iJRASET
International Journal For Research in Applied Science and Engineering Technology



INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

Volume: 14 **Issue:** V **Month of publication:** May 2026

DOI: https://doi.org/10.22214/ijraset.2026.82029

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International Journal for Research in Applied Science & Engineering Technology (IJRASET)
ISSN: 2321-9653; IC Value: 45.98; SJ Impact Factor: 7.538
Volume 14 Issue V May 2026- Available at www.ijraset.com

Between Dignity and Deference: Constitutional Recognition of Non-Heteronormative Families in Transformative Democracies

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Abstract: ***The constitutional status of non-heteronormative relationships presents a critical site for examining the interplay between human rights adjudication and constitutional theory. This paper interrogates whether the exclusion of LGBTQIA+ persons from formal legal recognition of marriage and attendant civil rights can withstand scrutiny under principles of equality, dignity, and personal liberty. Drawing on comparative moot-based arguments as an analytical lens, the study situates these claims within the broader framework of transformative constitutionalism and rights-expansive interpretation.***

Doctrinally, the paper argues that the rights to intimacy, family formation, and relational autonomy emerge as integral facets of the right to life and personal liberty, thereby necessitating a non-discriminatory extension of civil entitlements. It critiques binary statutory constructions of marriage as constitutionally suspect, insofar as they entrench structural exclusion and fail the tests of arbitrariness and proportionality. At the same time, the paper engages with the countervailing constitutional argument that courts must exercise institutional restraint, deferring to legislative competence in matters involving complex socio-cultural policy choices and the redefinition of foundational social institutions.

Methodologically, the paper adopts a doctrinal and comparative approach, synthesizing constitutional jurisprudence with theoretical insights from constitutional morality, separation of powers, and the counter-majoritarian difficulty. It argues that the tension between judicial review and democratic legitimacy is particularly acute in cases involving minority rights that lack majoritarian support.

The paper concludes that a principled commitment to constitutional morality requires courts to move beyond formalistic statutory interpretation toward a purposive, rights-oriented framework, while simultaneously articulating limiting principles to preserve institutional balance. In doing so, it contributes to ongoing debates on the scope and limits of transformative adjudication in plural constitutional democracies.

Keywords: Civil rights, LGBTQIA+, Transformative constitutionalism, Democracy, Separation of Powers.

I. INTRODUCTION

The constitutional recognition of non-heteronormative relationships represents one of the most contested frontiers in contemporary constitutional adjudication. Across jurisdictions, courts are increasingly confronted with claims that challenge entrenched heteronormative assumptions embedded within legal frameworks governing marriage, family, and civil entitlements. These claims are not merely demands for formal recognition; they are rooted in broader assertions of dignity, equality, and autonomy—principles that lie at the core of modern constitutional democracies.

In India, the trajectory of LGBTQIA+ rights has undergone a profound transformation over the past decade. The decriminalization of consensual same-sex relations in *Navtej Singh Johar v. Union of India* marked a decisive shift toward a rights-expansive constitutional order, affirming that sexual orientation is an intrinsic aspect of identity protected under Articles 14, 15, and 21 of the Constitution.[1] However, the recognition of intimate relationships has not been accompanied by the extension of corresponding civil rights, particularly in the context of marriage and family formation. This gap highlights a critical tension within constitutional law: the distinction between negative rights (freedom from criminalization) and positive rights (entitlement to recognition and protection).

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

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The question of whether non-heteronormative families are entitled to constitutional recognition thus emerges as a site where doctrinal interpretation intersects with broader questions of social legitimacy, institutional competence, and democratic accountability. It compels courts to navigate competing imperatives—on one hand, the obligation to uphold fundamental rights, and on the other, the need to respect legislative prerogatives in matters involving complex socio-cultural considerations.

Despite significant advancements in LGBTQIA+ rights jurisprudence, non-heteronormative relationships in India continue to lack formal legal recognition within the framework of family law. Existing statutes governing marriage, adoption, succession, and related civil entitlements are predominantly structured around binary and heteronormative conceptions of relationships.

This exclusion raises critical constitutional concerns. First, it calls into question the compatibility of such statutory frameworks with the guarantees of equality and non-discrimination under Articles 14 and 15.[2] Second, it implicates the right to life and personal liberty under Article 21[3], which has been expansively interpreted to include dignity[4], privacy[5], and autonomy.[6] Third, it highlights the limitations of formal legal reform in addressing structural inequalities embedded within social institutions.[7]

At the same time, the issue presents a countervailing constitutional argument grounded in the doctrine of separation of powers. It is contended that the recognition of marriage and family structures involves policy considerations that fall within the legislative domain, and that judicial intervention in such matters risks undermining democratic legitimacy. This creates a fundamental tension between rights-based adjudication and institutional restraint, which lies at the heart of the present inquiry.

A. Theoretical Framework: Transformative Constitutionalism

The concept of transformative constitutionalism provides the normative foundation for this study. It posits that constitutions are not merely instruments of governance but vehicles for social transformation, aimed at dismantling entrenched hierarchies and promoting substantive equality.[8]

In the Indian context, transformative constitutionalism has been invoked to justify a rights-expansive approach to interpretation, particularly in cases involving marginalized communities. The Supreme Court has repeatedly emphasized that constitutional morality must prevail over societal morality, thereby enabling the recognition of rights that may not enjoy majoritarian support.[9]

Within this framework, the recognition of non-heteronormative families can be understood as a logical extension of existing jurisprudence on privacy, dignity, and autonomy. However, transformative constitutionalism also raises important questions regarding the limits of judicial power. While courts are empowered to interpret and enforce constitutional rights, their role in reshaping social institutions must be carefully calibrated to avoid encroaching upon the legislative domain.

B. Constitutional Morality and Rights-Based Adjudication

The principle of constitutional morality plays a central role in adjudicating claims for LGBTQIA+ rights. It requires that constitutional interpretation be guided by the values of justice, equality, and dignity, rather than prevailing social norms.[10]

The Supreme Court explicitly rejected the notion that majoritarian morality can justify the denial of fundamental rights, affirming that the Constitution protects individual autonomy even in the face of societal opposition.[11] This principle has significant implications for the recognition of non-heteronormative families, as it challenges the legitimacy of exclusionary legal frameworks rooted in traditional conceptions of marriage. At the same time, the application of constitutional morality must be balanced against concerns of judicial overreach. The expansion of rights through judicial interpretation raises questions about the appropriate limits of adjudicatory power, particularly in areas involving complex social and cultural considerations.

C. Judicial Review and the Counter-Majoritarian Difficulty

The tension between judicial review and democratic legitimacy is often framed in terms of the counter-majoritarian difficulty, which refers to the challenge of justifying judicial intervention in decisions that override the will of the majority.[12]

[2] INDIA CONST. art. 14, art. 15.
[3] INDIA CONST. art. 21.
[4] Olga Tellis v. Bombay Municipal Corp., 1985 SCC (3) 545.
[5] Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.
[6] Mr. X v. Hospital Z, AIR 1999 SC 495.
[7] Supriyo v. Union of India, MANU/SC/1155/2023.
[8] Karl E. Klare, Legal Culture and Transformative Constitutionalism, 14 S. AFR. J. HUM. RTS. 146 (1998).
[9] Navtej Singh Johar v. Union of Inda, (2018) 10 SCC at 1 (India).
[10] Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (India).
[11] Navtej Singh Johar v. Union of Inda, (2018) 10 SCC at 1 (India).
[12] Alexander M. Bickel, The Least Dangerous Branch 16 (2d ed. 1986).

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In the context of LGBTQIA+ rights, this tension is particularly acute, as minority rights claims often lack broad political support. Courts are thus required to strike a delicate balance between protecting fundamental rights and respecting the democratic process.

The recognition of non-heteronormative families exemplifies this dilemma. While a rights-based approach may justify judicial intervention, the absence of legislative consensus raises questions about the institutional competence of courts to effect such changes. This underscores the need for a nuanced framework that reconciles the imperatives of constitutional protection with the principles of democratic governance.

II. CONSTITUTIONAL FOUNDATIONS OF NON-HETERONORMATIVE RIGHTS

A. Evolution of LGBTQIA+ Rights in Indian Constitutional Jurisprudence

The constitutional recognition of non-heteronormative identities in India has evolved through a series of judicial interventions that progressively expanded the scope of fundamental rights. This evolution reflects a shift from formalistic interpretations of equality toward a more substantive and rights-oriented approach.

The early jurisprudence, as reflected in *Suresh Kumar Koushal v. Naz Foundation*, upheld the constitutional validity of Section 377 of the Indian Penal Code, thereby reinforcing a heteronormative legal order.[13] The Court's reasoning, which characterized LGBTQIA+ individuals as a "minuscule minority," drew significant criticism for its failure to engage with the substantive dimensions of equality and dignity.

This position was decisively overturned in *Navtej Singh Johar v. Union of India*, where the Supreme Court decriminalized consensual same-sex relations and recognized sexual orientation as an essential attribute of identity.[14] The judgment marked a doctrinal turning point, emphasizing that constitutional guarantees must be interpreted in a manner that protects marginalized communities from structural discrimination.

The Court further grounded its reasoning in the principles of dignity, autonomy, and privacy, thereby integrating Articles 14, 15, and 21 into a unified framework of rights. This approach reflects a broader shift toward **transformative constitutionalism**, wherein the Constitution is viewed as an instrument for social change rather than merely a mechanism for governance.

B. Equality and Non-Discrimination: Articles 14 and 15

The right to equality under Article 14 constitutes the cornerstone of constitutional challenges to the exclusion of non-heteronormative relationships from legal recognition. The doctrine of equality has evolved from a formal notion of equal treatment to a substantive principle that addresses structural disadvantage and systemic discrimination.

In *Navtej Singh Johar*, the Court held that discrimination on the basis of sexual orientation violates Article 14, as it lacks a rational nexus with any legitimate state objective.[15] The judgment also emphasized that equality must be understood in terms of **substantive fairness**, rather than mere formal parity.

Similarly, Article 15 prohibits discrimination on grounds of sex, which has been judicially interpreted to include sexual orientation and gender identity.[16] This interpretation broadens the scope of constitutional protection, recognizing that discrimination against LGBTQIA+ individuals is intrinsically linked to gender-based stereotypes and social norms.

The exclusion of same-sex couples from marriage and family-related rights thus raises serious concerns under Articles 14 and 15, as it perpetuates a system of differential treatment that cannot be justified on constitutionally permissible grounds.

C. Article 21: Dignity, Privacy, and Autonomy

Article 21 of the Constitution has emerged as the most expansive source of rights in Indian constitutional jurisprudence. The Supreme Court has interpreted the right to life and personal liberty to include a wide range of derivative rights, including dignity, privacy, and autonomy.

In *Justice K.S. Puttaswamy v. Union of India*, the Court recognized the right to privacy as a fundamental right, emphasizing that privacy encompasses decisional autonomy in matters relating to personal relationships and identity.[17] This recognition provides a crucial doctrinal foundation for claims relating to non-heteronormative relationships.

[13] Suresh Kumar Koushal v. Naz Found., (2014) 1 SCC 1 (India).
[14] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[15] Id.
[16] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[17] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

The Court further reinforced this position in *Navtej Singh Johar*, where it held that the right to choose a partner is an essential aspect of personal liberty.[18] This principle has been echoed in subsequent decisions recognizing the autonomy of individuals in matters of marriage and personal relationships.[19]

The cumulative effect of these decisions is the emergence of a constitutional framework that recognizes intimacy, relational autonomy, and family formation as integral components of the right to life and personal liberty.

D. The Emerging Right to Family and Relational Autonomy

While the Constitution does not explicitly recognize a "right to family," judicial interpretation has progressively expanded the scope of Article 21 to include relational and familial rights.

In *Shafin Jahan v. Asokan K.M.*, the Supreme Court affirmed that the right to choose a life partner lies at the core of individual autonomy.[20] Similarly, in *Shakti Vahini v. Union of India*, the Court emphasized that the right to marry a person of one's choice is a fundamental right under Article 21.[21]

These decisions indicate a judicial recognition of the importance of personal relationships in the realization of human dignity. However, the extension of these principles to non-heteronormative relationships remains incomplete.

The denial of legal recognition to same-sex couples effectively restricts their ability to form families within the framework of law, thereby limiting their access to rights relating to adoption, inheritance, and social security. This exclusion undermines the substantive realization of dignity and equality, suggesting that the right to family must be understood in an inclusive and non-discriminatory manner.

E. Critique of Heteronormative Statutory Frameworks

Despite the progressive development of constitutional jurisprudence, statutory frameworks governing marriage and family law in India continue to reflect heteronormative assumptions. Laws such as the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 define marriage in terms that implicitly or explicitly exclude same-sex couples.[22]

This statutory exclusion creates a disjunction between constitutional principles and legislative frameworks. While the Constitution, as interpreted by the judiciary, recognizes the rights of LGBTQIA+ individuals, statutory law continues to deny them access to essential civil entitlements.

In *Supriyo v. Union of India*, the Supreme Court confronted this tension but ultimately refrained from recognizing same-sex marriage, citing institutional limitations and the need for legislative intervention.[23] While the decision acknowledged the rights and dignity of LGBTQIA+ individuals, it also highlighted the constraints of judicial power in effecting structural change within family law.

This raises critical questions regarding the role of the judiciary in addressing systemic exclusion and the extent to which constitutional rights can be realized in the absence of legislative reform.

F. Substantive Equality and Structural Exclusion

The exclusion of non-heteronormative families from legal recognition must be understood within the broader framework of **substantive equality**. Unlike formal equality, which focuses on equal treatment, substantive equality seeks to address underlying structural inequalities that perpetuate disadvantage.

By denying same-sex couples access to marriage and related rights, the legal system reinforces a hierarchy of relationships that privileges heteronormative unions. This not only limits the rights of LGBTQIA+ individuals but also perpetuates social stigma and marginalization.

The application of the doctrine of arbitrariness further strengthens this critique. Under Article 14, state action must not be arbitrary or irrational. The exclusion of non-heteronormative relationships from legal recognition, in the absence of a compelling justification, can be viewed as arbitrary and inconsistent with constitutional principles.[24]

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[18] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[19] Shakti Vahini v. Union of India, (2018) 7 SCC 192 (India).
[20] Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (India).
[21] Shakti Vahini v. Union of India, (2018) 7 SCC 192 (India).
[22] Hindu Marriage Act, No. 25 of 1955; Special Marriage Act, No. 43 of 1954 (India).
[23] Supriyo v. Union of India, MANU/SC/1155/2023 (India).
[24] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (India).

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The constitutional framework governing non-heteronormative rights in India reflects a complex interplay between progressive judicial interpretation and restrictive statutory structures. While the judiciary has significantly expanded the scope of fundamental rights to include dignity, privacy, and autonomy, the absence of corresponding legislative reform has limited the practical realization of these rights.

This chapter demonstrates that the constitutional foundations for recognizing non-heteronormative families are firmly established within Articles 14, 15, and 21. However, the persistence of heteronormative legal frameworks creates a gap between constitutional ideals and legal reality.

III. TRANSFORMATIVE CONSTITUTIONALISM AND THE ROLE OF THE JUDICIARY

A. Conceptual Foundations of Transformative Constitutionalism

Transformative constitutionalism provides the normative framework within which claims for the recognition of non-heteronormative families must be situated. At its core, the concept envisions the Constitution as an instrument of social transformation, aimed at dismantling entrenched hierarchies and fostering substantive equality.[25] Unlike classical constitutionalism, which primarily focuses on limiting state power, transformative constitutionalism seeks to actively reshape social relations in accordance with constitutional values.

Karl Klare, who first articulated the concept in the South African context, described transformative constitutionalism as a long-term project of constitutional enactment and interpretation directed toward social justice and equality.[26] This framework has been increasingly invoked in Indian constitutional jurisprudence, particularly in cases involving marginalized communities.

In the context of LGBTQIA+ rights, transformative constitutionalism enables courts to move beyond formalistic interpretations of law and engage with the underlying structures of exclusion. It provides a justification for interpreting constitutional provisions in a manner that promotes inclusivity and challenges entrenched social norms.

B. Transformative Constitutionalism in Indian Jurisprudence

The Indian Supreme Court has, over time, adopted a transformative approach to constitutional interpretation, particularly in its expansion of fundamental rights. This approach is evident in decisions that reinterpret constitutional provisions in light of evolving social realities. In *Navtej Singh Johar v. Union of India*, the Court explicitly invoked transformative constitutionalism to justify the decriminalization of same-sex relationships.[27] The judgment emphasized that the Constitution must be interpreted as a living document, capable of adapting to changing societal conditions. It further held that constitutional morality must guide judicial interpretation, even in the face of contrary social norms.

Similarly, in *Justice K.S. Puttaswamy v. Union of India*, the Court recognized privacy as a fundamental right, underscoring the importance of individual autonomy in a democratic society.[28] These decisions collectively reflect a shift toward a rights-expansive jurisprudence that prioritizes dignity and equality over rigid adherence to traditional legal frameworks.

The application of transformative constitutionalism to the recognition of non-heteronormative families thus represents a continuation of this jurisprudential trajectory.

C. Constitutional Morality as a Guiding Principle

The doctrine of constitutional morality plays a central role in the transformative project. It requires that constitutional interpretation be guided by the values of justice, liberty, equality, and fraternity, rather than prevailing social attitudes or majoritarian preferences.[29]

In *Navtej Singh Johar*, the Court emphasized that constitutional morality must prevail over societal morality, particularly in cases involving the rights of marginalized groups.[30] This principle is critical in the context of non-heteronormative relationships, where societal norms often lag behind constitutional values.

Constitutional morality thus provides a normative basis for extending legal recognition to non-heteronormative families, as it prioritizes the protection of individual rights over adherence to traditional conceptions of marriage and family.

[25] Karl E. Klare, Legal Culture and Transformative Constitutionalism, 14 S. AFR. J. HUM. RTS. 146 (1998).
[26] Id.
[27] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[28] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[29] Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1 (India).
[30] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).

D. The Judiciary as a Counter-Majoritarian Institution

One of the defining features of constitutional adjudication is the role of the judiciary as a **counter-majoritarian institution**. Courts are entrusted with the responsibility of protecting fundamental rights, even when such protection may be unpopular or lack political support.[31]

This role is particularly significant in cases involving LGBTQIA+ rights, where minority claims often face resistance from majoritarian social and political forces. The judiciary, by virtue of its independence, is uniquely positioned to safeguard these rights and ensure that constitutional guarantees are not subordinated to public opinion.

However, the exercise of counter-majoritarian power must be carefully calibrated. Excessive judicial intervention risks undermining democratic legitimacy, while excessive restraint may result in the perpetuation of injustice. This tension lies at the heart of debates surrounding the recognition of non-heteronormative families.

E. Expansion of Rights: From Formal to Substantive Equality

Transformative constitutionalism has facilitated a shift from **formal equality** to **substantive equality** in Indian jurisprudence. Formal equality focuses on equal treatment under the law, whereas substantive equality seeks to address structural disadvantages and ensure meaningful equality in practice.

In the context of non-heteronormative relationships, formal equality would require treating all individuals equally regardless of sexual orientation. However, substantive equality demands that the law recognize and address the specific disadvantages faced by LGBTQIA+ individuals, including their exclusion from family law frameworks.

The recognition of same-sex marriage and related rights can thus be viewed as a necessary step toward achieving substantive equality, as it removes barriers that prevent LGBTQIA+ individuals from fully participating in social and legal institutions.

F. Limits of Transformative Adjudication

While transformative constitutionalism provides a compelling framework for rights expansion, it also raises important questions regarding the limits of judicial power. The judiciary's role in reshaping social institutions must be balanced against the principles of separation of powers and democratic governance.

In *Supriyo v. Union of India*, the Supreme Court acknowledged the rights and dignity of LGBTQIA+ individuals but refrained from recognizing same-sex marriage, citing the need for legislative intervention.[32] The judgment reflects a cautious approach, emphasizing the institutional limitations of the judiciary in matters involving complex policy considerations.

This highlights a key limitation of transformative adjudication: while courts can interpret and enforce constitutional rights, they may lack the institutional capacity to implement comprehensive social reforms. The recognition of non-heteronormative families, which involves changes to multiple areas of law, may therefore require coordinated legislative action.

G. Reconciling Transformation and Restraint

The challenge, therefore, lies in reconciling the transformative potential of constitutional adjudication with the need for institutional restraint. Courts must navigate a delicate balance between advancing rights and respecting the boundaries of their authority.

One possible approach is the adoption of incremental adjudication, wherein courts progressively expand rights while leaving space for legislative action. Another approach is the articulation of clear constitutional principles that guide future reforms, thereby shaping the direction of legislative development. In the context of non-heteronormative families, this would involve recognizing the constitutional basis for such rights while allowing the legislature to determine the specific modalities of implementation.

Transformative constitutionalism provides a powerful framework for understanding the role of the judiciary in advancing the rights of marginalized communities. It enables courts to interpret constitutional provisions in a manner that promotes substantive equality and challenges entrenched social norms. At the same time, the application of this framework must be tempered by considerations of institutional competence and democratic legitimacy. The recognition of non-heteronormative families represents a complex issue that requires both judicial interpretation and legislative action. This chapter demonstrates that while the judiciary plays a crucial role in shaping constitutional rights, its interventions must be carefully calibrated to ensure a balance between transformation and restraint. This sets the stage for the next chapter, which examines the tension between dignity and deference in greater detail, focusing on the limits of judicial intervention in redefining family law.

[31] Alexander M. Bickel, The Least Dangerous Branch 16 (2d ed. 1986).
[32] Supriyo v. Union of India, MANU/SC/1155/2023 (India).

IV. DIGNITY VERSUS DEFERENCE — LIMITS OF JUDICIAL INTERVENTION

A. *Framing the Constitutional Tension*

The constitutional recognition of non-heteronormative families presents a fundamental tension between two competing imperatives: the protection of individual dignity and equality on one hand, and the principle of institutional restraint grounded in separation of powers on the other. This tension lies at the heart of contemporary constitutional adjudication, particularly in cases involving minority rights that lack broad societal or legislative consensus.

On the one hand, the denial of legal recognition to non-heteronormative relationships implicates core constitutional values, including dignity, autonomy, and substantive equality. On the other hand, the recognition of marriage and family structures involves complex socio-cultural considerations traditionally within the domain of the legislature. The challenge for courts, therefore, is to navigate this tension without undermining either constitutional rights or institutional legitimacy.

B. *Dignity-Based Arguments for Recognition*

The argument for the constitutional recognition of non-heteronormative families is grounded primarily in the principles of dignity and equality. The Supreme Court has repeatedly affirmed that dignity is an intrinsic component of the right to life under Article 21.[33]

In *Navtej Singh Johar v. Union of India*, the Court emphasized that the denial of equal treatment to LGBTQIA+ individuals constitutes a violation of their dignity and identity.[34] The judgment recognized that sexual orientation is not merely a personal characteristic but a fundamental aspect of individual identity, deserving of constitutional protection.

The exclusion of same-sex couples from marriage and related rights can thus be viewed as a denial of dignity, as it prevents individuals from forming legally recognized relationships that are central to their identity and social existence. This exclusion also reinforces societal stigma, perpetuating the marginalization of LGBTQIA+ individuals.

From the perspective of equality, the denial of recognition creates a system of differential treatment that lacks a rational basis. The doctrine of arbitrariness under Article 14 requires that state action must not be irrational or discriminatory.[35] The exclusion of non-heteronormative relationships from legal recognition, in the absence of a compelling justification, fails to satisfy this requirement.

C. *Proportionality and Arbitrariness*

The doctrine of proportionality provides a structured framework for evaluating restrictions on fundamental rights. Under this doctrine, any limitation on rights must satisfy the following conditions:

1) It must pursue a legitimate aim;
2) It must be rationally connected to that aim;
3) It must be necessary and the least restrictive means available;
4) It must maintain a balance between the rights of individuals and the interests of the State.[36]

Applying this framework to the exclusion of same-sex couples from marriage reveals significant constitutional concerns. While the State may argue that the regulation of marriage serves legitimate social objectives, the exclusion of non-heteronormative relationships does not appear to be necessary or proportionate to achieving those objectives.

Similarly, the doctrine of arbitrariness, as articulated in *E.P. Royappa v. State of Tamil Nadu*, holds that arbitrary state action is inherently violative of Article 14.[37] The continued exclusion of same-sex couples, despite evolving constitutional jurisprudence recognizing their rights, can be viewed as arbitrary and inconsistent with the principles of equality.

D. *Deference and the Separation of Powers*

Against these dignity-based arguments, a powerful countervailing perspective emphasizes the need for judicial deference. The doctrine of separation of powers assigns distinct roles to the legislature, executive, and judiciary, with the legislature being primarily responsible for policy-making.

In *Supriyo v. Union of India*, the Supreme Court declined to recognize same-sex marriage, emphasizing that such recognition would require extensive changes to existing legal frameworks governing marriage, adoption, and succession.[38] The Court held that these changes fall within the legislative domain and that judicial intervention in this area could disrupt institutional balance.

[33] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[34] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[35] Id.
[36] Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).
[37] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (India).

This reasoning reflects a broader concern regarding the limits of judicial power. Courts, while empowered to interpret constitutional rights, may lack the institutional capacity to design and implement comprehensive regulatory frameworks. The recognition of non-heteronormative families involves complex policy considerations, including social norms, cultural practices, and administrative feasibility, which are traditionally addressed through legislative processes.

E. The Counter-Majoritarian Difficulty Revisited

The debate over judicial intervention in this context is closely linked to the concept of the counter-majoritarian difficulty. As discussed earlier, courts are often required to protect minority rights against majoritarian preferences. However, the exercise of this power raises questions about democratic legitimacy.[39]

In cases involving LGBTQIA+ rights, this tension is particularly pronounced. While constitutional principles may support the recognition of non-heteronormative families, the absence of legislative consensus may be cited as a reason for judicial restraint.

However, it is important to recognize that the purpose of constitutional rights is precisely to protect individuals from the tyranny of the majority. The failure of the legislature to act should not, in itself, justify the continued denial of fundamental rights. At the same time, courts must be mindful of their institutional limitations and avoid overstepping their constitutional role.

F. Comparative Constitutional Approaches

Comparative jurisprudence provides valuable insights into how other constitutional democracies have addressed similar issues. In several jurisdictions, courts have played a proactive role in recognizing same-sex marriage, often invoking principles of equality and dignity. For instance, the United States Supreme Court in *Obergefell v. Hodges* held that the right to marry is a fundamental right that cannot be denied on the basis of sexual orientation.[40] Similarly, constitutional courts in countries such as South Africa have adopted a rights-based approach to recognizing same-sex relationships.[41]

These decisions illustrate the potential for judicial intervention to advance social transformation. However, they also highlight the importance of contextual factors, including constitutional structure and societal conditions, in shaping judicial outcomes.

G. Toward a Principled Framework

The analysis thus far suggests that neither absolute judicial activism nor complete judicial restraint provides an adequate solution. Instead, there is a need for a principled framework that balances dignity-based claims with institutional considerations.

Such a framework would involve:

- Recognizing the constitutional basis for the rights of non-heteronormative families;
- Applying rigorous standards of review, including proportionality and arbitrariness;
- Allowing for legislative participation in determining the modalities of recognition;
- Ensuring that judicial decisions provide clear guidance for future reforms.

This approach would enable courts to uphold constitutional rights while respecting the institutional role of the legislature.

The tension between dignity and deference represents a central challenge in the constitutional recognition of non-heteronormative families. While dignity-based arguments strongly support the extension of legal recognition, concerns regarding separation of powers and democratic legitimacy necessitate a cautious and balanced approach.

This chapter demonstrates that the resolution of this tension requires a nuanced understanding of both constitutional principles and institutional dynamics. Courts must navigate this complex terrain by adopting a principled approach that advances rights without undermining institutional legitimacy.

The analysis sets the stage for the final chapter, which synthesizes the arguments presented thus far and proposes a coherent framework for addressing the constitutional recognition of non-heteronormative families in transformative democracies.

V. CONCLUSION

A. Reframing the Constitutional Question

This study set out to examine whether the continued exclusion of non-heteronormative families from legal recognition can be sustained within the framework of the Indian Constitution.

[38] Supriyo v. Union of India, MANU/SC/1155/2023 (India).
[39] Alexander M. Bickel, The Least Dangerous Branch 16 (2d ed. 1986).
[40] Obergefell v. Hodges, 576 U.S. 644 (2015).
[41] Minister of Home Affairs v. Fourie, 2006 (1) SA 524 (CC) (S. Afr.).

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The analysis reveals that this issue is not merely a question of extending civil entitlements, but one that strikes at the core of constitutional identity—engaging the principles of dignity, equality, autonomy, and institutional legitimacy.

The Indian Constitution, as interpreted through a transformative lens, aspires not only to regulate state power but to reshape social relations in accordance with normative commitments to justice and inclusivity. The recognition of LGBTQIA+ rights through decisions such as *Navtej Singh Johar v. Union of India* marked a decisive step in this direction, affirming that constitutional guarantees must extend to all individuals irrespective of sexual orientation.[42] However, the absence of corresponding recognition within the domain of family law reveals a critical gap between constitutional principle and legal reality.

B. Constitutional Foundations and Their Implications

The doctrinal analysis undertaken in this paper demonstrates that the constitutional foundations for recognizing non-heteronormative families are firmly established within Articles 14, 15, and 21.

First, the principle of substantive equality under Article 14 requires that the law address structural disadvantage rather than merely ensuring formal parity. The exclusion of same-sex couples from marriage and related rights perpetuates a system of differential treatment that cannot be justified on rational or constitutional grounds.[43]

Second, Article 15's prohibition of discrimination extends to sexual orientation and gender identity, thereby reinforcing the constitutional mandate for inclusivity.[44] The continued denial of recognition to non-heteronormative relationships is inconsistent with this mandate, as it reflects a form of discrimination rooted in heteronormative assumptions.

Third, Article 21, as expansively interpreted in *Justice K.S. Puttaswamy v. Union of India*, encompasses dignity, privacy, and autonomy, including the right to form intimate relationships and choose a life partner.[45] The denial of legal recognition to such relationships undermines these core aspects of personal liberty, reducing constitutional guarantees to abstract principles without practical effect.

Taken together, these provisions establish a strong constitutional basis for the recognition of non-heteronormative families. The failure to translate these principles into legal reality thus represents a significant limitation within the current framework.

C. The Transformative Promise and Its Limits

The concept of transformative constitutionalism, as explored in Chapter 3, provides a powerful normative framework for addressing this gap. It envisions the Constitution as an instrument of social change, capable of dismantling entrenched hierarchies and promoting substantive equality.[46] The Indian judiciary has embraced this vision in several landmark decisions, demonstrating a willingness to reinterpret constitutional provisions in light of evolving social realities. However, the application of this approach to the recognition of non-heteronormative families reveals important limitations. In *Supriyo v. Union of India*, the Supreme Court acknowledged the dignity and rights of LGBTQIA+ individuals but declined to extend recognition to same-sex marriage, citing institutional constraints and the need for legislative action.[47] This decision reflects a cautious approach, emphasizing the limits of judicial power in areas involving complex policy considerations. While such restraint may be justified in terms of institutional competence, it also raises concerns regarding the effectiveness of constitutional rights. If the realization of fundamental rights is contingent upon legislative action, the judiciary's role as a guardian of the Constitution may be undermined.

D. Dignity versus Deference: A Constitutional Balance

The central tension identified in this study—between dignity and deference—captures the complexity of the issue. On one hand, dignity-based arguments strongly support the recognition of non-heteronormative families, as the denial of such recognition perpetuates inequality and marginalization. On the other hand, principles of separation of powers caution against excessive judicial intervention in matters traditionally within the legislative domain.

The resolution of this tension requires a nuanced and principled approach. Absolute judicial activism risks undermining democratic legitimacy, while complete judicial restraint may result in the perpetuation of constitutional violations. The challenge, therefore, lies in identifying a middle path that reconciles these competing imperatives.

[42] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[43] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (India).
[44] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).
[45] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[46] Karl E. Klare, Legal Culture and Transformative Constitutionalism, 14 S. AFR. J. HUM. RTS. 146 (1998).
[47] Supriyo v. Union of India, MANU/SC/1155/2023 (India).

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This study argues that such a balance can be achieved through a rights-oriented but institutionally sensitive approach, wherein courts recognize the constitutional basis for non-heteronormative families while allowing the legislature to determine the specific modalities of implementation. This approach ensures that constitutional principles are upheld without encroaching upon legislative prerogatives.

E. Toward a Principled Framework for Recognition

Building on the analysis presented in the preceding chapters, this paper proposes a framework for addressing the recognition of non-heteronormative families within a transformative constitutional order.

First, courts must explicitly affirm that the exclusion of non-heteronormative relationships from legal recognition is constitutionally suspect and subject to strict scrutiny. This involves applying doctrines of proportionality and arbitrariness to evaluate the legitimacy of such exclusion.[48]

Second, judicial decisions should articulate clear constitutional principles that guide future legislative reform. By establishing the normative foundations of recognition, courts can shape the direction of policy without directly engaging in law-making.

Third, the legislature must undertake comprehensive reforms to align statutory frameworks with constitutional values. This includes revising existing laws governing marriage, adoption, and succession to ensure inclusivity and non-discrimination.

Fourth, there is a need for broader societal engagement with issues of diversity and inclusion. While legal recognition is essential, it must be accompanied by efforts to address social stigma and promote acceptance of non-heteronormative relationships.

F. Broader Implications for Constitutional Adjudication

The issues examined in this paper have broader implications for constitutional adjudication in transformative democracies. They highlight the challenges of balancing rights-based claims with institutional constraints, particularly in contexts involving deeply embedded social norms.

The recognition of non-heteronormative families serves as a test case for the capacity of constitutional systems to adapt to changing social realities while maintaining institutional integrity. It underscores the importance of a dynamic and responsive approach to constitutional interpretation, one that is capable of addressing emerging challenges without compromising foundational principles.

At the same time, it reveals the limitations of legal solutions in addressing complex social issues. While constitutional adjudication can play a crucial role in advancing rights, it cannot, by itself, transform societal attitudes. This underscores the need for a holistic approach that integrates legal, social, and political dimensions.

G. Concluding Reflections

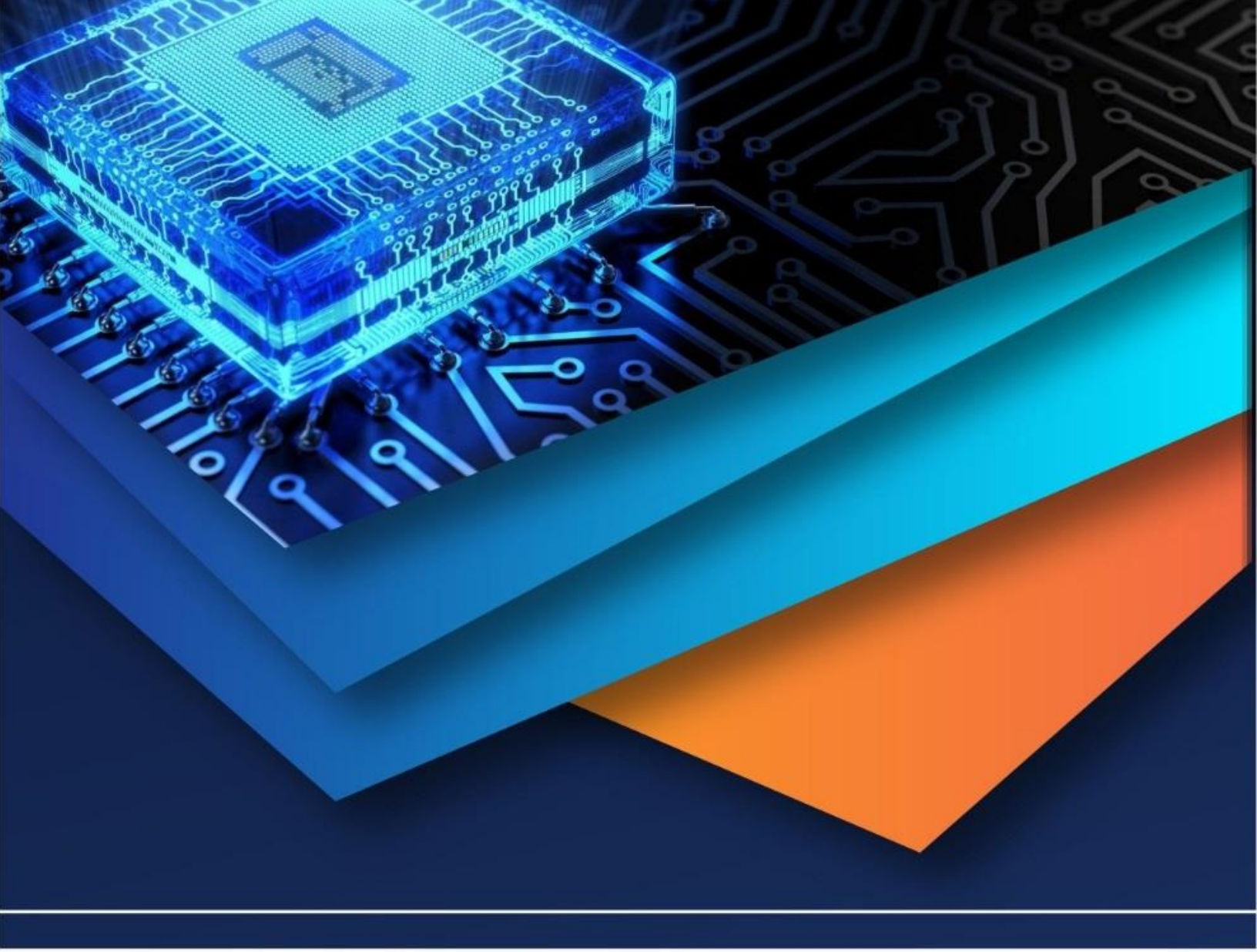
The journey from decriminalization to recognition represents the next frontier in the evolution of LGBTQIA+ rights in India. While significant progress has been made in affirming the dignity and autonomy of individuals, the absence of legal recognition for non-heteronormative families remains a critical gap.

This study demonstrates that the Constitution provides a robust foundation for addressing this gap, but its realization requires a careful balancing of competing considerations. The tension between dignity and deference is not a problem to be resolved once and for all, but a dynamic challenge that must be navigated through principled and context-sensitive adjudication.

Ultimately, the legitimacy of the constitutional order depends on its ability to extend its protections to all individuals, including those who have historically been marginalized. The recognition of non-heteronormative families is thus not merely a legal issue, but a test of the Constitution's commitment to equality, dignity, and justice.

The path forward lies in embracing the transformative potential of the Constitution while respecting the institutional frameworks within which it operates. Only through such a balanced approach can the promise of constitutional democracy be fully realized.

[48] Modern Dental Coll. & Research Ctr. v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).



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