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**Judicial and Legislative Approaches to Same-Sex Marriage:
Comparative Insights for Legal Reform in India****Vartika Singh**Assistant Professor of Law
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This paper will focus on critically examining the judicial and legislative pathways through which various jurisdictions have recognized same-sex marriage and will explore how these approaches within can be applicable in the Indian legal framework. The paper will be a comparative analysis of all the legal system such as the United States, South Africa, Canada, and Taiwan, and how they achieved marriage equality through constitutional interpretations, statutory reforms, and the role of civil society. The paper will also focus on the evolving global jurisprudence surrounding the marriage equality as extension of fundamental rights to equality, dignity, and privacy especially in the aftermath of the *Supriyo @ Supriya Chakraborty v. Union of India* decision, wherein the Supreme Court of India acknowledged queer individual's right to relationships but deferred legislative recognition of same-sex marriage to Parliament. This paper will dwell on that the Indian constitutional scheme particularly Articles 14, 15, 19, and 2 offers a robust foundation for the legal recognition of same-sex unions, even in the absence of explicit statutory amendment. will further assess the potential for reform through judicial reinterpretation of existing statutes, notably the Special Marriage Act, alongside the prospect of adopting gender-neutral or relationship-neutral legal frameworks. Additionally, the study aims to propose a comprehensive legal framework for the recognition of same-sex marriages in India, aligning domestic law with

KeywordsMarriage equality, Constitutional frame
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evolving global standards and human rights norms.

INTRODUCTION

Marriage equality may be defined as having equal rights vis-a-vis choice of partner irrespective of one's sexual orientation. Oxford dictionary defines it as "the situation in which same sex couples have the same legal right to marry as their heterosexual counterparts."

The last few years have indeed seen significant public debate and a shift in the traditional definition of "marriage." Previously, marriage was commonly understood as the legal union between a man and a woman. However, contemporary liberal interpretations have broadened the understanding of marriage to include homo-sexual couples. Queer individual's Right to Marry has been one of the most significant human rights and constitutional law issues of the contemporary legal world. Due to the consistent demand of LGBTQ+ rights advocates to recognise same-sex marriage, the right to equality, dignity, privacy, and family formation have been questioned and scrutinized across all major legal systems.

Despite the significant increase in the number of countries that have adopted legislative or judicial measures to recognize marriage equality, significant variation still persists in the scope of rights, and the framing of reforms.

India, also witnessed some substantial shifts in recognizing and protecting the human rights of LGBTQ+. The Judiciary through precedents in cases like *National Legal Service Authority v. Union of India*, *Naz Foundation v. Government of NCT of Delhi* and the decriminalization of consensual same-sex relationships in *Navtej Singh Johar v. Union of India* has led to path for the same. But even after the landmark judgment of

Navtej Singh Johar case the courts and statutes remained silent on the recognition of same-sex marriage and law remained unsettled. The decision of the hon'ble Apex Court in *Supriyo @ Supriya Chakraborty v. Union of India* though acknowledged that many rights accrue to queer persons, the legal and expressed recognition of the same-sex marriage in India was left to be determined by the Parliament of India, leaving a significant gap. The judgment of the hon'ble apex court laid out a critical point of view, wherein though the court not only acknowledged the constitutional rights of LGBTQ+ individuals but also the lack of legal recognition of same-sex marriage and suggested for legislative reform of current legislation.

In order to have a better understanding of how these models could influence reform in India, it is important to extract lessons from comparative jurisdictions, particularly the United States of America, South Africa, Canada, and Taiwan, encompassing both judicial and legislative reforms. In India even in the absence of a legal framework and expressed recognition of marriage equality, the right to marry of queer individuals is strongly supported by constitutional framework through Articles 14, 15, 19, and 21 of the Constitution of India. It is imperative to adopt a legal reform framework for India that complies with international humanitarian law by critically evaluating the function of the Special Marriage Act, 1954 and taking into account potential reform options like gender-neutral marriage, relationship-neutral registration, and civil union regimes.

Comparative Analysis of Other Jurisdiction

Globally, 34 countries including the United States, South Africa, Canada, Taiwan and countries like Nepal have legalized same-sex marriage or the same-sex civil unions. Yet there are countries where the same-sex marriage is still banned, and this has led to uneven expansion of broader LGBTQ+ rights on the global platform. All the human right

groups and International organizations, including the United Nations, have issued resolutions in support of LGBTQ+ rights, but they have limited power to get it enforced.

A comparative analysis of legal framework around same-sex marriage from other jurisdictions has been done to draw parallels regarding the same in India context,

1. The United States of America
The legal development with respect to marriage equality in the United States of America can be summarized as:

1. Judicial Approach: The Supreme Court of the United States in *Obergefell v. Hodges* ruled legalising the homosexual marriage in all the states and in the territories of the United States opined that the constitution grants same-sex couples the right to marry. The Supreme Court further held that “the Fourteenth Amendment’s Due Process and Equal Protection Clauses guarantee same-sex couples the fundamental right to marry. The Court reasoned that marriage embodies individual autonomy, intimate association, and social stability, all protected by constitutional liberty. This landmark decision recognized marriage equality and expanded the rights of same-sex couples across the country.”

Prior to *Obergefell*, same-sex marriage was lawful in a number of states through legislative or judicial action; Massachusetts became the first state to recognise the same-sex marriage in *Goodridge v. Department of Public Health*. Same-sex weddings had been refused recognition under the federal Defense of Marriage Act (DOMA, 1996), Section 3 of DOMA was declared unconstitutional in case of *United States v. Windsor* citing that it violated the principle of equal protection.

2. Respect for Marriage Act (2022): Concerns about potential challenges to same-sex marriages prompted the passing of the Respect for Marriage Act, 2022 that repealed DOMA 1996, and recognized same-sex marriages at the federal level. This legislation aimed to provide further protection and recognition for same-sex marriages and solidify their validity nationwide.

3. Public Opinion: A significant increase was witnessed in public support for same-sex marriage in the United States. According to polling data, the approval rating rose from 27 percent in 1996 to 71 percent in 2022.

4. Religious Objections and Legal Debates: Debates between proponents of legal equality and those who oppose marriage equality on the grounds of religious convictions continue despite the rise in public favor. A Colorado baker refused to make a wedding cake for a same-sex couple in the case of *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. The Supreme Court of the United States ruled in favor of the baker on the narrower grounds that public accommodations can refuse certain services based on the first amendment claim of free exercise of religion and can therefore be granted exemption from law ensuring non-discrimination in public accommodations. However, the case did not address the larger issue of businesses refusing services to LGBTQ+ individuals based on religious objections. Later, in 2020, the Supreme Court issued a different decision. Later, in a different decision in 2020, the US Supreme Court ruled that discrimination in the workplace on the basis of sexual orientation or gender identity is illegal under the Civil Rights Act of 1964, while also providing rights to LGBTQ+ people.

These developments illustrate the ongoing legal and social dynamics with respect to the same-sex marriage

in the United States, including the balance between LGBTQ+ rights and religious freedom. The Supreme Court rulings and legislative actions have had a significant impact on the recognition and protection of same-sex marriages, but the discussion and legal challenges continue to shape the landscape of marriage equality in the country.

2. South Africa:

South Africa is a constitutional democracy with an independent court that is governed by common law, legislation, and a 1996 amendment to the Constitution. The Constitution of South Africa expressly prohibits discrimination on grounds of sexual orientation. In *Minister of Home Affairs v. Fourie* the local and regional legislation that forbade same-sex unions was challenged and the court ruled "Same-sex marriage rights are fundamental and not subject to jurisdictional limitations. Although the positive right to same-sex marriage is not explicitly stated in the South African Constitution or the applicable laws, the Constitutional Court determined that guarantees to equality and nondiscrimination inevitably ensure the basic right to same-sex marriage.

Section 9 of South Africa's Bill of Rights states-

"(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status,

ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

The Bill of Rights sub-section (3) continues by stating that gender and sexual orientation are examples of grounds for equality.

The Court argued that "denying same-sex couples the same "entitlements and responsibilities" as different-sex couples violated the right to equal protection of the same-sex couple. The Court further stated that the denial of privileges for same-sex marriage was the outcome of historical homophobia. Consequently, it was not enough to understand the Constitution's equal rights clause as a guarantee that shielded LGBTQ+ people from prejudice. Since right to equality inherently include the right to be accepted as equals and embraced with dignity by the law, the clause must instead be construed to include the right to the legal recognition of same-sex marriage. Significantly, the Court rejected the argument that the UDHR excluded same-sex marriage. It stated:

"There is nothing in the international law instruments to suggest that the family which is the fundamental unit of society must be constituted according to any particular model. Indeed, even if the purpose of the instruments was expressly to accord protection to a certain type of family formation, this would not have implied that all other modes of establishing families should for all time lack legal

protection. Finally, the Court found that not recognizing same-sex marriage subverts public policy. Marriage touches on many ... aspects of law," the Court observed, "including labor law, insurance and tax. These issues are of importance not only to the applicants and the gay and lesbian community but also to society at large"

This paradigm shows how well legislative legitimacy and judicial impulse may be combined. Although the Court found a constitutional flaw, the legislature fixed it through a democratic process that balanced societal acceptance with rights essential and unaffected by jurisdictional restrictions.

3. Canada:

In Canada the groundwork for marriage equality was laid down by Provincial Courts judgment in *Halpern v. Canada (Attorney General)* followed by many other provincial courts judgments stating that the definition of marriage in common-law as between a man and a woman violated the equality guarantee in Section 15 of the Canadian Charter of Rights and Freedoms.

The Canadian Parliament enacted the Civil Marriage Act, 2005, defining marriage as "the lawful union of two persons to the exclusion of all others" to ensure uniformity with respect to marriage equality. This legislative approach reflected national consensus around equality and ensured nationwide recognition of the right to marry of individuals from queer communities.

The Canadian model demonstrates benefits of clear legislation which includes easy implementation, national consistency, and lesser legal dispute and underlines that reform can progress without judicial pressure where political agreement aligns with constitutional principles.

4. Taiwan:

Taiwan, became a notable exception in Asia when it came to the recognition of same-sex marriage. In May 2019, it became the first country in Asia to legalize homo-sexual marriage. The decision was made by the Constitutional Court of Taiwan in 2017, which ruled that "the current marriage laws were unconstitutional for denying same-sex couples the right to marry." Following the court ruling, the Taiwanese government passed the "Act for Implementation of Judicial Yuan Interpretation No. 748" in 2019, allowing same-sex couples to register their marriages and enjoy the same legal rights and protections as opposite-sex couples. The law also granted recognition to same-sex marriages performed overseas. Taiwan's legalization of same-sex marriage was a significant milestone for LGBTQ+ rights in the region and was celebrated as a progressive step toward equality reflecting Taiwan's commitment to inclusivity and respect for diversity

LEGAL FRAMEWORK IN INDIA

I. Constitutional Basis:

The principles of equality (Article 14), non-discrimination (Article 15), freedom of expression and association (Article 19), and the right to life and personal liberty (Article 21) together form a solid basis for marital equality in India.

The Supreme Court in *Navtej Singh Johar v. Union of India* declared that constitutional morality takes precedence over social morality, decriminalizing same-sex relationships by overturning section-377 of the Indian Penal Code, the Court upheld the idea that sexual orientation is a fundamental component of liberty and dignity.

This case law has a direct bearing on the discussion of marital equality. Given that same-sex intimacy is allowed by the constitution, it follows logically that withholding marriage recognition on the basis of sexual

orientation is an infringement on the same rights to equality and dignity.

II. Special Marriage Act, 1954:

Special marriage Act, 1954 is a secular law and anyone, irrespective of their religion can get married under this act. Section-4 of the SMA, 1954 lays down the condition for marriage:

"4. Conditions relating to solemnization of special marriages.

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

(a) neither party has a spouse living; 3

(b) neither party (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (iii) has been subject to recurrent attacks of insanity

© the male has completed the age of twenty-one years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends

Explanation. In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied—

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by the family."

In *Supriyo @ Supriya Chakraborty v. Union of India*, petitioners contended that gendered expressions should be interpreted as "any two persons" and its exclusion violates Articles 14, 15, 19, and 21. The Union Government resisted, claiming that marriage is essentially heterosexual and falls under the legislative rather than the judicial purview. The court recognized the right to queer individual's right to cohabitation and partnership but refused to grant relief or make any suggested amendment or interpretation citing that courts cannot expand statutory definitions without legislative amendment and created a paradox by acknowledging the right of queer individuals but not providing any state protection to it.

The ruling recognized many significant validations of the progress in the direction of marriage equality.

Article 21 of the Constitution of India protects the right to

choose a spouse.

Queer relationships should be protected by the state.

Discrimination against LGBTQ+ individuals comes within the preview of Article 15 of constitution of India

A committee must be formed by the state to investigate advantages such adoption, inheritance, and healthcare decision-making.

The Court by pointing out constitutional flaws in existing legislation, set the stage for future reform even if it decided against legalizing same-sex marriage.

COMPARATIVE INSIGHTS AND RELEVANCE TO INDIA

1. Key Lessons from Global Jurisprudence

Interpretation of the Constitution as a Force for Equality

In both the Obergefell (U.S.) and Fourie (South Africa), the courts recognized marriage equality as an integral part of constitutional rights to dignity and equality. The hon'ble apex court of India with Navtej Singh Johar and Supriyo's case, has already acknowledged the rights available to members of LGBTQ+ community, so interpreting the Special Marriage Act, 1954 (SMA) in a similar line will be constitutionally coherent in paving the way to expressly and formally recognise the marriage equality.

Judicial-Legislative Synergy

The South Africa and Taiwan model illustrates collaborative constitutionalism where the courts declare violations of rights of queer individuals and allow the legislatures to frame remedies within a defined timeframe. India could also adopt a comparable approach, mandating Parliament to reform and amend the Special Marriage Act, 1954 by making it gender

neutral while maintaining judicial oversight.

Legislative Precision and Inclusivity

Canada by defining marriage as "the union of two persons," demonstrated a legislative prototype that guarantees administrative ease and legal clarity. Similar changes might be made to the Special Marriage Act, 1954 in India, adding gender-neutral wording without violating any personal religious prohibitions.

2. Challenges

Complexities of the Personal Law Regime

In India marriages are governed by pluralistic personal laws. Each of these laws recognizes union between a man and a woman and defines marriage in terms that are unique to gender and heterosexuality. The amendment in personal law to include same-sex couples might be seen as interfering with the freedom of religion of individuals protected by Article 25 of the Constitution of India, hence making it difficult from a legal and political standpoint to implement uniform and consistent change across the personal laws.

The more feasible option would be amending and interpreting secular laws like the Special Marriage Act or Foreign Marriage Act, 1969 which already offers a neutral framework for civil weddings independent of faith, is a more pragmatic and constitutionally sound approach. Without changing religious legislation, amending the secular acts to include same-sex couples will guarantee adherence to the constitutional values of equality (Article 14), non-discrimination (Article 15), and the right to privacy and dignity (Article 21). Marriage equality may thus be accomplished within the current constitutional framework, protecting individual religious freedom while granting all individuals equal civic rights.

Administrative Coordination Across Statutes

The task of administrative harmonization throughout

India's intricate legal system is still very difficult, even if marital equality is acknowledged by the amendment of the Special Marriage Act or enactment of a new Civil Union Act. All the incidences of marriage like inheritance, maintenance, adoption, taxes, pensions, health insurance, and next-of-kin status are just a few of the many rights and obligations that come with marriage, making it more than just a single legal institution. These rights currently exist in statutes that use gendered or heteronormative language including the Indian Succession Act, 1925, Hindu Succession Act, 1956) Guardians and Wards Act, 1890, The Income Tax Act, 1961, and other pension and insurance regulations. Each of these laws would need specific revisions to add gender-neutral terminology like "spouse" and "partner" in order to guarantee substantive equality.

The procedural level must also be addressed by administrative reforms, which include educating marriage officials, modernizing online registration platforms, updating official documents, and establishing grievance procedures for discrimination. The Law Commission of India (2024) has already underlined that if bureaucratic readiness is lacking, legislative reform runs the risk of producing "paper equality" with little practical impact.

Therefore, to supervise legal harmonization, keep an eye on implementation, and direct state-level authorities in converting legislative purpose into efficient administration, a concerted, inter-ministerial effort, possibly through a National Task Force on Marriage Equality is necessary.

PRACTICAL APPROACH TO NAVIGATE THE CHALLENGES

1. Fresh Judicial interpretation of the Special Marriage

Act, 1954 (SMA)

In the future, the Supreme Court may apply the doctrine of reading-down constitutional law to interpret "man" and "woman" under Section 4 of the SMA in a way that is gender-neutral. Such a refresh approach in interpreting would maintain the constitutionality of the Act while bringing its provisions to align with the equality and individual liberty protections included in Articles 14 and **21 of the Constitution.**

2. Amendments

Parliamentary intervention is a different and longer-lasting strategy. By redefining marriage in gender neutral terms like "the voluntary union of two persons" just like the Canadian model, the legislature might expand the definition of marriage making it inclusive and beyond the heteronormative bounds. To maintain doctrinal and procedural consistency throughout the legal system, this change would need amendment incidental and supplemental to ancillary acts, such as the law related to adoption and Acts governing, succession and related statutes governing the succession.

3. Civil union framework

India can enact and pass a Civil Union Act through which same-sex couples can have legal rights and benefits that are incidental to matrimonial rights in the same line as it is available to any heterosexual couples, as a politically viable solution.

4. Administrative and institutional reforms

A reformative change like marriage equality would not just require a legally or judicially strong framework but will also require an extensive administrative actions to be operationalized. These would entail educating and training marriage registrars, changing and amending official records, forms and registration processes to include the gender-neutral language, and launching public awareness campaigns to encourage diversity and inclusivity and lessen

the social stigma attached to homosexuality

CONCLUSION

The attainment of marriage equality in India is a complex issue with several potential pathways, drawing on constitutional principles and legislative action, as evidenced by international precedents. The foundational legal framework for recognizing same-sex unions in India has been significantly shaped by landmark Supreme Court judgments.

The challenge ahead is primarily institutional, not doctrinal. Legislative inertia, political opposition, and administrative complexity delay the realization of constitutional promises. Yet, as global jurisprudence shows, equality in marriage is not merely a social demand making it a constitutional imperative flowing

from right to dignity, privacy, and equality.

Therefore, it makes sense for India's Parliament to alter the secular acts governing marriage or enacting a Civil Union Act that fully recognizes same-sex union. Instead of undermining Indian values, this change would realize the constitutional principles of equality, justice, liberty, and fraternity for all the citizens.

The Supreme Court in Navtej Singh Johar's case emphasized that the constitutional promise "is to an India that celebrates diversity and pluralism." That commitment must be fulfilled by granting same-sex couples the same rights in marriage.