

A Trans-Queer Paradox and the Search for Legal Recognition

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The Supreme Court of India is hearing the arguments in favour of same-sex marriage petitions. From the very first day, the petitioners' arguments, presented by a stellar panel of senior advocates, have come across as pleadingly progressive and constitutionally evolved.

The petitioners urged the court to read same-sex marriage as a right to be conferred under the Special Marriage Act (SMA), 1954, despite the Union government's emphasis that parliament is the only constitutionally permissible forum to decide on the creation of a new social relationship.

To better understand the nuances of the queer community's daily life challenges four years after Section 377 was struck down, a team of researchers from the Centre for New Economics Studies' Visual Storyboards and Swabhimaan conducted a brief ethnographic study in June last year across the urban landscapes of Pune, Delhi, Bangalore, and Mumbai.

One of the key observations made during our study was the repeated emphasis on the fact of *what is considered acceptable and relevant* during a social movement.

"A lot of people who want the ability to marry each other should be given that right. But when we focus on this issue so much, we are falling into heteronormative dualism. I do see the worth in fighting for queer marriage, but I personally disagree with it," said Shruti, a respondent to our study.

“If you think of the American queer movement, when it came to accessibility, white gay men were much more ‘acceptable’ than black trans women. What is considered acceptable has always been a part of class, race and caste... Intersectionality is very important in this sense,” explains another respondent, Shreeya.

One of the most widely discussed arguments presented by the petitioners in the current socio-legal battle is vehement opposition to the Union government’s claim that a socially recognised same-sex union is an “urban elite concept.”

While refuting this claim, the petitioners’ counsel cited the socio-economic backgrounds of the petitioners to emphasise that many of them belong to marginalised, lower-class backgrounds. They further stressed that the legal recognition would enable a positive flow of other social rights that are certainly enjoyed by heterosexual married couples.

All the while a bench of five judges led by Chief Justice of India (CJI) D.Y. Chandrachud is affirmingly hearing various contentions brought forth by the petitioner litigants, another legal battle is being waged at the same time, which is led by trans rights activist Grace Banu, that sought clarification on the NALSA verdict passed in 2014.

In an application filed by Banu, she sought the court’s intervention to clarify whether the reservation granted to transgender people in the NALSA judgment is a horizontal reservation. Crossing all caste groups, horizontal reservations would entail different reservations within each category as a percentage of ST, SC, OBC, and General seats would be reserved under horizontal reservations for transgender individuals in both education and employment. However, the CJI stated that the court is not inclined to accept the motion in a disposed-off petition.

In another instance, focusing on the violence faced by the marginalised queer, the PUCL and National Network of LBI Women and Trans Persons organised a closed-door public hearing on April 1, 2023, where they reported familial violence in the lives of queer and transgender persons in the marriage equality debates.

They emphasised those invisibilised voices that have faced extreme violence from their natal families and have been forced to walk out of abusive homes to find and form living bonds with others. The hearing sought to place significant focus on the assertion of the self-determination of their gender, as well as their desire and right to select a family that would accept them for who they are.

In a separate research endeavour, *Swabhimaan*, a CNES initiative, interviewed Sappho for Equality, one of the members of the National Network of LBI Women and Trans Persons, for an edition on family structures back in November 2022. The edition, called Gharana, was aimed at understanding how the idea of family, a foundational unit of society, was changing and gaining recognition within the legal arenas of the country.

We asked the representatives of Sappho for Equality what they thought of the dichotomy of marriage within queer spaces. They said that “marriage as an institution manages the form of existence, but it is not the only one.

So, if you want to marry, yes you should have the right, but not everything can follow through marriage, because what patriarchy is doing is it is centralising all the right resources through marriage. Access to livelihood, property, insurance etc all arise out of marriage. Thus, unless you come through the heteronormative door, you do not have access to many resources.”

They also emphasised that the need for “this grand discourse around marriage should be demystified. So while marriage as a social institution is omnipresent and cannot be eroded, the overemphasis on its impact should be lessened.”

While the courts are actively engaging to redefine the boundaries of a socially integrated structure of a holy union, they are failing to simultaneously acknowledge that this very tradition is embedded in class, caste capital, and wealth.

While the fight for queer marriage equality is certainly a step forward in recognising the political rights of the community, entering the ‘sacred’ institution of marriage will not immediately end the violence against them. Even after several attempts by grassroots activists and organisations to voice and vow their battles have only been greeted with state-enabled violence and rejection from the courts, as the social prejudice and *otherisation* of the queer community is tragically not a mainstream dialogue focus.

It is crucial to stress that not all community concerns are included in the public discourse as matters of public interest, nor are they represented by powerful legal fraternities, but their voices and contentions are an underrepresented fight for the fundamental rights that are assumed by every citizen of the nation.

The legal intricacies that maintain caste endogamy and regulations that directly violate the couple’s fundamental rights by infringing upon their personal liberty and privacy must be brought to the public’s attention. Only then will same-sex marriage equality begin to result in the trans-queer community being embraced within the bounds of state protection.

Tavleen Kaur is a senior research assistant with CNES, Jindal School of Liberal Arts and Humanities, O.P. Jindal Global University, and the team lead for Swabhimaan and a member of the Visual Storyboards initiative of CNES. Shreeya Bhayana is a senior research assistant with CNES and the co-team lead for Swabhimaan. Deepanshu Mohan is professor of economics and director, CNES.