its progressive constitutional jurisprudence concerning privacy and sexual orientation, continues to withhold legal recognition of same-sex marriages.

The present study seeks to examine whether the existing framework of Hindu marriage law can be reconciled with constitutional guarantees of equality and dignity. It analyses statutory provisions, judicial precedents, constitutional principles, and scholarly opinions to evaluate whether the exclusion of same-sex couples from marriage withstands constitutional scrutiny. The study also investigates the interaction between constitutional morality and religious autonomy within India's plural legal system.

Rather than treating marriage equality merely as a political or social controversy, this article approaches it as a constitutional question involving competing values of equality, liberty, religious freedom, legislative competence, and democratic governance. It aims to contribute to the ongoing academic discourse by critically evaluating whether Hindu marriage law can evolve in a manner consistent with contemporary constitutional principles while respecting India's diverse religious traditions.

2. EVOLUTION OF HINDU MARRIAGE LAW

• 2.1 Historical Development of Hindu Marriage

Marriage has occupied a central position in Hindu society since ancient times. Unlike many Western legal systems where marriage has traditionally been viewed as a civil contract, classical Hindu jurisprudence regarded marriage as a sacrament (*Sanskara*). It was considered a sacred and permanent union between a man and a woman, intended not only to establish a family but also to fulfill religious obligations (*Dharma*), ensure procreation (*Praja*), and facilitate spiritual companionship (*Sahadharma*).

Ancient Hindu texts such as the Vedas, Manusmriti, Yajnavalkya Smriti, and Narada Smriti treated marriage as one of the essential rites of passage in an individual's life. According to these texts, marriage enabled a person to discharge three fundamental debts (*Rinas*): the debt to ancestors through procreation, the debt to sages through learning, and the debt to the gods through religious rituals. The wife was regarded as an indispensable partner in performing sacred rites, reinforcing the religious nature of marriage.

Classical Hindu law recognized eight forms of marriage:

1. Brahma
2. Daiva
3. Arsha
4. Prajapatya
5. Asura
6. Gandharva
7. Rakshasa
8. Paisacha

Among these, the Brahma marriage was considered the most ideal and socially accepted form. Over time, however, many customary practices emerged, including child marriage, polygamy, restrictions on widow remarriage, and caste-based prohibitions. These practices often led to social inequalities and discrimination, particularly against women.

The nineteenth century witnessed a series of social reform movements led by reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Swami Dayananda Saraswati. These reformers advocated widow remarriage, women's education, abolition of child marriage, and greater equality within marriage. Legislative measures during British rule, such as the Hindu Widows' Remarriage Act, 1856 and the Child Marriage Restraint Act, 1929, reflected these reformist efforts.

Following independence, the need to modernize Hindu personal law became a priority. The Constituent Assembly and Parliament recognized that traditional Hindu law required codification to align with the constitutional ideals of equality, justice, and social reform.

• 2.2 Codification of Hindu Marriage Law

The codification of Hindu personal law culminated in the enactment of the Hindu Marriage Act, 1955, one of the four major statutes forming the Hindu Code Bills. The Act introduced comprehensive reforms while preserving the religious character of Hindu marriage.

The principal objectives of the Act included:

- Establishing monogamy.
- Providing legal grounds for divorce.
- Introducing judicial separation.
- Recognizing restitution of conjugal rights.
- Providing maintenance and permanent alimony.
- Regulating conditions for a valid marriage.

Section 5 of the Hindu Marriage Act prescribes the essential conditions for a valid Hindu marriage. Although the Act does not expressly use the terms "male" and "female" throughout every provision, several sections imply that marriage is intended between a "bride" and a "bridegroom." Consequently, the statutory language has traditionally been interpreted as excluding same-sex couples.

The Act represented a significant shift from uncoded Hindu law by introducing divorce—a concept historically inconsistent with the sacramental nature of Hindu marriage. This demonstrates that Hindu marriage law has evolved over time in response to changing social realities.

The history of legislative reform suggests that Hindu marriage law is not static but capable of adaptation when social conditions demand legal change.

• 2.3 Hindu Marriage as Sacrament versus Contract

One of the central debates surrounding marriage equality concerns the legal nature of Hindu marriage.

Traditional Hindu jurisprudence considers marriage a Sanskara, meaning a sacred sacrament that creates an indissoluble spiritual union extending beyond one lifetime. Marriage is therefore viewed not merely as a legal arrangement but as a religious obligation.

Modern legal scholars, however, argue that after the enactment of the Hindu Marriage Act, 1955, Hindu marriage possesses characteristics of both a sacrament and a civil contract.

Several provisions illustrate this transformation:

- Marriage requires free consent in certain circumstances.
- Divorce is legally recognized.
- Judicial separation is available.
- Maintenance rights are enforceable.
- Marriages can be declared void or voidable.
- Civil remedies exist for matrimonial disputes.

Thus, although Hindu marriage retains religious significance, it also functions as a legal institution regulated by statutory law.

This dual character becomes particularly significant when considering whether constitutional principles may influence the interpretation of marriage under the Act.

3. CONSTITUTIONAL FRAMEWORK GOVERNING MARRIAGE EQUALITY

The Constitution of India serves as the supreme law of the land and guarantees equality, liberty, dignity, and justice to all individuals. Although the Constitution does not explicitly recognize a fundamental right to marry, several provisions collectively provide the constitutional foundation for marriage equality.

• 3.1 Article 14: Equality Before Law

Article 14 guarantees:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This provision forms the cornerstone of Indian constitutional jurisprudence.

Equality under Article 14 prohibits arbitrary state action and requires that legal classifications satisfy two conditions:

- There must be an intelligible differentia.
- The classification must bear a rational nexus with the objective sought to be achieved.

Supporters of marriage equality argue that excluding same-sex couples from marriage solely because of their sexual orientation constitutes unreasonable discrimination lacking constitutional justification.

Marriage provides access to numerous legal rights including:

- inheritance,
- pension,
- adoption,
- taxation,
- maintenance,
- succession,

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- insurance,
 - medical consent,
 - next-of-kin status.

Denying these rights to same-sex couples creates unequal treatment despite their equal status as citizens.

- **3.2 Article 15: Prohibition of Discrimination**

Article 15 prohibits discrimination on grounds of:

- religion,
- race,
- caste,
- sex,
- place of birth.

Although sexual orientation is not expressly mentioned, the Supreme Court has interpreted discrimination "on the basis of sex" broadly to include gender identity and sexual orientation.

This interpretation reflects evolving constitutional values recognizing that discrimination based on sexual orientation is closely connected to sex-based discrimination.

Consequently, denying marriage solely because individuals choose partners of the same sex may amount to indirect discrimination prohibited under Article 15.

- **3.3 Article 19: Freedom of Expression and Association**

Article 19 protects various civil liberties including freedom of speech, expression, movement, and association.

The Supreme Court has recognized that personal identity, emotional relationships, and intimate choices constitute important aspects of individual autonomy.

Choosing one's life partner represents one of the most fundamental exercises of personal liberty.

Supporters of marriage equality argue that preventing same-sex couples from marrying restricts their ability to express their identity and maintain legally recognized intimate relationships.

- **3.4 Article 21: Right to Life and Personal Liberty**

Article 21 provides:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

Judicial interpretation has expanded Article 21 far beyond mere physical survival.

The Supreme Court has held that Article 21 includes:

- dignity,
- privacy,
- autonomy,
- reproductive choice,
- decisional freedom,

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- personal identity,
 - choice of partner.

The recognition of privacy as a fundamental right significantly strengthened constitutional protection for LGBTQ+ individuals.

The Court has repeatedly emphasized that intimate personal relationships fall within the protected sphere of privacy.

Marriage therefore cannot be viewed merely as a statutory privilege but also as an important aspect of personal liberty.

• 3.5 Article 25: Freedom of Religion

Opponents of marriage equality often rely upon Article 25, which guarantees freedom of conscience and the right freely to profess, practice, and propagate religion.

Since Hindu marriage possesses religious significance, it is argued that judicial reinterpretation may interfere with religious practices protected by the Constitution.

However, Article 25 is not absolute.

It remains subject to:

- public order,
- morality,
- health,
- other fundamental rights.

Furthermore, the Constitution authorizes the State to enact social reform legislation affecting religious practices.

Examples include:

- abolition of untouchability,
- temple entry reforms,
- prohibition of polygamy,
- widow remarriage legislation.

Accordingly, Article 25 does not entirely prevent legislative reform of Hindu marriage law where constitutional values require change.

4. CONSTITUTIONAL MORALITY AND PERSONAL LAW

One of the most significant constitutional developments in recent years is the emergence of the doctrine of constitutional morality.

Constitutional morality requires that constitutional values prevail over social prejudice, majoritarian morality, and discriminatory customs.

The Supreme Court has increasingly relied upon this doctrine in cases involving:

- privacy,
- gender equality,

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- LGBTQ+ rights,
 - individual liberty,
 - dignity.

Supporters of marriage equality contend that constitutional morality requires equal legal recognition of all consenting adult relationships regardless of sexual orientation.

Opponents argue that constitutional morality should not override long-established religious traditions embedded within personal laws.

This tension illustrates one of the most complex issues confronting Indian constitutional law: balancing individual rights with religious autonomy in a pluralistic society.

The debate is further complicated by differing judicial opinions regarding whether personal laws themselves are subject to direct constitutional scrutiny under Part III of the Constitution.

5. EMERGING CONSTITUTIONAL QUESTIONS

The debate over marriage equality raises several unresolved constitutional questions:

- Can the judiciary reinterpret the Hindu Marriage Act to include same-sex couples?
- Does exclusion from marriage violate Articles 14, 15, and 21?
- Should Parliament amend the Hindu Marriage Act to make its provisions gender-neutral?
- Can constitutional morality justify reform of religiously influenced personal laws?
- How should courts balance equality with religious freedom?

These questions remain central to contemporary constitutional discourse and will shape the future development of family law in India.

6. SAME-SEX MARRIAGE UNDER HINDU MARRIAGE LAW

• 6.1 Concept of Same-Sex Marriage

Same-sex marriage refers to the legally recognized union between two individuals of the same sex, granting them the same legal rights, duties, and obligations as those enjoyed by heterosexual married couples. These rights generally include inheritance, maintenance, adoption, succession, taxation, pension benefits, insurance, medical decision-making, and other spousal privileges.

The demand for marriage equality is rooted in the principle that marriage is not merely a religious institution but also a civil status carrying significant legal consequences. Advocates argue that denying same-sex couples access to marriage amounts to discrimination based on sexual orientation and violates the constitutional guarantees of equality, dignity, liberty, and privacy.

Globally, many democratic nations have recognized same-sex marriage through legislative reforms or judicial decisions. These developments have influenced legal discourse in India, where the LGBTQ+ community continues to seek equal recognition under family laws, including the Hindu Marriage Act, 1955.

• 6.2 Whether the Hindu Marriage Act, 1955 Recognizes Same-Sex Marriage

The Hindu Marriage Act, 1955, governs marriages among Hindus, Buddhists, Jains, and Sikhs in India. Although the Act was enacted to codify and reform Hindu personal law, it was drafted at a time when marriage was universally understood as a union between a man and a woman.

Several provisions of the Act indicate this traditional understanding:

- **Section 5** prescribes the conditions for a valid Hindu marriage and refers to a "bride" and a "bridegroom."
- **Section 7** recognizes marriage solemnized according to customary Hindu rites and ceremonies.
- Other provisions relating to restitution of conjugal rights, divorce, maintenance, legitimacy of children, and remarriage also proceed on the assumption of opposite-sex spouses.

Consequently, the statutory language has consistently been interpreted as recognizing only heterosexual marriages.

Unlike some foreign jurisdictions where courts have interpreted gender-specific terms in marriage statutes to include same-sex couples, Indian courts have thus far refrained from reading the Hindu Marriage Act in a gender-neutral manner. The judiciary has generally maintained that altering the statutory meaning of marriage would amount to judicial legislation, a function reserved for Parliament.

Nevertheless, constitutional scholars argue that the Act should be interpreted in light of evolving constitutional values. They contend that terms such as "bride" and "bridegroom" could be replaced legislatively with gender-neutral expressions like "spouse" or "party to the marriage," thereby extending the institution of marriage to same-sex couples without disturbing its broader legal framework.

• 6.3 Constitutional Challenges to the Exclusion of Same-Sex Couples

The exclusion of same-sex couples from the Hindu Marriage Act has been challenged on several constitutional grounds.

Violation of Equality (Article 14)

Article 14 guarantees equality before the law and equal protection of the laws. Excluding same-sex couples from marriage creates a distinction based solely on sexual orientation. Critics argue that this classification lacks a reasonable nexus with the objectives of marriage, particularly in a modern constitutional democracy where marriage encompasses companionship, emotional support, mutual responsibility, and legal recognition, in addition to procreation.

Discrimination under Article 15

Article 15 prohibits discrimination on grounds of sex. The Supreme Court has interpreted the expression "sex" to include sexual orientation and gender identity. Consequently, denying marriage rights to same-sex couples may amount to indirect discrimination based on sex and sexual orientation.

Violation of Personal Liberty (Article 21)

Article 21 protects the right to life and personal liberty, which includes dignity, privacy, autonomy, and the freedom to make intimate personal choices. Marriage is widely regarded as one of the most

significant expressions of individual autonomy. Excluding same-sex couples from this institution arguably deprives them of equal enjoyment of these constitutional rights.

Freedom of Expression and Association (Article 19)

Marriage also reflects an individual's identity and emotional commitments. Preventing same-sex couples from entering legally recognized marriages may impair their freedom to express their identity and maintain socially recognized relationships.

7. JUDICIAL DEVELOPMENTS RELATING TO LGBTQ+ RIGHTS

Indian constitutional jurisprudence concerning LGBTQ+ rights has undergone significant transformation over the past decade. Several landmark decisions have progressively expanded constitutional protections for sexual minorities and laid the foundation for the debate on marriage equality.

• 7.1 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 recognized the **right to privacy** as a fundamental right under Article 21 of the Constitution.

The judgment held that privacy encompasses personal autonomy, bodily integrity, dignity, and the freedom to make intimate decisions concerning one's life. Importantly, the Court observed that sexual orientation forms an essential attribute of privacy and personal identity. This recognition significantly strengthened constitutional protection for LGBTQ+ persons.

The *Puttaswamy* decision established that intimate relationships between consenting adults fall within the protected sphere of individual autonomy. Although the case did not directly concern marriage, it laid the constitutional foundation for subsequent challenges seeking legal recognition of same-sex relationships.

• 7.2 Navtej Singh Johar v. Union of India (2018)

The decision in *Navtej Singh Johar v. Union of India* marked a turning point in Indian constitutional law.

A Constitution Bench of the Supreme Court unanimously declared that Section 377 of the Indian Penal Code was unconstitutional insofar as it criminalized consensual sexual relations between adults of the same sex.

The Court emphasized several constitutional principles:

- Every individual possesses inherent dignity.
- Sexual orientation is an immutable aspect of identity.
- LGBTQ+ persons enjoy equal protection under the Constitution.
- Constitutional morality must prevail over social morality.
- Majoritarian prejudice cannot justify discrimination.

The Court observed that members of the LGBTQ+ community are entitled to full constitutional citizenship and equal participation in society.

However, the judgment addressed only the issue of criminalization and did not confer legal recognition upon same-sex marriages.

Nevertheless, *Navtej Singh Johar* fundamentally altered the constitutional landscape by affirming that sexual minorities possess equal constitutional status and cannot be subjected to discriminatory legal treatment merely because of their sexual orientation.

• 7.3 *Supriyo v. Union of India* (2023)

The most significant judicial development concerning marriage equality occurred in *Supriyo v. Union of India*.

Several same-sex couples approached the Supreme Court seeking legal recognition of marriage under existing statutes, including the Special Marriage Act, 1954, and various personal laws.

Arguments of the Petitioners

The petitioners argued that:

- Marriage is a fundamental aspect of personal liberty.
- Exclusion of same-sex couples violates Articles 14, 15, 19, and 21.
- Existing marriage statutes should be interpreted in a gender-neutral manner.
- Constitutional morality requires equal recognition of all adult relationships.

They further contended that denial of marriage deprives LGBTQ+ persons of numerous statutory rights, including inheritance, pension, succession, adoption, insurance, medical consent, and spousal benefits.

Arguments of the Union Government

The Union Government opposed judicial recognition of same-sex marriage, arguing that:

- Marriage has historically been understood as a union between a biological man and a biological woman.
- Any change to this understanding requires legislative action.
- Personal laws are deeply connected with religious and cultural traditions.
- The judiciary should not rewrite statutory provisions enacted by Parliament.

Decision of the Supreme Court

The Constitution Bench unanimously declined to recognize a fundamental right to marry for same-sex couples under existing marriage statutes.

The Court held that:

- The Constitution protects LGBTQ+ persons against discrimination.
- Same-sex couples have the right to form relationships and cohabit.
- There is no fundamental right requiring the State to recognize marriage under existing legislation.
- Recognition of marriage falls within Parliament's legislative domain.

Although the Court declined to legalize same-sex marriage, it directed the State to ensure that LGBTQ+ individuals are protected against discrimination and harassment. The judgment also

emphasized the need for governments to examine the practical difficulties faced by queer couples in accessing social welfare benefits.

8. JUDICIAL RESTRAINT VERSUS JUDICIAL ACTIVISM

The *Supriyo* decision revived the longstanding debate regarding the appropriate role of the judiciary in constitutional governance.

Supporters of judicial intervention argue that constitutional courts have historically expanded fundamental rights through purposive interpretation. Landmark decisions concerning privacy, environmental protection, gender equality, and transgender rights demonstrate that constitutional adjudication often requires progressive interpretation of existing laws.

Conversely, supporters of judicial restraint contend that marriage involves complex questions of social policy affecting family law, adoption, succession, inheritance, and religious customs. Such reforms require comprehensive legislative deliberation rather than judicial reinterpretation.

The Supreme Court ultimately adopted the latter approach, emphasizing institutional limitations and the separation of powers.

9. EMERGING LEGAL ISSUES

The absence of legal recognition creates numerous practical challenges for same-sex couples, including:

- Lack of inheritance rights under personal laws.
- Ineligibility for spousal pension and family benefits.
- Difficulty obtaining joint adoption rights.
- Exclusion from marital maintenance and alimony provisions.
- Uncertainty regarding medical consent and next-of-kin status.
- Inability to claim tax and insurance benefits available to married couples.

These issues underscore that the debate extends beyond symbolic recognition to the equal enjoyment of a wide range of legal protections associated with marriage.

The judicial developments in *Puttaswamy*, *Navtej Singh Johar*, and *Supriyo* reflect the evolving constitutional recognition of LGBTQ+ rights in India. While the Supreme Court has affirmed that sexual orientation is protected under the Constitution and that same-sex relationships deserve dignity and respect, it has also held that extending the institution of marriage to same-sex couples is a matter for legislative action rather than judicial interpretation.

The Hindu Marriage Act, 1955, as presently drafted and interpreted, does not recognize same-sex marriages. Yet, the constitutional principles of equality, dignity, privacy, and non-discrimination continue to fuel scholarly and public debate about whether the law should evolve to reflect changing social realities. This tension between constitutional guarantees and traditional personal law forms the core challenge of marriage equality in India and sets the stage for considering comparative legal experiences and possible reforms.

10. CONSTITUTIONAL CHALLENGES TO MARRIAGE EQUALITY UNDER HINDU MARRIAGE LAW

The debate surrounding the legal recognition of same-sex marriage in India presents one of the most complex constitutional issues in contemporary jurisprudence. It requires balancing individual rights guaranteed under the Constitution with religious freedom, legislative competence, and the autonomy of personal laws. The conflict lies not merely in the interpretation of the Hindu Marriage Act, 1955, but also in reconciling constitutional morality with deeply embedded social and religious traditions.

• 10.1 Equality versus Traditional Classification

The foremost constitutional challenge concerns the compatibility of the exclusion of same-sex couples with the principle of equality under Article 14 of the Constitution.

Article 14 guarantees equality before the law and equal protection of the laws. Traditionally, the Hindu Marriage Act has recognized marriage only between a man and a woman. The rationale historically advanced for this distinction is that marriage primarily serves the purposes of procreation, family continuity, and the preservation of social order.

However, constitutional jurisprudence has evolved considerably. Marriage is now understood not merely as a means of reproduction but also as an institution founded on companionship, emotional support, mutual respect, and personal autonomy. Opponents of exclusion argue that limiting marriage to opposite-sex couples creates an arbitrary classification based solely on sexual orientation, thereby violating Article 14.

Supporters of the traditional framework contend that the distinction is based on the historical and religious nature of Hindu marriage rather than discrimination. They argue that any expansion of marriage must be undertaken through democratic legislation rather than judicial reinterpretation.

Thus, the constitutional question is whether historical understandings of marriage continue to constitute a constitutionally valid classification in a modern democratic society.

• 10.2 Right to Dignity and Personal Liberty

Article 21 of the Constitution guarantees the right to life and personal liberty. Through judicial interpretation, this provision has expanded to include dignity, privacy, autonomy, and the freedom to make intimate personal choices.

Marriage is widely recognized as one of the most significant expressions of personal autonomy. It enables individuals to establish legally recognized families and enjoy numerous civil rights attached to marital status.

Excluding same-sex couples from marriage has practical as well as symbolic consequences. Without legal recognition, such couples are denied:

- inheritance rights;
- maintenance and alimony;
- adoption opportunities under existing family laws;
- pension and retirement benefits;
- succession rights;

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- medical decision-making authority;
 - insurance and taxation benefits;
 - recognition as legal next of kin.

These disabilities affect not only the legal status of same-sex couples but also their dignity and equal citizenship.

The constitutional challenge therefore extends beyond the right to marry and concerns equal access to the legal protections that accompany marriage.

- **10.3 Constitutional Morality versus Social Morality**

The doctrine of constitutional morality has emerged as a central principle in Indian constitutional law.

Constitutional morality requires that constitutional values—including equality, liberty, dignity, and justice—prevail over majoritarian prejudice or discriminatory social practices. The Supreme Court has invoked this doctrine in several landmark judgments involving gender justice, privacy, and LGBTQ+ rights.

Advocates of marriage equality argue that constitutional morality obligates the State to protect minority rights even when public opinion remains divided. They contend that constitutional rights cannot depend upon social acceptance.

Conversely, critics argue that constitutional morality should not be used to invalidate long-standing religious traditions without legislative consensus. They caution that courts should exercise restraint where issues involve complex questions of social policy and religious belief.

This tension between constitutional morality and social morality remains one of the defining challenges in the marriage equality debate.

11. PERSONAL LAW PERSPECTIVES

- **11.1 Nature of Hindu Personal Law**

Hindu personal law governs matters relating to marriage, divorce, adoption, maintenance, guardianship, and succession among Hindus, Buddhists, Jains, and Sikhs. Although codified through statutes such as the Hindu Marriage Act, 1955, many of its principles continue to reflect religious customs and traditional Hindu jurisprudence.

Marriage under Hindu law has historically been regarded as a sacred sacrament rather than a purely civil institution. The concept of *Vivaha* emphasizes religious duty (*Dharma*), companionship, and the continuation of family lineage.

Because of these religious foundations, many scholars maintain that the institution was never intended to encompass same-sex relationships.

- **11.2 Arguments Supporting Recognition**

Despite the traditional understanding, several scholars argue that Hindu law possesses sufficient flexibility to accommodate evolving constitutional values.

The principal arguments include:

- Hindu law has continuously evolved through legislative reform.
- Divorce, widow remarriage, monogamy, and women's property rights were all introduced through statutory amendments despite earlier religious opposition.
- The Hindu Marriage Act itself represents legislative modernization rather than strict adherence to ancient religious texts.
- Constitutional guarantees should influence the interpretation of personal laws where fundamental rights are implicated.

Supporters further observe that ancient Indian literature contains references to gender diversity and non-heteronormative identities. Although these references do not establish historical recognition of same-sex marriage, they demonstrate that Indian civilization has historically acknowledged variations in gender and sexuality.

Consequently, they argue that recognizing marriage equality would represent another stage in the progressive development of Hindu family law rather than a complete departure from tradition.

• 11.3 Arguments Opposing Recognition

Opponents rely primarily upon the religious and cultural foundations of Hindu marriage.

Their principal contentions include:

- Hindu marriage has always been understood as a union between a man and a woman.
- Religious ceremonies such as *Saptapadi* are traditionally performed by opposite-sex couples.
- Marriage serves the purposes of procreation and continuation of family lineage.
- Judicial reinterpretation would fundamentally alter the institution rather than merely interpret statutory language.
- Parliament alone possesses democratic legitimacy to undertake such comprehensive reform.

Many scholars also argue that personal laws occupy a unique constitutional position and should not be substantially modified without broad public consultation.

12. RECOMMENDATIONS

The legal recognition of same-sex marriage under Hindu marriage law remains one of the most significant constitutional debates in contemporary India. Although the Supreme Court in *Supriyo v. Union of India* (2023) declined to recognize same-sex marriage through judicial interpretation, it acknowledged the discrimination and hardships faced by LGBTQ+ persons. Therefore, meaningful reforms are necessary to ensure that constitutional guarantees of equality, dignity, and liberty are effectively realized. The following recommendations are proposed:

1. Legislative Amendment to Marriage Laws

Parliament should consider amending the **Hindu Marriage Act, 1955** and the **Special Marriage Act, 1954** by replacing gender-specific terms such as "husband," "wife," "bride," and "bridegroom" with gender-neutral expressions like "spouse" or "party to the marriage." Such amendments would extend marriage rights without altering the essential legal framework governing marriage.

2. Protection of LGBTQ+ Rights

Comprehensive anti-discrimination legislation should be enacted to prohibit discrimination based on sexual orientation and gender identity in employment, education, healthcare, housing, and public services. Legal recognition of marriage should be accompanied by effective enforcement mechanisms to safeguard equal treatment.

3. Recognition of Civil Unions

As an interim measure, Parliament may introduce a statutory framework for civil unions or registered partnerships, granting same-sex couples legal rights relating to inheritance, maintenance, pension, insurance, succession, taxation, and medical decision-making. While civil unions may not fully satisfy the demand for marriage equality, they would provide immediate legal protection.

4. Reform of Ancillary Family Laws

Recognition of marriage equality should be accompanied by corresponding amendments to adoption, guardianship, succession, maintenance, taxation, pension, and insurance laws to ensure that same-sex couples receive equal legal benefits and responsibilities.

5. Public Awareness and Social Sensitization

Legal reform should be supported by awareness campaigns promoting constitutional values of equality, dignity, and non-discrimination. Educational institutions, legal professionals, civil society organizations, and the media should contribute to reducing prejudice and fostering social acceptance of LGBTQ+ individuals.

6. Judicial Sensitivity

Although the judiciary has emphasized legislative competence in matters of marriage, courts should continue interpreting constitutional rights in a manner that protects LGBTQ+ persons from discrimination. Judicial sensitivity in matters involving custody, maintenance, domestic violence, employment, and housing can substantially improve access to justice.

7. Respect for Religious Freedom

Any legislative reform should preserve the autonomy of religious institutions in conducting religious ceremonies. Marriage equality can be implemented through civil law without compelling religious denominations to alter their doctrinal beliefs, thereby maintaining the balance between Articles 14 and 25 of the Constitution.

13. CONCLUSION

Marriage is not merely a legal institution but also a social, cultural, and religious relationship that carries profound significance in Indian society. Under Hindu law, marriage has traditionally been regarded as a sacrament intended to unite a man and a woman for the performance of religious duties, companionship, and the continuation of family lineage. However, constitutional jurisprudence has progressively expanded the meaning of equality, dignity, privacy, and personal liberty, recognizing that sexual orientation is an intrinsic aspect of individual identity deserving constitutional protection.

The decisions of the Supreme Court in *Justice K. S. Puttaswamy (Retd.) v. Union of India* (2017) and *Navtej Singh Johar v. Union of India* (2018) significantly advanced the constitutional rights of LGBTQ+ persons by recognizing privacy, autonomy, and equality as fundamental constitutional values. Nevertheless, in *Supriyo v. Union of India* (2023), the Court held that while same-sex couples are entitled to dignity and protection against discrimination, the legal recognition of marriage falls within the legislative domain.

The present study demonstrates that the Hindu Marriage Act, 1955, as currently drafted, does not recognize same-sex marriages. At the same time, the exclusion of same-sex couples raises important constitutional concerns under Articles 14, 15, 19, and 21 of the Constitution. Comparative experiences from jurisdictions such as the Netherlands, Canada, South Africa, the United States, and Taiwan illustrate that marriage equality can coexist with religious freedom and social stability when implemented through carefully designed legislative reforms.

Ultimately, the debate over marriage equality reflects the broader challenge of harmonizing constitutional morality with personal law traditions in a pluralistic society. The Constitution of India aspires to secure justice, liberty, equality, and dignity for every individual. Realizing these ideals requires continuous legal evolution responsive to changing social realities while respecting India's cultural and religious diversity. A balanced legislative approach that extends equal civil rights to same-sex couples and safeguards religious autonomy offers the most appropriate path toward achieving substantive equality and inclusive constitutional governance.

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