

# Beyond Marriage Equality: How to Redefine the Family

---

[theindiaforum.in/law/beyond-marriage-equality-how-redefine-family](https://theindiaforum.in/law/beyond-marriage-equality-how-redefine-family)

Poushali Basak, Niharika Banerjee

May 16, 2023

Bhubaneswar Pride Parade (2019) | Sailesh Patnaik/Wikimedia

The endogamous family has survived because it chooses not to support single women, queer and trans persons, sex workers, or anyone wanting to marry outside of caste and religious norms. Only when this structure is challenged will there be scope to think of families in a renewed manner.

The Supreme Court has heard a set of petitions on marriage equality and [reserved judgement 1](#) . While there are many ways to approach the issue of marriage equality, we will talk about it from learnings and conversations with our kins, allies, and critique-al others [2](#) and from young persons who have run away from their natal homes due to violence inflicted by their families. This learning relates to the desire to redefine family.

Let us state at the outset that as we write this, the voices of our queer kins, lovers, friends, intimate others, students, and young persons who have shared their familial traumas are with us.

The picture that repeatedly surfaces in the debates and discourses on marriage equality in the Supreme Court premises and outside, is that this is what the LGBTIQKHA+ [3](#) community has been fighting for in the last several years. Marriage right is *the* right, conjugal recognition is most coveted and desired, and these will bring an end to the violence, discrimination, isolation in queer and trans persons'

lives. Do we ever take into cognisance that the LGBTIQKHA+ spectrum was never a community? There are hierarchies and variations of experiences related to caste, class, (dis)ability, religion, ethnicity, and geographical location, which counter against an understanding of a homogenous spectrum.

That marriage is the only thing that queer and trans persons want as a logical extension of the reading down of Section 377 of the Indian Penal Code is therefore a deeply problematic assumption.

Do we ever take into cognisance that the LGBTIQKHA+ spectrum was never a community? There are hierarchies and variations of experiences related to caste, class, (dis)ability, religion, ethnicity, and geographical location...

Marriage equality is not the only concern either within the broader LGBTIQKHA+ spectrum, nor within the several collectives and organisations that make up the larger category of queer and trans movements in India. Questions of horizontal reservation, dignity and self-respect, access to health care, education and livelihood are urgent concerns facing queer and trans persons in India, especially those who are dispossessed and routinely open to social and material injury.

## A petition and a report

---

Yet, both of us want marriage equality to be recognised, as one of the many ways in which to gain access to a life free from stigma, violence, discrimination, all of which are crucial to claim a liveable life and equal citizenship. Even when asking for marriage equality, it is the desire to redefine family that lies at the heart of the petition and the report. Both of us are connected to the [Rituparna Borah & Ors. Vs. Union of India](#) – one of the 30 petitions heard by the Supreme Court on marriage equality – and a report titled, [Apnon Ka Bahut Lagta Hain. Centering Familial Violence in the lives of Queer and Trans Persons in the Marriage Equality Debates](#) (17 April 2023). We highlight the key points of both the petition and the [Apnon Ka Bahut Lagta Hain](#) report, with a focus on the question of the family, to lead into the reasons behind natal family violence and the need to redefine the family.

Most of the petitions for same-sex marriage refer to constitutional guarantees under Articles 14 & 15 (right against discrimination), 19 (right to freedom of expression), and 21 (right to privacy and dignity), all of which are mobilised to also draw attention to the benefits that marriage confers upon individuals entering that contract. These benefits, which include nominations for insurance, joint bank accounts, gratuities, adoption, surrogacy, health related and end-of-life decisions, are privileges that marriage confers to those who get married. Many of these while crucial, are specific in their focus in that they (1) spotlight exclusively on the question of rights only in the context of marriage, and (2) cater to a politics of middle-class respectability by drawing attention to petitioners who are already privileged in terms of their caste-class locations. These two angles have been the focus of much discussion in anti-caste alliances, queer-feminist collectives, and critical academic scholarship.

What we hope is that the [Rituparna Borah and Ors.](#) petition will help to bring into public discourse an understanding of family that challenges the cis-hetero-patriarchal norm. The cis-hetero-normative family system is a space of hurt, violence, and humiliation for the queer and trans persons. Because of this, many queer and trans people leave natal families permanently at a very young age to escape violence. This is brought forth by the [Apnon ka Bahut Lagta Hain](#) report. The report is written from the proceedings of a *jansunwai*, a closed-door public hearing, on 1 April 2023 in Delhi and is a compilation of 31 testimonies shared by queer and trans persons from diverse class, caste, religious backgrounds, rural areas, and small towns. <sup>4</sup> It provides a glimpse of the diverse nature of natal family violence, societal violence, violence from police, medical and several institutions and the kind of protection needed for claiming equal citizenship rights.

## Why natal family violence?

---

The stigma of being different – ‘being like a boy when one is assigned female at birth’, ‘being like a girl when one is assigned male at birth’, ‘liking woman when one is a woman’ – has always loomed large, and much of the violence and discrimination always starts at home. Instead of being a space of comfort and safety, the familial space is a space of threat and abandonment.

The main sociological reason behind such threat and familial violence is the need to maintain caste endogamy. B.R. Ambedkar in [“Castes in India: Their Mechanism, Genesis and Development”](#) (1917) pointed out endogamy as the essence that maintains and propagates the caste system. A key function of the familial unit then is reproduction within the endogamous groups and maintaining that essence via prohibition of inter-caste and interfaith marriages. The institution of caste Hindu marriage in this frame exists to perpetuate the endogamous groups via procreation, intergenerational transference of property, and continuation of the lineage. Those who do not fulfil this function are at the receiving end of various kinds of negative sanctions, of which violence is one.

Queer and trans persons do not at first glance fall into this frame. There are many persons identifying as heterosexual who opt to marry but not procreate, and then those that do not marry and procreate but stay in live-in partnerships. Inter-caste and inter-religious marriages are also common. All these situations are met with different kinds of familial violence and community disapproval, often culminating in beatings, threat to life, and murder. The natal family therefore is like a hierarchical pyramid, where marriage and procreation are at the top. Those who toe the line enter the institution of marriage and procreate. Legal rights by default are granted along with social legitimacy of the union.

The institution of caste Hindu marriage ... exists to perpetuate the endogamous groups via procreation, intergenerational transference of property, and continuation of the lineage.

Much of the marriage discourse is about legally recognising queer and trans persons’ relationships and giving them the legitimacy of a family, without interrogating what kind of family is being asked for. At the same time, those who are the defenders of the endogamous family in the courts, feel threatened by demands for marriage equality. For instance, Solicitor General Tushar Mehta, arguing for the Union

of India, stated marriage to be between 'a biological man and a woman'. Similarly Rakesh Dwivedi, another advocate opposing the petitions in court, quoted the Rig Veda and the Manusmriti to argue that the core purpose of heterosexual union has been to perpetuate human race and 'same sex unions have always existed, but they were not given equality at par with heterosexual couples'.

We face a complex situation where either the demand for marriage remains uninterrogated or it is considered too sacrosanct to be open for claims within it.

## The endogamous family

---

Critical voices within the queer and trans movements and in the larger population either by choice or by compulsion disrupt the concept and structure of the cis-hetero-patriarchal endogamous family. Unstructured care and support units and structured discipleship *gharana* systems exist in parallel and in engagement with the endogamous family, however without any legal recognition and minimal or no social acceptance. These units and systems created by hijra, kothi, transwomen, gender non-conforming people, lesbian and queer identifying persons, transmasculine persons, networks of single persons (among others) do not get adequate attention or are rejected as legitimate models of living precisely because (1) they do not reproduce the cis-hetero-patriarchal endogamous family and (2) they expand the notion of family to include those who are not related by blood or marriage.

Marriage equality needs to be understood in relation to these realities. If such units do not overtly challenge the endogamous family which marriage helps to propagate, they keep on surviving through acts of non-recognition, discrimination, and violence. But when claimed in court, then the defenders of endogamous marriage become virulent. In a recent statement, the Vishwa Hindu Parishad's (VHP) Tripura chief Mahendrapal Singh said, "Nationwide protests will be held against the plea in the Supreme Court. This plea is against the ethics of Sanatani beliefs."

Unstructured care and support units and structured discipleship *gharana* systems exist in parallel and in engagement with the endogamous family, however without any legal recognition and minimal or no social acceptance.

Does asking for equal marriage rights for queer and trans persons destabilise the endogamous family? At first glance it threatens but does not necessarily destabilise.

The arguments of the Solicitor General or the comments of the VHP Tripura chief provides ongoing evidence that marriage equality is perceived as an immediate threat to the endogamous family. Perhaps to counter this, most petitioners have taken refuge in constitutional morality. When they ask to read the Special Marriage Act, 1954 to include queer and trans persons, they are careful to also say that all they are asking for is equality and not interested in disrupting the heteronormative family. <sup>5</sup> At this level then, the argument for *only equality* does nothing to either bring recognition or bestow rights to unstructured care and support units or *gharana* systems.

An argument based on only equality merely serves to include those who wish to partake in the system of legal recognition and rights that marriage offers. By implication, the endogamous family structure is not destabilised, even if threatened, and may even accommodate queer and trans persons for its own survival. Caste Hindu queer and trans persons may very well choose to carry on endogamous functions, through marriage within one's caste, reproduction of lineage via adoption and surrogacy and intergenerational transference of wealth and property. It is at this juncture that the unstructured and structured systems have a role to play. In the *Rituparna Borah & Ors.* petition, these units and systems are referred to as "chosen families."

## The chosen family

---

The term "families we choose" was popularised by the American anthropologist Kath Weston (1991) to talk about the effort and choice that goes into the making of bonds of commitment and love. Later this inspired a body of work and the term 'queer kinship' also entered academic discourse.

In our context units and *gharanas* outside of cis hetero-patriarchal institutions have also existed. Such units do not carry any names as such. There have been some studies of hijra *gharanas* which give insight into very different alternative care-economic communities which is less visible. To our knowledge, no studies exist of units that gender non-conforming, lesbian identifying and transmasculine persons are part of.

We, the authors of this essay, are part of such units as well, where we have persons outside our relationships of blood and marriage on whom we rely upon, turn to for comfort and security and depend upon to take care of the families that we are born in. Not always do we agree, or are able to always be physically present, but we live and survive together and hope to do so as we age, become sick and prepare for death. These chosen families, sometimes known as also atypical families, include but are not limited to conjugal like relationships, and nor can they be only termed as friendships. There can be multiple primary relationships in chosen families other than a conjugal relationship if it has one.

We envisage marriage equality along with the right to a chosen family as a possible way to counter natal family violence and interrupt the dominance of the endogamous family.

'Chosen family' helps to highlight these forms of living. When read with/in the *Rituparna Borah & Ors.* petition and the *Apnon ka Bahut Lagta Hain* report, the term will help to interrupt the endogamous family structure, and socially and legally expand the notion of care, intimacy and parenthood beyond blood and marriage. Those of us in support of these two documents are of the opinion that marriage equality is necessary but not a sufficient condition to uphold different forms of the chosen family and bestow it with rights that are required to live a life worth living.

We envisage marriage equality *along with* the right to a chosen family as a possible way to counter natal family violence and interrupt the dominance of the endogamous family. It is only when the structure of endogamous marriage with two individuals in a conjugal relationship is challenged that there is some scope to think of families in a renewed manner. And maybe loneliness, discrimination, violence can be dealt with better.

The thrust of redefining the endogamous family becomes most evident in the findings and recommendations of the report. In the recommendation section of the report many points are geared towards redefining rights in relation to natal/assigned family and in imagination of 'chosen family' beyond the model of marriage. One unique demand here has been the concept of "nominated representative" taken from the [Mental Healthcare Act 2017](#) that recognises a person's right to appoint any person as the nominated representatives for the purpose of giving effect to their advance directives during mental healthcare treatment in the event of their incapacity. This is a clause that shifts the primacy from natal or marital family which can be used to understand family in law.

The right to choose one's family does not only mean to care and share responsibilities with but also to have someone who could be nominee or a beneficiary to one's income and assets. To be able to make a gift property to, to procure a joint loan from bank, to nominate as an heir, to nominate as beneficiary in medical insurance schemes or upon death, benefits from retirement, pension and various other social, legal and economic rights and entitlements that family members have. This is one recommendation to redefine family at legal and policy level.

## **An appeal to our readers**

---

With the help of the petition and the report, we ask our readers to shift focus exclusively from marriage to chosen family. Think of or watch out for the innumerable ways in which people live, not only queer and trans people but anyone in different care and kinship systems that do not follow the familiar structures of marriage and bloodline. How do they care for each other, support each other in times of distress and celebrate in times of happiness? These are not transitional stops to a final destination of an endogamous family model; but they are the destination, without formal recognition or rights. Some persons living these lives want or need marriage equality to escape violence from natal families, as marriage would offer that protection in police stations and courts of law. Others while supportive of marriage equality do not want marriage for themselves as they already have caste-class based cultural and social protections and privileges and do not wish to fortify the endogamous familial model.

The endogamous family has survived because it chooses not to support single women, queer and trans persons, sex workers, or anyone wanting to marry outside of caste and religious norms. Legal rights must be expanded to include those who do not and cannot opt for being married, such that access to education, health care, livelihood and economic transactions do not depend on networks of marriage and bloodline. This may seem a far-fetched vision, but unless we demand recognition of forms of living outside of endogamy, we will never be on the path to annihilating caste and all the dispossessions that come with it.

*Poushali Basak is a PhD scholar at Tata Institute of Social Sciences, Bombay and a member of Sappho for Equality, Feminists in Resistance in Kolkata and Forum against Oppression of Women in Bombay. Niharika Banerjea is a professor at the Jindal Global Law School, O.P. Jindal Global University, Sonapat, and is a member of Sappho for Equality, Kolkata.*