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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

MARRIAGE, MORALITY, AND THE CONSTITUTION: **A LEGAL ANALYSIS OF LGBTQ+ RIGHTS IN THE** **SHADOW OF HETERONORMATIVITY.**

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Abstract

This paper critically examines the intersection of marriage, morality, and constitutional rights for LGBTQ+ individuals in India. While the decriminalisation of homosexuality marked a historic milestone, full legal equality—particularly in the realm of marriage—remains elusive. Using a doctrinal approach, the paper explores how heteronormative frameworks embedded in statutory laws continue to obstruct queer rights. The recent refusal by the Supreme Court to legalise same-sex marriage is analysed against constitutional values of equality, dignity, and liberty. Further, the study investigates whether Indian constitutional morality can effectively dismantle societal morality rooted in patriarchy, tradition, and exclusion. Ultimately, the paper calls for a legal paradigm that transcends heterosexual norms and affirms queer love as constitutionally valid and morally legitimate.

Keywords: LGBTQ+, Constitution of India, Heteronormativity, Same-Sex Marriage, Fundamental Rights, Morality, Judicial Review.

1. Introduction

In the grand tapestry of constitutional democracy, the institution of marriage holds a unique symbolic and legal significance. It is a site where the personal becomes political and the intimate is regulated by the state. In India, marriage is not merely a private commitment between two individuals; it is also a deeply embedded socio-legal contract shaped by religion, tradition, and patriarchy. Over the years, the Indian legal system has extended the protective umbrella of fundamental rights to previously marginalized identities, yet marriage equality remains conspicuously elusive for the LGBTQ+ community. The struggle for queer rights has evolved from decriminalisation to demands for equal legal recognition, including the right to

marry. However, the enduring shadow of heteronormativity, the presumption that heterosexual relationships are natural, normative, and superior, continues to structure Indian marriage laws, social attitudes, and even judicial reasoning. The 2018 Supreme Court judgment in *Navtej Singh Johar v. Union of India* marked a watershed moment in Indian constitutional jurisprudence. It read down Section 377 of the Indian Penal Code and decriminalised consensual same-sex relationships. With this judgment, the Court elevated the values of dignity, privacy, and individual autonomy, affirming that LGBTQ+ persons are entitled to the full range of constitutional protections. Yet, despite this affirmation of identity and dignity, the Court stopped short of extending these rights into the terrain of marriage. Five years later, the LGBTQ+ community returned to the Supreme Court seeking legal recognition for same-sex marriages. In a historic but sobering verdict in *Supriyo v. Union of India (2023)*, the Supreme Court acknowledged the legitimacy of queer relationships but refrained from recognising a right to marriage, placing the burden on Parliament to legislate such recognition. This judicial restraint highlights a critical tension: while constitutional morality seeks to challenge entrenched prejudices, social morality rooted in heteronormative structures continues to dominate legal discourse.

This research paper seeks to interrogate the intricate relationship between marriage, morality, and constitutional rights in the context of LGBTQ+ individuals in India. It raises a central question: Can a constitution that promises equality, liberty, and dignity be fully realised if it fails to dismantle the heteronormative assumptions that undergird legal institutions like marriage? The paper argues that the denial of marriage rights to LGBTQ+ persons is not simply a legislative shortcoming but a constitutional failure. It reflects a deeper unwillingness to challenge traditional conceptions of family, gender roles, and intimacy conceptions that continue to be valorised as the normative ideal. This reluctance is often framed in terms of judicial deference, cultural sensitivity, or the separation of powers, yet at its core lies a moral anxiety about legitimising non-heterosexual forms of love. The notion of constitutional morality, as introduced and reinforced in landmark decisions such as *Navtej Johar*, *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)*, and *K.S. Puttaswamy v. Union of India (Right to Privacy)*, was envisioned as a counterweight to societal prejudice. It mandates the judiciary to uphold the spirit of the Constitution even if it means going against prevailing social norms. However, in the realm of marriage equality, the judiciary has retreated from this emancipatory role, allowing social morality often shaped by religious doctrine, patriarchy, and majoritarian sensibilities to dictate the boundaries of legal rights. This raises

important questions about the transformative potential of constitutional interpretation and whether the judiciary has abdicated its responsibility to protect minority rights in the face of social conservatism.

Heteronormativity in India is not merely a social attitude; it is institutionalised through legal texts and administrative procedures. The Hindu Marriage Act, 1955, Special Marriage Act, 1954, Christian Marriage Act, 1872, and Muslim Personal Law, all presuppose a binary, heterosexual structure of marriage. Terms like "husband and wife," "bride and bridegroom," and "man and woman" are deeply embedded in the statutory language. The laws governing adoption, surrogacy, guardianship, and inheritance are also premised on this binary. As a result, LGBTQ+ couples regardless of the longevity, stability, or commitment of their relationships are denied basic legal entitlements such as joint adoption, spousal health benefits, next-of-kin status, and property rights. This legal exclusion not only reinforces social stigma but also undermines the constitutional promise of equal citizenship. The recent *Supriyo* judgment, delivered in 2023, is emblematic of the complexities and contradictions in the Indian legal system's engagement with queer rights. While some justices acknowledged that same-sex couples deserve the same respect and recognition as heterosexual couples, the bench remained divided on the nature and extent of legal intervention. The majority held that the Court could not "create a new social institution," reiterating that the task of redefining marriage lay with the legislature. Yet this very stance seems to betray the constitutional mandate of the Court to protect fundamental rights when the legislature fails to act. The judgment thus reinforces the precarious position of queer citizens affirmed in theory, abandoned in practice. In comparison to many liberal democracies where marriage equality is constitutionally or legislatively recognised such as the United States, South Africa, and Taiwan, India's approach appears regressive.

Interestingly, even within South Asia, countries like Nepal have made more inclusive strides. In July 2023, Nepal's Supreme Court issued interim directions for the registration of same-sex marriages, setting a benchmark for progressive legal recognition. India, in contrast, despite its otherwise strong jurisprudence on dignity, privacy, and equality, lags behind due to a deeply ingrained resistance to challenging conventional family structures. At its heart, this paper contends that the denial of marriage equality to LGBTQ+ persons is not a neutral act of legislative omission, but a deliberate continuation of legalised discrimination under the guise of cultural preservation. It underscores the need for a radical reinterpretation of marriage not

as a static, culturally fixed institution, but as a dynamic site of rights, recognition, and inclusion. Just as the Constitution of India has evolved to accommodate a broad spectrum of identities and rights be it the rights of women, minorities, Dalits, or persons with disabilities it must now evolve to fully encompass the realities and aspirations of queer citizens. The legal system cannot continue to speak in the language of equality while denying LGBTQ+ persons one of the most fundamental institutions of human life. It cannot simultaneously affirm the dignity of queer relationships while refusing to protect those relationships through legal structures. And it cannot invoke constitutional morality while retreating in the face of social morality. This paper thus makes the case for a transformative constitutionalism, one that reimagines marriage beyond gender binaries, acknowledges love beyond heteronormativity, and affirms the fundamental truth that equality must be both declared and delivered.

2. Heteronormativity in Indian Law

The architecture of Indian law, particularly in relation to family, marriage, and sexuality, is deeply embedded in a heteronormative framework—a worldview that assumes heterosexuality is the default, normal, and desirable mode of sexual orientation. Heteronormativity, in this context, is not merely a social or cultural bias; it is legally institutionalised through statutes, case law, bureaucratic practices, and judicial interpretations. This section of the paper examines how heteronormativity operates within Indian legal structures and how it systematically excludes LGBTQ+ individuals from full participation in the legal and social fabric of the country.

1. Defining Heteronormativity

Heteronormativity is the belief system that views heterosexuality as the only valid or natural sexual orientation and structures society around this assumption. It reinforces rigid gender binaries (male/female), prescribes fixed gender roles (husband/wife), and devalues or erases non-heterosexual relationships. In legal terms, it manifests as the codification of laws that recognise only opposite-sex couples for purposes such as marriage, adoption, inheritance, surrogacy, and spousal benefits. This framework does more than discriminate; it actively renders queer identities invisible. It treats LGBTQ+ individuals as legal anomalies—citizens whose existence is tolerated but not recognised within key institutions like marriage and family.

2. Marriage Laws: The Stronghold of Heteronormativity

Marriage laws in India are the most visible and entrenched sites of heteronormative legal architecture. Almost all personal and secular marriage statutes define marriage exclusively in heterosexual terms:

- The Hindu Marriage Act, 1955 defines marriage as a sacrament between a "bride" and a "bridegroom."
- The Special Marriage Act, 1954, although secular in nature, repeatedly refers to the parties as "male" and "female," reinforcing gender binaries.
- The Christian Marriage Act, 1872 and the Indian Divorce Act, 1869 similarly reflect Christian heterosexual norms.
- Muslim Personal Law, while uncodified in many respects, also recognises only heterosexual unions.

These laws provide no scope for same-sex or non-binary partnerships. Even in situations where two persons of the same gender live together for years, the state denies them the legal recognition and protections that heterosexual couples enjoy. Thus, marriage in India is not just legally heterosexual; it is compulsorily heterosexual. Any deviation from this norm is viewed not as an alternate form of relationship but as a legal impossibility. This rigid framework systematically excludes LGBTQ+ individuals from the legal, economic, and social benefits that flow from marriage, including inheritance rights, tax exemptions, joint property, adoption rights, and medical decision-making.

3. Adoption and Parenthood: A Gendered Denial

The adoption regime in India, governed largely by the Juvenile Justice (Care and Protection of Children) Act, 2015, and monitored through the Central Adoption Resource Authority (CARA), is also inherently heteronormative. Single persons may adopt, but queer couples are denied joint adoption. This denial stems not from the law's explicit exclusion of LGBTQ+ persons but from CARA's guidelines and administrative practice, which presumes family structures to consist of a "male" and "female" parenting model. This means:

- Queer couples who wish to jointly adopt are barred from doing so.
- In the case of a single LGBTQ+ parent, the partner has no legal rights over the adopted child.
- Children in queer households remain unprotected in law in case of separation or the death of one parent.

Despite the Supreme Court's acknowledgment in *Navtej Singh Johar v. Union of India* (2018) that LGBTQ+ individuals are entitled to full citizenship rights, this has not translated into actionable legal recognition in the area of parenthood.

4. Surrogacy and Assisted Reproduction: The Exclusion Continues

With the enactment of the Surrogacy (Regulation) Act, 2021, the legal exclusion of LGBTQ+ persons became even more stark. The Act permits surrogacy only for heterosexual, Indian, married couples who have been married for at least five years and are medically certified as infertile. Single persons, live-in partners, and queer couples are not allowed to opt for surrogacy. Similarly, the Assisted Reproductive Technology (Regulation) Act, 2021, excludes LGBTQ+ individuals by defining eligible recipients of reproductive technologies in terms of married heterosexual couples or single women. These laws reflect a deeply patriarchal and heteronormative conception of family—where the state defines who is "fit" to be a parent based on sexual orientation and marital status. The implicit message is that LGBTQ+ people are either morally or biologically unfit to raise children—an assumption without any constitutional basis or empirical support.

5. Trans Identities and Legal Ambiguity

The Transgender Persons (Protection of Rights) Act, 2019, while promising in name, is marred by contradictions and bureaucratic hurdles. Though it recognises the right of transgender persons to self-identify their gender, in practice, the process involves heavy medicalisation and state scrutiny.

Most notably, the Act does not address family law rights for trans persons—meaning marriage, adoption, and inheritance laws still require trans persons to conform to binary categories (male/female) to be legally valid. For instance, a trans woman marrying a cisgender man may still face legal challenges if her gender is not officially recognised in documents under male/female binary norms. Moreover, the Act is silent on non-binary identities, leaving a significant section of the queer community legally invisible.

6. Bureaucratic and Administrative Practices

Beyond statutes, heteronormativity pervades administrative frameworks—in passport forms, ration cards, insurance policies, hospital consent forms, school admission documents, and pension schemes. These often mandate the disclosure of a “mother”

and “father,” with no provision for same-sex or trans/non-binary guardianship.

In death certificates, property transfer applications, and pension nominations, same-sex partners are not legally acknowledged, leading to widespread legal disenfranchisement and emotional distress. The law effectively erases queer relationships by refusing to document them, much less protect them.

7. The Judiciary’s Role in Upholding Heteronormativity

The Indian judiciary, while progressive in many instances, has also sometimes reinforced heteronormativity. The 2023 Supreme Court judgment in *Supriyo v. Union of India*, though affirming the dignity of queer individuals, refused to declare marriage equality a fundamental right. By placing the responsibility on Parliament, the Court reinforced the idea that queer rights are conditional—not absolute or inherent. This reluctance reflects a judicial deference to social morality, despite previous judgments like *S. Khushboo v. Kanniammal* (2010), which warned against allowing morality to dictate legal standards. The Court’s reasoning implies that queer relationships are legitimate in the private sphere but do not deserve public or legal affirmation through institutions like marriage.

3. Marriage, Morality, and Constitutional Values

In the Indian context, marriage has always been more than a private affair; it is a cultural institution, a religious sacrament, a legal contract, and, increasingly, a site of constitutional contestation. Traditionally governed by religious norms and patriarchal codes, marriage has long been associated with fixed gender roles and heterosexual coupling. The legal framework that sustains this institution reflects and reinforces this societal expectation. However, as Indian society becomes more pluralistic and constitutional values continue to evolve, the intersection between marriage, morality, and constitutionalism is being called into question especially by the demands of the LGBTQ+ community for equal recognition under the law.

A. Marriage as a Socio-Legal Institution:-

Marriage in India is not uniform; it is regulated by various religious personal laws as well as secular legislation. Yet, across the board, one feature remains constant: the presumption of heterosexuality. The Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and other personal laws frame marriage as a union between a "man" and a

"woman." This narrow definition has not been meaningfully revisited by the legislature, despite social transformations and judicial recognition of diverse sexual identities.

From a legal standpoint, marriage bestows a bundle of rights: spousal benefits, inheritance, taxation benefits, next-of-kin status in medical emergencies, adoption rights, and more. When the state withholds marriage from LGBTQ+ individuals, it denies not only these material entitlements but also a sense of legal personhood. This denial becomes particularly problematic when evaluated through the lens of constitutional values equality, dignity, privacy, and liberty.

B. The Morality Debate: Social vs. Constitutional:-

Morality, in the context of law, has always been a double-edged sword. In a culturally diverse and religiously pluralistic country like India, societal morality often draws from religion, caste, gender norms, and tradition. It is not uncommon for laws—or judicial decisions—to reflect this moral consensus. However, constitutional morality, a term famously used in *Naz Foundation* and later crystallised in *Navtej Singh Johar v. Union of India* (2018), calls for the elevation of constitutional values over popular sentiment. In *Navtej Johar*, the Supreme Court asserted that the Constitution must be interpreted in a manner that protects the dignity and rights of minorities, even when this goes against prevailing societal beliefs. It declared that social morality cannot be used to curtail fundamental rights. Yet, this moral clarity was conspicuously missing in the 2023 judgment in *Supriyo v. Union of India*, where the Court declined to recognise same-sex marriage and deferred the issue to Parliament. Despite recognising the dignity and legitimacy of queer relationships, the Court stopped short of granting them legal sanction through marriage, citing institutional limitations and the separation of powers. This retreat from constitutional morality reveals a reluctance to fully embrace the transformative promise of the Constitution. In effect, the Court allowed social morality, deeply tied to heteronormative expectations, to prevail over the constitutional imperative of equality.

C. Constitutional Values: The Promise of Inclusion:-

The Constitution of India, particularly through Articles 14, 15, 19, and 21, enshrines a framework of rights that is meant to be universal and inclusive. These provisions are not static they have been interpreted dynamically by courts to expand the scope of individual freedom and dignity.

- Article 14 (Equality before Law) demands that all persons be treated equally by the state. Denying LGBTQ+ persons the right to marry while granting the same to heterosexual couples is a clear violation of this principle.
- Article 15 (Prohibition of Discrimination) prohibits discrimination based on sex. The term "sex" has been interpreted to include sexual orientation and gender identity, thereby requiring laws to be neutral to these identities.
- Article 21 (Right to Life and Personal Liberty) has been expansively interpreted to include the right to privacy (Puttaswamy, 2017), the right to choose one's partner (Shafin Jahan, 2018), and the right to dignity. Denying the right to marry infringes upon all these dimensions.
- Article 19 (Freedom of Expression) includes the freedom to express one's sexual and emotional identity. When queer individuals are told their relationships are not "worthy" of legal recognition, the message is clear: their love is not valid in the eyes of the state.

Constitutional morality insists that the state must rise above popular prejudices and protect the rights of those whom society marginalises. Yet, the current legal framework around marriage does precisely the opposite; it reinforces the majoritarian moral code that privileges heterosexuality.

D. The Hypocrisy of Recognition Without Rights:-

Perhaps the most glaring contradiction in the post-Navtej legal landscape is the recognition of queer identities without granting them functional rights. The Supreme Court has celebrated the dignity of LGBTQ+ persons in numerous judgments. However, without the ability to marry, adopt, or inherit as a family unit, such recognition remains symbolic. This performative liberalism where the law "accepts" queer existence but refuses to accommodate queer living exposes the hollowness of our constitutional promises. It creates a class of citizens who are constitutionally visible but legally excluded from core institutions of life.

4. The Role of Judiciary: Ally or Arbitrator?

The Indian judiciary has played a transformative role in the recognition of LGBTQ+ rights, yet its position oscillates between that of a progressive ally and a hesitant arbitrator of societal morality. This duality, sometimes visionary, other times evasive has created both hope and

disillusionment within queer communities. The courts, in many landmark moments, have demonstrated a clear commitment to constitutional values of equality, dignity, and liberty. However, when these values clash with perceived social morality or legislative inertia, the judiciary has often stepped back, acting more as a neutral referee than a change-driving institution. One of the judiciary's most celebrated interventions was the 2018 judgment in *Navtej Singh Johar v. Union of India*, where a five-judge Constitution Bench of the Supreme Court struck down Section 377 of the IPC, decriminalizing consensual same-sex relations. This verdict was not merely a legal decision, it was a symbolic affirmation of dignity, autonomy, and identity. The Court explicitly invoked constitutional morality over popular morality, asserting that the legitimacy of queer existence was not contingent on majoritarian approval. In doing so, the judiciary firmly positioned itself as an ally, championing rights that Parliament had long ignored.

Another watershed moment came in *National Legal Services Authority (NALSA) v. Union of India* (2014), where the Supreme Court recognized the rights of transgender individuals to self-identify their gender, ordering the state to ensure their welfare. The judgment signaled an expansive reading of Article 14 (equality before law) and Article 21 (right to life and personal liberty). However, even this progressive leap was followed by a patchy implementation record, with subsequent legislative responses like the Transgender Persons (Protection of Rights) Act, 2019 being critiqued as regressive and paternalistic.

Yet, this judicial activism hit a wall in *Supriyo v. Union of India* (2023), when the Supreme Court refused to legalize same-sex marriages. While acknowledging the dignity of queer partnerships and urging the government to recognize civil unions, the bench unanimously held that marriage equality is a matter for the legislature. The Court tiptoed around issues of family, adoption, and inheritance rights suggesting that these matters must evolve through “democratic consensus,” not judicial fiat. This marked a significant retreat from its earlier assertiveness, revealing the Court's reluctance to confront deeply entrenched heteronormative norms head-on. This contradiction bold in some cases, cautious arbitrator in others highlights the judiciary's institutional limits and cultural caution. The Court's rhetoric embraces inclusion, but its remedies often stop short of structural transformation. Ultimately, while the judiciary has undeniably advanced LGBTQ+ rights, its fluctuating stance suggests that true legal revolution may require both judicial courage and legislative resolve.

5. International Jurisprudence and Global Trends

Globally, the jurisprudence on LGBTQ+ rights, especially the right to marry has undergone a revolutionary transformation over the past two decades. From North America to Latin America, Europe to parts of Asia, there has been a clear shift toward recognising same-sex marriages as a matter of human dignity, equality, and non-discrimination. The international trend favours an interpretation of marriage that goes beyond gender binaries and embraces diverse forms of human intimacy. In contrast, India's judiciary, while progressive in decriminalising homosexuality, has refrained from fully embracing this trend, particularly in the context of legalising same-sex marriage.

The landmark judgment of *Obergefell v. Hodges* (2015) by the United States Supreme Court remains a gold standard in global LGBTQ+ jurisprudence. The Court ruled that same-sex couples have a fundamental right to marry under the U.S. Constitution. It held that the denial of marriage to same-sex couples violated both the Due Process Clause and the Equal Protection Clause. The judgment emphasised that marriage is not merely a legal arrangement but a recognition of love and dignity. Importantly, the U.S. The Supreme Court did not wait for legislative action it acted decisively, showcasing judicial leadership in upholding minority rights.

In South Africa, the Constitutional Court in *Minister of Home Affairs v. Fourie* (2005) held that the common-law definition of marriage violated the equality clause of the post-apartheid Constitution. The Court gave Parliament one year to amend the law, failing which same-sex marriages would be read into existing statutes. South Africa became the first African country to legalise same-sex marriage, framing it as an issue of justice, equality, and human dignity.

Latin American nations like Argentina (2010) and Brazil (2013) also recognised same-sex marriages through judicial and legislative action. In Colombia, the Constitutional Court mandated marriage rights for same-sex couples in 2016, citing international human rights obligations. These countries demonstrate that progressive constitutional interpretation and legislative responsiveness can work hand in hand.

Closer to India, Nepal has taken bold steps despite its conservative socio-cultural environment. In July 2023, the Supreme Court of Nepal issued interim directions to register same-sex marriages, becoming a trailblazer in South Asia. This judicial courage puts pressure on other

regional democracies like India to revisit their own reticence. India's failure to align with this growing international consensus is particularly ironic, given its otherwise robust human rights jurisprudence. The Puttaswamy (privacy), NALSA (gender identity), and Navtej Johar (sexual autonomy) judgments all draw inspiration from global constitutional values. Yet, when it came to marriage equality in Supriyo (2023), the Indian judiciary chose restraint over recognition.

Global jurisprudence reflects a clear trajectory: marriage equality is not a special right, but a natural extension of human dignity and equality. India's constitutional vision must now catch up with this global momentum, or risk relegating queer citizens to a lesser form of legal existence.

6. The Way Forward: Deconstructing the Norm

The denial of marriage equality in India is not merely a gap in law; it is a mirror to a society clinging tightly to its heteronormative moorings. To move forward, we must confront the uncomfortable truth: the "norm" itself of binary gender roles, heterosexual marriage, and state-sanctioned morality needs to be deconstructed. Legal recognition of LGBTQ+ relationships must begin with dismantling this scaffold of cultural conservatism masked as tradition. The way forward is not about assimilating queer identities into existing frameworks but transforming those very frameworks to reflect the multiplicity of love, gender, and family.

First and foremost, constitutional morality must guide this transformation. The Supreme Court in Navtej Johar rightly upheld that constitutional values must prevail over majoritarian beliefs. However, the judiciary must now extend this reasoning to its logical conclusion: equal rights in marriage, adoption, inheritance, and property. The state cannot cherry-pick dignity: it must either uphold it fully or admit its failure to do so. True equality is not mere decriminalisation; it is recognition, inclusion, and protection in every sphere of law.

Secondly, legislative reform must become a priority. Parliament must take proactive steps to amend personal laws and codify gender-neutral definitions of "spouse" and "marriage." India need not draft entirely new laws; rather, existing frameworks like the Special Marriage Act and Hindu Marriage Act can be sensitively modified to include same-sex and non-binary couples. Law must evolve with lived realities. The personal is political, and when personal lives are denied legal status, the political project of equality collapses.

Educational institutions, too, must be engines of social reform. Legal education, especially, must engage students with gender theory, queer jurisprudence, and the ethics of inclusion. Judges, lawyers, and lawmakers are products of the same society that often ridicules, criminalizes, or silences queer voices. Changing curricula, fostering dialogue, and challenging unconscious bias must be embedded in our academic and professional training. Furthermore, media and pop culture must play a responsible role in reshaping the collective imagination. As long as queer characters are stereotypes or sidekicks, and love stories remain exclusively heterosexual, law and policy will continue to reflect and reinforce exclusion. Visibility, representation, and normalisation in storytelling are as vital as court judgments in shifting public sentiment. Lastly, the queer movement in India must remain intersectional. The struggle for marriage rights must not ignore the realities of caste, class, religion, region, and ability. A Dalit queer person, a trans woman from a rural background, or a working-class lesbian couple experiences oppression differently than urban elites. The future of equality depends on acknowledging these differences while demanding a common dignity.

To deconstruct the norm is to reimagine justice—not as conformity to tradition, but as liberation from it. The road ahead is long, but its destination is clear: an India where love is not judged by its gender, but protected by its Constitution.

7. Conclusion

As India advances into the 21st century with a Constitution that enshrines liberty, equality, and dignity as fundamental values, it remains bound by social structures that continue to marginalize individuals based on whom they love. This paper began with a critical lens on the tension between constitutional promises and societal norms, and ends by reiterating that LGBTQ+ rights, particularly the right to marry, must no longer be viewed as aspirational demands. They are constitutional entitlements, long denied. The legal discourse around marriage equality in India is not merely about amending statutes; it is about unlearning centuries of heteronormativity and recognizing the humanity of queer citizens. Indian law, heavily shaped by colonial morality, patriarchal traditions, and religious conservatism, continues to mirror an outdated idea of marriage as an institution meant solely for procreation, gender roles, and lineage. This heteronormative framework erases queer relationships not just socially, but legally, by rendering them invisible and illegitimate.

Despite the powerful judgments in NALSA, Navtej Johar, and Puttaswamy, the judicial terrain on LGBTQ+ rights has remained inconsistent. On one hand, the judiciary has boldly asserted that dignity, privacy, and identity are inalienable rights. On the other hand, in *Supriyo v. Union of India* (2023), the very same judiciary chose restraint over recognition. It declined to recognize same-sex marriage, deferring the matter to the legislature, thereby placing a constitutional issue at the mercy of political will. This reveals a systemic discomfort in confronting majoritarian morality and a reluctance to challenge the structures that uphold heteronormative dominance. The denial of marriage equality is more than a legal omission; it is a moral failure. It delegitimizes the lives of LGBTQ+ individuals by denying them access to the same legal protections enjoyed by heterosexual couples: adoption, inheritance, property rights, medical consent, tax benefits, insurance, and social recognition. The symbolic weight of marriage in Indian society cannot be overstated. It is the cultural marker of adulthood, family, stability, and social approval. Denying it to queer persons institutionalizes inequality and cements their exclusion.

This issue must also be contextualized globally. The past two decades have witnessed a remarkable shift in international jurisprudence toward inclusion and justice. Countries across different continents South Africa, Canada, Taiwan, Brazil, Argentina, and most recently Nepal have embraced marriage equality. Their courts have interpreted constitutional values progressively, recognizing that dignity and equality demand more than tolerance; they require affirmative recognition. The Indian judiciary, hailed globally for its expansive interpretation of fundamental rights, must not shy away from joining this global chorus for justice. But legal reform alone cannot transform society. LGBTQ+ rights are not just legal issues they are human rights issues. A narrow focus on marriage alone may risk excluding those who do not conform to the ideals of monogamy, domesticity, or binary gender roles. Marriage equality is important, but it must be a gateway not the limit of queer justice. It must be accompanied by reform in adoption laws, gender-neutral language in all personal statutes, and strong anti-discrimination protections in employment, housing, and education. This is also a time for the legal fraternity, academia, and activists to build a coalition that pushes not just for judicial intervention, but legislative engagement. Law Commissions, parliamentary committees, and even religious reform boards must be involved in reshaping the law for inclusivity. The battle for marriage equality is not only about courtrooms; it is about conversations in drawing rooms, classrooms, boardrooms, and every space where normative morality is silently enforced.

Importantly, queer movements in India must remain intersectional. Class, caste, religion, geography, and gender identity significantly affect the experiences of LGBTQ+ persons. A queer Dalit woman in rural Bihar faces different challenges than a gay man in Mumbai. To build a truly inclusive legal system, we must listen to those voices that are often ignored—even within the movement. Otherwise, we risk creating a version of “equality” that serves only the privileged within the queer community. We must also reclaim Indian cultural traditions that affirm queerness, rather than dismissing LGBTQ+ identities as Western imports. Ancient Indian texts, temple sculptures, folklore, and regional literature have long celebrated fluidity in gender and sexuality. It is ironic that the modern legal system—born of colonial constructs—now cites “Indian culture” to deny queer rights. True Indian tradition has always been diverse, fluid, and non-binary; it is time the law acknowledged this indigenous inclusivity.

Constitutionally, this is the moment to reaffirm the transformative vision of Dr. B.R. Ambedkar. The Constitution was never meant to freeze India in time. It was meant to evolve, to dismantle oppressive hierarchies, and to provide a legal framework for justice—not status quo. The preamble’s promise of “justice—social, economic, and political” is hollow if LGBTQ+ persons remain excluded from one of society’s most important institutions. The Court’s reluctance in the Supriyo judgment is a reminder that constitutional morality must often confront popular morality. It is the Court’s duty to protect the rights of minorities—especially when the majority is unwilling to do so. Marriage equality, like the abolition of untouchability or criminalization of marital rape, may never find majority support. But the Constitution exists precisely to ensure that justice does not depend on numbers.

Looking ahead, the way forward must include:

- Amending the Special Marriage Act to be gender-neutral.
- Reforming personal laws to allow same-sex unions, inheritance, and adoption.
- Introducing a comprehensive Anti-Discrimination Law covering sexual orientation and gender identity.
- Including LGBTQ+ studies in school curricula to counter stigma early.
- Establishing civil union options for those not seeking traditional marriage.

In essence, India must evolve from a culture of tolerance to a culture of acceptance—and from mere acceptance to equal recognition under law.

To conclude, the marriage equality movement in India is not merely about wedding ceremonies and legal benefits. It is about visibility, recognition, and justice. It is about asserting that queer

lives are not peripheral but central to the democratic imagination. The Constitution of India promises liberty and equality to all—without conditions or caveats. It is time to honour that promise in full. Let marriage not be the privilege of a few, but the right of all. Let love, in all its colors, be recognized by the law—not in the shadow of heteronormativity, but in the full light of constitutional morality.

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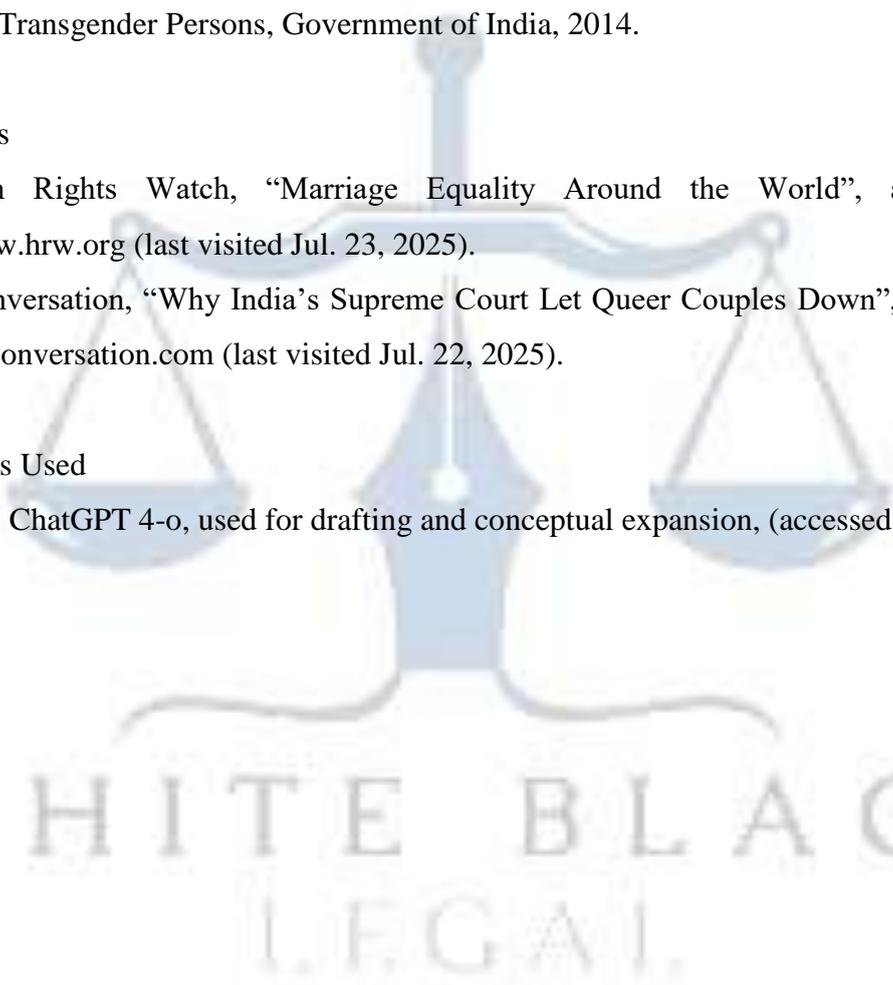
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