



## CONSTITUTIONAL MORALITY VERSUS LEGISLATIVE DOMAIN: ANALYZING THE SUPREME COURT'S APPROACH TO SAME-SEX MARRIAGE IN INDIA

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### ABSTRACT

*An important turning point in the evolution of constitutional jurisprudence is represented by the position of same-sex marriage in India. Despite the Supreme Court's affirmative expansion of the definition and acceptance of LGBTQ+ autonomy, identity, and dignity, Supriyo v. Union of India reverses this earlier revolutionary approach. This essay analyses the constitutional conflicts in the ruling and makes the case that striking a balance between legislative sovereignty and constitutional morality was crucial. It places India's position in a comparative worldwide perspective, analyses the structural and legal deficiencies resulting from the denial of marriage equality, and examines the Court's reasoning within the framework of fundamental rights. The article contends that despite the Court's reasoning being based on institutional restraint and the separation of powers, its unwillingness to expand marital rights leads to a partial realisation of constitutional protections. It comes to the conclusion that legislative initiative and ongoing judicial engagement with the values of autonomy, equality, and dignity are necessary for real reform to occur.*

**Keywords:** Same-Sex Marriage, Constitutional Morality, Legislative Domain, LGBTQ+ Rights, Article 21, Equality, Judicial Review, India, Marriage Law Reform.

### INTRODUCTION

Regarding LGBTQ+ rights, India's constitution has undergone a dramatic change in recent years. Decriminalising consenting same-sex relationships was a significant departure from colonial-era morality and upheld the constitution's dedication to individual autonomy and dignity. The lack of legal recognition for same-sex unions, however, shows a persistent

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disconnect between constitutional principles and actual circumstances despite these advancements. A turning point in this course was the Supreme Court's ruling in *Supriyo v. Union of India*. The petitioners sought recognition of same-sex marriages under existing statutory frameworks, arguing that exclusion from marriage violates fundamental rights guaranteed under Articles 14, 15, 19, and 21 of the Constitution<sup>1</sup>. Their argument concerned access to several rights related to marriage, such as inheritance, adoption, and social security, rather than just official recognition.

However, the Court refused to acknowledge this, ruling that marriage is a matter best left to the legislative branch. This ruling presents a basic constitutional conundrum: should the judge intervene to defend fundamental rights when the legislature fails to act, or should it respect democratic processes? Through a thorough examination of the ruling, this article examines this conflict and makes the case that, although judicial restraint is institutionally justified, undue deference could jeopardise the Constitution's transformational potential.

## **BACKGROUND OF THE CASE**

The petitions in *Supriyo v Union of India*<sup>2</sup> challenged the exclusion of same-sex couples from the ambit of marriage under the Special Marriage Act, 1954 and the Foreign Marriage Act, 1969. These statutes, while secular in nature, implicitly restrict marriage to heterosexual couples through gender-specific language. The petitioners argued that such exclusion creates an unconstitutional classification, violating the guarantee of equality under Article 14.<sup>3</sup> They further contended that denial of marriage rights undermines dignity and personal autonomy, which are central to the right to life under Article 21.<sup>4</sup> Crucially, the case expands on previous legal acknowledgement of LGBTQ+ rights. The Supreme Court has already ruled that discrimination based on sexual orientation is unlawful and that sexual orientation is an essential component of identity. As a result, the petitioners presented marital equality as a natural progression of preexisting fundamental values.

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<sup>1</sup> Constitution of India 1950, arts 14, 15, 19, 21.

<sup>2</sup> *Supriyo v Union of India* 2023 SCC OnLine SC 1348.

<sup>3</sup> *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75.

<sup>4</sup> *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1.

## CONSTITUTIONAL FRAMEWORK AND DOCTRINAL FOUNDATIONS

**Constitutional Morality:** One of the main tenets of Indian constitutional law is the concept of constitutional morality. Even in the face of social opposition, governance must be guided by constitutional values.

In *Navtej Singh Johar v Union of India*, the Supreme Court emphasised that constitutional morality must prevail over majoritarian views.<sup>5</sup> The Court recognised that the Constitution protects individual dignity and autonomy, irrespective of popular sentiment.

Similarly, in *Indian Young Lawyers Association v State of Kerala*, the Court reiterated that constitutional morality cannot be subordinated to social morality.<sup>6</sup> These decisions underscore the judiciary's role as a counter-majoritarian institution. In the context of same-sex marriage, constitutional morality demands that the rights of LGBTQ+ individuals be protected, even if societal acceptance remains limited.

**Equality and Non-Discrimination:** Article 14 guarantees equality before the law and prohibits arbitrary classification. The Supreme Court has interpreted this provision to require that any classification must be based on intelligible differentia and bear a rational nexus to the objective sought to be achieved.<sup>7</sup> This standard is not met by prohibiting same-sex couples from getting married. It makes a distinction based only on sexual orientation, which is illogical given the goal of marriage as a legal institution. Additionally, sex-based discrimination is forbidden by Article 15. In *Navtej Singh Johar*, the Court broadened the definition of 'sex' to encompass sexual orientation, putting LGBTQ+ people under constitutional protection.

**Right to Life and Personal Liberty:** Article 21's right to life has been broadly construed to encompass autonomy, dignity, and the ability to make one's own decisions. The Court acknowledged privacy as a basic right that includes decisional autonomy in *Justice KS Puttaswamy v Union of India*.<sup>8</sup> The right to choose a partner has been affirmed in *Shafin Jahan v Asokan KM*, where the Court held that personal choices relating to marriage fall within the

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<sup>5</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

<sup>6</sup> *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1.

<sup>7</sup> *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

<sup>8</sup> *Justice KS Puttaswamy* (n 4).

ambit of Article 21.<sup>9</sup> Denying same-sex couples the right to marry therefore restricts their ability to exercise autonomy and undermines their dignity.

**Legislative Domain and Separation of Powers:** An essential component of the Indian constitutional structure is the idea of separation of powers. It guarantees the separation of the judicial, executive, and legislative branches. In *Supriyo*, the Court emphasised that Parliament must address marriage since it is a policy issue involving intricate societal concerns. Although this justification shows a dedication to institutional boundaries, it raises questions regarding the defence of fundamental rights.

### THE SUPREME COURT'S DECISION

The Court declined to give same-sex weddings legal recognition in *Supriyo v. Union of India*. According to the majority:

- Statutory provisions cannot be changed by courts.
- The legislative branch is responsible for marriage laws.
- The balance of powers would be upset by judicial intervention.

The Court made several progressive observations concurrently. It recognised the freedom of LGBTQ+ people to live together and develop relationships without hindrance. It also acknowledged that the State must guarantee nondiscrimination. However, queer couples lacked legal protection because these observations were not followed by actionable rights.

### KEY LEGAL AND STRUCTURAL GAPS

**Lack of Legal Recognition:** The absence of marriage rights has far-reaching consequences. It affects access to adoption, inheritance, taxation, and healthcare decision-making. In *Lakshmi Kant Pandey v Union of India*, the Court highlighted the importance of legal frameworks in regulating adoption.<sup>10</sup> However, such frameworks remain inaccessible to same-sex couples. This creates a situation where queer relationships exist socially but lack legal validity.

**Judicial Restraint versus Activism:** The Court's approach in *Supriyo* contrasts with its earlier willingness to intervene in the absence of legislation. In *Vishaka v State of Rajasthan*, the Court

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<sup>9</sup> *Shafin Jahan v Asokan KM* (2018) 16 SCC 368.

<sup>10</sup> *Lakshmi Kant Pandey v Union of India* (1984) 2 SCC 244.

framed guidelines to address workplace harassment.<sup>11</sup> The refusal to adopt a similar approach in *Supriyo* suggests a shift towards judicial restraint, raising questions about consistency in constitutional interpretation.

**Minority Rights and Majoritarian Politics:** The Constitution is designed to protect minority rights against majoritarian impulses. In *National Legal Services Authority v Union of India*, the Court recognised the rights of transgender persons despite societal resistance.<sup>12</sup> The reluctance to extend similar protection to same-sex couples indicates an unresolved tension between constitutional principles and political realities.

### COMPARATIVE PERSPECTIVE

**United States:** In *Obergefell v Hodges*, the US Supreme Court held that the right to marry is a fundamental liberty protected by the Constitution.<sup>13</sup> The decision emphasised dignity, autonomy, and equal protection.

**United Kingdom:** The UK took a step-by-step strategy, first legalising same-sex marriage by legislation and then creating civil partnerships. This illustrates a reform model that is motivated by both legislative action and judicial acknowledgement.

**India's Position:** India's strategy is typified by progressive court rulings but little legislative action. As a result, there is a disconnect between the goals of the constitution and actual circumstances.

### CRITICAL ANALYSIS

A very cautious approach to constitutional interpretation, one that places institutional constraints above broad rights-based adjudication, is reflected in the ruling in *Supriyo v. Union of India*. In a formal sense, the Court's emphasis on legislative competence and the separation of powers is doctrinally valid. It recognises that democratic procedures, as opposed to judicial innovation, have historically moulded some domains, especially those requiring intricate socio-legal relationships like marriage. However, India's constitutional adjudication has always

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<sup>11</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

<sup>12</sup> *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

<sup>13</sup> *Obergefell v Hodges* 576 US 644 (2015).

embraced a revolutionary vision, particularly when it comes to fundamental rights and oppressed people. It has never been limited to formality alone.

In this regard, the Court's unwillingness to expand marital rights seems more like a retreat from its own progressive course than a reasoned restriction. Previous rulings have consistently upheld the Constitution's status as a living text, to challenge and change current social structures in addition to preserving them. By refusing to get involved, the Court essentially shifts the responsibility for reform to the legislature, an organisation that could be impacted by political and societal trends. Although institutionally respectful, this deference runs the risk of postponing the enjoyment of rights that the Constitution already, in theory, protects.

In this discussion, marriage cannot be reduced to a solely cultural or social institution. It serves as a legal entry point that grants access to a variety of rights and benefits. Inheritance, adoption, taxes, healthcare decision-making, spousal benefits, and next-of-kin recognition are a few examples of these rights. Therefore, denying same-sex couples' access to marriage does more than just deny them symbolic affirmation; it routinely keeps them out of a system of legal protections that heterosexual couples can easily obtain. In this sense, securing equitable participation in an established legal institution is more important than granting a particular privilege.

A hierarchy of citizenship is the result of such exclusion. Although LGBTQ+ people are denied the full range of rights that result from these assurances, they are acknowledged as equal in theory and are entitled to autonomy, dignity, and nondiscrimination. As a result, legal recognition and real inequality coexist in a type of "partial citizenship." However, the Constitution's commitment to equality requires both formal inclusion and meaningful access to social and legal institutions; it does not take into account such fragmented rights. Therefore, a fair assessment of the ruling would recognise that the Court's adherence to institutional boundaries attained a certain level of constitutional correctness. It preserved the institutional integrity of the division of powers and refrained from going too far into the legislative branch. However, this accuracy comes at the expense of moral leadership. When legislative action has been lacking or insufficient, the judiciary, especially in the Indian setting, has frequently catalysed social change. Its position as the defender of basic rights gives it the authority to do so.

The Court does not completely embrace this position in *Supriyo*. Although it acknowledges the existence of rights, it is reluctant to convert them into legally binding rights. The recognition of dignity does not result in its legal protection, which leads to a conflict between principle and practice. As a result, the ruling falls somewhere in the middle, being both progressive in acknowledging LGBTQ+ identities and conservative in refusing to expand that recognition to include rights. In the end, the ruling highlights a more general difficulty in constitutional governance: striking a balance between institutional restraint and the need for justice. The Court's prudence may be warranted in order to protect democratic processes, but it also draws attention to the shortcomings of a strictly deferential strategy when it comes to resolving structural injustices. The Constitution's capacity to overcome these restrictions and guarantee that rights are realised as essential elements of citizenship rather than being dependent on legislative readiness is what gives it its transformational potential.

## SUGGESTIONS AND RECOMMENDATIONS

**Legislative Reform:** Parliament should change current legislation to recognise same-sex unions and incorporate gender-neutral clauses.

**Judicial Engagement:** Courts must keep broadening the definition of basic rights, especially in light of Article 21.

**Administrative Measures:** The executive can grant temporary recognition through housing, employment, and healthcare policies.

## CONCLUSION

The decision in *Supriyo v Union of India* marks a pivotal moment in India's constitutional journey, not because it settled the issue of marital equality, but rather because it revealed the boundaries of constitutional adjudication when faced with deeply ingrained social and legislative inertia. The *Supriyo v Union of India* ruling represents a turning point in India's constitutional history. The ruling highlights the limits set by the separation of powers concept and represents the Supreme Court's deliberate decision to exhibit institutional restraint. In doing so, the Court reaffirmed that certain social changes must begin inside the democratic framework of Parliament, particularly when they pertain to complex policy matters like marriage. However, this deference comes at a constitutional cost.

The Court essentially places LGBTQ+ people in a situation where their identities and relationships are recognised in theory but denied full legal consequences by refusing to grant legal recognition to same-sex marriages. Constitutional jurisprudence becomes inconsistent as a result. On the one hand, prior rulings have firmly upheld equality, autonomy, and dignity as fundamental constitutional principles. However, the practical realisation of these fundamental rights is limited in the context of marriage due to the lack of legal recognition. In this way, equality becomes conditional, recognised in abstract but restricted in application. The ruling thus highlights a more fundamental structural problem: the discrepancy between legislative action and constitutional morality. Although the Constitution contemplates a transformative framework that shields minorities from majoritarian impulses, legislative willingness is frequently necessary for its effective implementation. Judicial restraint has the risk of perpetuating rather than eliminating current disparities in the absence of such willingness. This is especially important when it comes to LGBTQ+ rights, as legislative reform has lagged behind judicial advancement and popular acceptance is still changing unevenly.

The constitutional guarantees of autonomy and dignity will remain unfulfilled until same-sex partnerships are fully recognised by the law. This is not because the Constitution lacks the required principles, but rather because those concepts have not been converted into legally enforceable rights. As a legal institution, marriage serves as a doorway to several social, economic, and civil rights. Therefore, denying access to this institution has far-reaching effects that go well beyond symbolic recognition; it impacts everything from social legitimacy and protection from discrimination to healthcare decision-making and inheritance. Therefore, a single institution cannot be the foundation of the future. It necessitates a persistent and well-coordinated effort across several disciplines. In order to create inclusive legal frameworks, the government must take the initiative. This can be done by creating new forms of recognition, like civil unions, or by amending current statutes. The judiciary must continue to interpret fundamental rights in a way that broadens protections and tackles covert forms of discrimination while upholding institutional boundaries. At the same time, because social acceptance and the law frequently reinforce one another, public views must shift to support and maintain these legal changes.

In the end, the question is not just whether same-sex marriage will be accepted in India, but also how and when it will. The Supriyo ruling changes the focus of change rather than closing the door on marital equality. It indicates that while the judiciary continues to be a significant,

but not exclusive, protector of rights, the next stage of this constitutional journey will rely on legislative initiative and community engagement. Equality in India will remain in a condition of transition until that convergence is attained, deeply rooted in constitutional promise but awaiting full expression in both law and lived experience.