
GUARDIANSHIP IN INDIA: LEGAL OBSTACLES AND THE EXCLUSION OF LGBTQ+ FAMILIES IN A GENDERED FRAMEWORK

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ABSTRACT:

This paper examines the challenges faced by LGBTQ+ individuals in India concerning parental rights, particularly in the areas of guardianship and adoption. While the landmark judgment in *Navtej Singh Johar v. Union of India* (2018) decriminalized homosexuality, significant legal barriers persist in recognizing LGBTQ+ individuals as parents. Laws such as the *Guardians and Wards Act* (1890) and the *Hindu Minority and Guardianship Act* (1956) remain rooted in heteronormative frameworks, often preventing LGBTQ+ individuals and couples from fully exercising their rights as guardians or adoptive parents.

One of the primary concerns is that these laws implicitly favor heterosexual, cisgender parents, failing to accommodate diverse family structures. The absence of explicit legal recognition for LGBTQ+ parents results in uncertainty and potential discrimination, particularly in adoption proceedings, where eligibility is often determined by traditional interpretations of "family." The recent Supreme Court case, *Supriyo v. Union of India* (2023), underscores the pressing need for legal reforms to align parental rights with constitutional guarantees of equality and non-discrimination.

The lack of inclusive legal frameworks has practical consequences, leaving LGBTQ+ individuals in precarious positions when seeking guardianship of children, whether as biological parents, adoptive parents, or caregivers. This exclusion contradicts India's constitutional commitment to equality under Articles 14 and 15, as well as the right to life and dignity under Article 21. Given the evolving legal landscape and increasing social acceptance of LGBTQ+ rights, it is imperative to revisit and amend these outdated laws to ensure that parental rights are not restricted based on sexual orientation or gender identity. Legal recognition of LGBTQ+ parental rights would not only uphold constitutional values but also provide children with stable and secure family environments, regardless of the gender or sexual orientation of their parents.

Introduction

The framework governing parental and guardianship rights in India has been shaped by a combination of codified statutes and religious customs, reflecting the broader societal norms that have historically underscored family law. In India, personal laws, which are specific to religious communities, largely dictate the rights and responsibilities of parents and guardians over their children. These laws are steeped in tradition and often emphasise patriarchal authority within family structures. The Guardians and Wards Act of 1890 ("GWA")¹, a colonial-era legislation, marked a pivotal development by formally granting district courts the authority to appoint guardians for minor children irrespective of their religious background. A guardian, as per the GWA, is entrusted with significant duties concerning both the minor's personal welfare and property-related decisions, highlighting the entrenched notion of paternal authority within the Indian legal framework.

Within the domain of Hindu law, guardianship has its roots in ancient patriarchal family structures that trace back to the Vedic Age, where children, especially sons, were considered the father's property².

The concept of guardianship evolved in the Hindu legal system, where the supreme authority over individuals was vested in the king, who acted as the ultimate guardian or *parens patriae* for all people, especially minors. This principle underscored the state's role in the protection and welfare of children, especially in the absence of direct family members.³ In familial contexts, minor children, often living within a joint family, were under the protection of the *karta*, or the male head of the family. It was only gradually that the legal system began to recognize a son's right to separate self-acquired property⁴, while still emphasising the father's dominant role in guardianship decisions. The Hindu Minority and Guardianship Act of 1956 later codified these principles, solidifying the father's position as the "natural guardian," while allowing for an increasing recognition of the mother's custodial rights, particularly for young minors.

In contrast, Muslim personal law regarding guardianship is largely uncoded and follows a

¹ Guardians and Wards Act, § 4(2) (India)

² A.N. Saha, *Guardians and Wards Act* 1 (13th ed., 1998)

³ Manu Smriti VII 27, Gautama X, 48

⁴ Diwan Paras, *Modern Hindu Law* 239 (1992)

nuanced distinction between physical custody (*hizanat*) and legal guardianship. Under Muslim law, *hizanat* refers to the right of everyday care of a minor child, which typically lies with the mother, while guardianship of the child's property, upbringing, and major decisions remains vested with the father.⁵ Despite this distinction, the father's role as the natural guardian is enshrined in Muslim personal law based on the religious texts of the Quran and various *ahadis*.⁶ However, the principle of the "best interests of the child" often influences court decisions, enabling deviations from strict personal law provisions in favour of a child's welfare.

It is important to note that these personal laws do not exist in isolation. The broader legal system, especially the GWA, serves as a common thread that runs across different religious communities, allowing the courts to intervene and ensure the best interests of minors. However, while the Indian judiciary has progressively acknowledged the custodial rights of mothers across religious groups, the inherent gender biases of personal laws often leave women with fewer rights in the guardianship domain, despite the constitutional commitment to gender equality.

Amidst these complexities, LGBTQ individuals seeking legal recognition as parents find themselves navigating an even more challenging legal terrain. The deep-rooted heteronormative foundations of personal laws, particularly those concerning marriage, custody, and guardianship, pose significant obstacles for LGBTQ families. Despite the existence of non-heteronormative relationships in Indian history and cultural texts, such as the *Kama Sutra* and ancient Hindu festivals that celebrate same-sex love⁷, the formal recognition of LGBTQ parental rights remains an evolving issue.

Karoly Maria Kertbeny, credited with coining the term "homosexuality" in 1868 to describe sexual relations between individuals of the same gender, significantly shaped the discourse around non-heteronormative relationships.⁸ The term's introduction marked a critical point in understanding and acknowledging sexual diversity, laying a foundation for subsequent legal and societal debates. However, the Indian Penal Code, shaped by Victorian moralities, historically criminalised same-sex relationships, casting a long shadow over the possibility of

⁵ Bajpai Asha, *Child Rights in India: Law, Policy, and Practice* 96 (2003)

⁶ Id.

⁷ Subodh Mukherjee, *Trikone*, Vol. 5:1 (1990)

⁸ Ronald J. Hunt, *The Teacher: Gay and Lesbian Politics*, 29 PS: POL. SCI. & POL. 69 (1996), <https://doi.org/10.2307/419712>

recognizing LGBTQ family structures.

In the context of the broader debate on family, sexuality, and parental rights, LGBTQ individuals represent a subversive challenge to traditional familial norms. The visibility of same-sex couples and their assertion of parental rights brings into question the very foundations of legal family structures, which have long been anchored in patriarchal and heteronormative principles. Scholars like Bernstein and Reimann argue that same-sex couples, by making themselves visible as families, challenge conventional gender roles and the dominant conceptions of family that have prevailed in both law and society.⁹ Moreover, Lehr suggests that LGBTQ families occupy a unique vantage point from which they can redefine family dynamics and propose alternative structures that transcend the binary gendered expectations of parenting.¹⁰

Despite the decriminalisation of homosexuality in India through the landmark *Navtej Singh Johar v. Union of India* case, the recognition of LGBTQ parental rights continues to face hurdles. The reliance on religious personal laws to regulate family life complicates the ability of LGBTQ individuals to seek guardianship of children. These laws, which were framed with a heteronormative and patriarchal lens, fail to account for the diverse familial configurations that exist in modern society.

In the more recent *Supriyo v. Union of India*¹¹ case, the petitioners sought legal recognition of same-sex marriages under the Special Marriage Act, 1954. Although the Supreme Court stopped short of recognizing same-sex marriage, the discussions within the judgment were pivotal, especially in the realm of guardianship and adoption. The court highlighted the necessity to safeguard the rights of LGBTQ+ individuals to form families and raise children, emphasising that sexual orientation should not be a barrier to parenthood. The deliberations in this case reiterated that the constitutional principles of equality and non-discrimination demand a reconsideration of existing laws that prevent LGBTQ+ individuals from becoming legal guardians or adopting children, laying the groundwork for further legal reform.

As India moves toward greater recognition of LGBTQ rights, it is crucial that the legal system adapts to accommodate these new realities. The evolution of family law must take into account

⁹ Bernstein & Reimann, *Same-Sex Marriage Movements* (2001)

¹⁰ Lehr, *Queer Family Politics*, 1999

¹¹ *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, W.P. (C) No. 1011/2022, (2023) INSC 920.

the constitutional guarantees of equality, dignity, and personal liberty, ensuring that LGBTQ individuals and families are not left marginalised by the remnants of outdated legal principles. This research aims to examine the intersection of LGBTQ rights, personal laws, and guardianship in India, exploring how the legal framework must evolve to support diverse familial structures in line with India's constitutional promises.

Despite advancements, existing personal laws and the Guardians and Wards Act of 1890 still operate within a framework that privileges patriarchal and binary understandings of family roles. For example, under the Hindu Minority and Guardianship Act of 1956, the father is typically designated as the primary guardian, followed by the mother. Such prescriptive norms not only perpetuate gendered hierarchies but also exclude LGBTQ+ parents, reflecting broader societal prejudices that undermine the constitutional ideals of equality and non-discrimination.¹²

The Guardians and Wards Act articulates that the welfare of the child is paramount, yet the rigid interpretation of natural guardianship neglects the realities of modern parenting.¹³ The current legal regime fails to embrace the plurality of family structures, often relegating LGBTQ+ parents to a position of legal invisibility. This is particularly troubling given India's ratification of the U.N. Convention on the Rights of the Child, which mandates the protection of children's rights without discrimination.¹⁴ By adhering to archaic interpretations of guardianship, Indian law fundamentally undermines the spirit of this international covenant.

In matrimonial proceedings, custody issues are addressed through various statutes, including the Hindu Marriage Act and the Special Marriage Act. These laws delineate custodial rights predominantly through the lens of traditional heterosexual marriages, thus perpetuating a framework that is not only exclusionary but also detrimental to the well-being of children in same-sex families.¹⁵ The notion of a 'natural guardian' remains tethered to outdated patriarchal

constructs, failing to recognize the nurturing capabilities of LGBTQ+ parents who are often well-equipped to provide loving, stable environments for their children.

¹² Geeta Hariharan v. Reserve Bank of India, (1999) 2 S.C.C. 228 (India)

¹³ Guardians and Wards Act, 1890, § 7(i)

¹⁴ CRC, ratified Dec. 11, 1992

¹⁵ Hindu Marriage Act, 1955, § 26; Special Marriage Act, 1954, § 38

The majority of legal doctrines on the custodianship rights require a strong sense of paternal authority, reflecting antediluvian perceptions of parentage to be placed aside in view of modern family development. Provisions relating to the rights of LGBTQ+ families are rarely found, depriving such families of legal protection as well as of guardianship rights. The exclusion of LGBTQ+ parenting from India's legal framework highlights both systemic inequities and the failure to prioritise children who could thrive in diverse familial settings.

Given this critical gap, legislative reforms should be all-inclusive in nature and must recognize that love, commitment, and care, from where the proper basis of family comes, transcend biology or tradition. As society progresses and moves deeper into acceptance of diverse relationships, it is the law that must advance with it, ensuring equal rights and protections for all families regardless of structure. It is a transformation beyond the need for legal sufficiency; rather, it speaks to the very notion of humanity's reach for equity and justice.

The Role of Courtroom Bias in Shaping Parenthood Beyond Tradition

Continuing the discourse on the parental rights of LGBTQ individuals, the role of family courts is both pivotal and problematic. Tasked with adjudicating guardianship and custody, these courts often prioritise adult conflicts over children's welfare, which is particularly troubling for LGBTQ families. In many cases, the needs of children are relegated to the background amid matrimonial disputes (Bajpai, 1999). This tension between adult interests and children's well-being brings to the fore a critical challenge within the family court system

The guiding principle of the "best interest of the child" is inconsistently applied, leading to outcomes shaped more by individual judges' biases than by a clear understanding of nurturing environments (Bajpai, 1998). This unpredictability can deepen vulnerabilities for LGBTQ parents, as a lack of standardised procedures means their children's needs are frequently overlooked.

Moreover, the absence of legal representation for children leaves their voices unheard, with parental disputes overshadowing their emotional well-being. In the tumultuous context of divorce, where LGBTQ relationships face unique challenges, the focus often shifts from what is best for the child to what serves the adults' interests (Bajpai, 2005).

While some rulings prioritise children's welfare over financial status, others disproportionately

favour economically superior parents, depriving LGBTQ individuals who may lack the same resources as their heterosexual counterparts. This economic bias not only undermines the notion that a child's well-being is rooted in love and support, but it also emphasises the need for reform in the court's approach (Bajpai, 1982).

To achieve equitable parental rights for LGBTQ individuals, family courts must adopt a genuinely child-centred approach. This entails a critical reassessment of existing practices and acknowledging the complexities of contemporary family dynamics and ensuring that the best interests of all children—regardless of their parents' sexual orientation—take precedence. In doing so, we affirm that every child deserves a loving and supportive environment, transcending societal prejudices and legal shortcomings.¹⁶

In light of this, a shift in perspective on parenthood is essential for progress. While family courts must focus on the child, it is equally important to recognize that the concept of family itself is evolving. No longer confined to traditional, biological definitions, parenthood now includes diverse structures formed through adoption, surrogacy, and other paths. This broader understanding calls for a recalibration of legal frameworks to reflect these new family dynamics, ensuring that all children, regardless of their parents' sexual orientation or the method through which they become a family, are raised in supportive environments.

Traditionally, the archetypal family structure has been that of a heterosexual couple, biologically positioned to conceive and raise children in accordance with societal expectations. This conventional view of parenthood links parents' rights and duties to their genetic contributions. However, the idea of parenthood extends beyond mere biological ties, with alternatives like surrogacy and adoption offering viable pathways to parenthood that challenge the traditional norms.

Legislatively, various statutes have emerged to accommodate these alternative forms of parenthood. In India, the legal framework for adoption among Hindus is primarily governed by the Hindu Adoption and Maintenance Act of 1956. Conversely, individuals from other religious backgrounds wishing to adopt can only assume the role of 'guardian' under the Guardians and Wards Act of 1890. This distinction creates significant limitations for non-Hindu families

¹⁶ Jacob M. Held, *Gay Marriage, Liberalism, and Recognition: The Case for Equal Treatment*, 21 Pub. Aff. Q. 221 (2007), available at <https://www.jstor.org/stable/40441460>.

seeking legal recognition as parents.

An important statute that broadens the scope of adoption is the Juvenile Justice (Care and Protection of Children) Act of 2000, which applies universally, allowing single individuals to adopt children in need of care and protection. Unlike the Guardians and Wards Act, this legislation forges a direct parent-child relationship rather than simply establishing guardianship. It focuses on the welfare, development, and rehabilitation of abandoned or orphaned children, without imposing marital status as a prerequisite for adoption.¹⁷ Thus, any individual meeting the stipulated criteria under this Act and the guidelines from the Central Adoption Resource Authority (CARA) may legally adopt a child.¹⁸

For those desiring biological offspring, surrogacy represents another avenue toward achieving parenthood. While couples in live-in relationships, despite receiving constitutional acknowledgment under the Protection of Women from Domestic Violence Act of 2005, remain exempt from restrictions, single women face considerable barriers. Notably, modifications to the Surrogacy Act are, however, underway, allowing unmarried and widowed women aged 35 to 45 to act as single mothers, reflecting a gradual shift in legal recognition of diverse family structures.

Parenthood to the LGBTQ Community in India

The Hindu Adoption and Maintenance Act of 1956 serves as a key legal framework for adoption in India but operates within a rigid binary understanding of gender, limiting the adoption rights of non-binary and LGBTQ individuals. While unmarried individuals are permitted to adopt, the Act fails to accommodate any provisions for same-sex couples or transgender persons who identify outside of traditional gender categories. Furthermore, although the Central Adoption Resource Authority (CARA) guidelines and the Adoption Regulations of 2017 do not explicitly prohibit LGBTQ individuals from adopting, the lack of a third-gender option in the application form effectively excludes them from the adoption process.¹⁹ This lack of inclusivity highlights

¹⁷ Shabnam Hashmi v. Union of India, (2014) 4 SCC 1

¹⁸ Niraj Meena, *Adoption Laws in India: Challenging Existing Law*, available at <http://docs.manupatra.in/newsline/articles/Upload/E8EFE493-114B-4E5B-A014-682EB1729301.pdf>, last visited January 31, 2021

¹⁹ Online Registration Form, Central Adoption Resources Authority, Ministry of Women and Child Development, Government of India, available at <https://carings.nic.in/Parents/parentregshow.aspx>, last visited on February 2, 2021

the need for reform in adoption laws to recognize diverse family structures.

Moreover, while single LGBTQ individuals may technically be allowed to adopt, the current legislative framework still discriminates against couples, thereby perpetuating the notion that only traditional families are legitimate. In addition, the Surrogacy (Regulation) Act of 2021 further compounds this issue by explicitly excluding LGBTQ couples from accessing surrogacy services. This exclusion appears arbitrary and discriminatory, lacking any substantive justification. The Act also disqualifies single individuals, further narrowing the pathways to parenthood for those outside conventional family structures. Consequently, the Act has faced significant backlash for undermining women's autonomy and reproductive rights while failing to address the needs of LGBTQ individuals and families.

The landmark *Navtej Singh Johar* decision, which decriminalised same-sex relationships, opened the door for further discussions about equality and non-discrimination. Yet, the current adoption and surrogacy laws continue to perpetuate inequality by denying specific communities their rights based on sexual orientation. The principle of reasonable classification must be critically evaluated in this context, as the denial of parenthood rights lacks a rational basis.²⁰ Additionally, the *NALSA* judgement emphasised the necessity for non-discrimination across all identities, highlighting that civil liberties should extend to all individuals regardless of gender identity or sexual orientation.

An analysis of Supriya Chakraborty v Union of India: The Issue of Joint Adoption by Queer Couples

In the *Supriya Chakraborty* case, one of the central issues revolved around joint adoption by queer couples. The petitioners challenged Regulation 5(3) of the Central Adoption Resource Authority (CARA) 2020 Regulations, which stipulates that couples must have been in a stable marital relationship for at least two years before adopting jointly. This regulatory requirement raises critical questions about the inclusivity of adoption laws for LGBTQ individuals. The petitioners argued that this requirement was arbitrary and ultra vires the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), which does not explicitly impose such a restriction.

²⁰ *The State of West Bengal v. Anwar Ali Sarkar* Habib Mohammed, AIR 1952 SC 75

Specifically, the JJ Act, under Section 57(2), requires the consent of both spouses for adoption, implying that joint adoption is only allowed for married couples. However, the petitioners contended that this provision should not restrict joint adoption only to those in a marital relationship, but also to unmarried and same-sex couples. In this context, the Supreme Court grappled with the interpretation of Section 57(2), which does not explicitly use the term “married,” but references “spouses.” This ambiguity highlights the need for a broader interpretation of parental rights; the petitioners argued that the JJ Act is broad enough to permit adoption by unmarried couples, making the CARA regulations unnecessarily restrictive.

Divergence in Reasoning

Chief Justice D.Y. Chandrachud, in his reasoning, sided with the petitioners, stating that Section 57(2) of the JJ Act could be interpreted as allowing joint adoption by both married and unmarried couples. He viewed the requirement for “spousal consent” as applicable only to married couples, and thus, CARA Regulation 5(3) was found to exceed the scope of the parent Act by unnecessarily imposing a marital condition on adoption. Accordingly, the Chief Justice “read down” the word “marital” from Regulation 5(3), allowing for the possibility of joint adoption by unmarried couples, including same-sex couples.

However, Justices Bhat and Kohli dissented, arguing that the intention of the JJ Act was clearly to permit joint adoption only by married couples. To support their viewpoint, they invoked the principle of *noscitur a sociis*, interpreting the term “couple” in conjunction with “spouse,” to conclude that the Act intended only married couples to jointly adopt. This interpretation clearly shows a legislative choice aimed at protecting the welfare of the child by ensuring that the adoption occurs within a stable, legally recognized family structure.

The dissenting judges emphasised that the requirement of spousal consent serves a vital purpose—ensuring the child’s welfare and stability within the adoptive family. They contended that joint adoption by unmarried couples, whether heterosexual or queer, poses potential risks for the child, especially in the event of relationship breakdowns. Unlike married couples, whose rights and responsibilities towards the child are safeguarded by matrimonial and family laws (e.g., custody, maintenance, inheritance), unmarried couples may lack adequate legal frameworks to address such responsibilities, which could lead to complications in securing the child’s well-being.

Moreover, the dissent also drew attention to the broader ecosystem of laws surrounding adoption, noting that legal protections for children adopted by single individuals are clear and robust. In contrast, allowing joint adoption by unmarried couples, without sufficient legal protections in place, could leave the child vulnerable. They expressed concern that existing laws, such as those related to guardianship and maintenance, might be insufficient to protect the child in cases where the relationship between the adopting couple dissolves.

Structural Exclusion and Unseen Bias

Despite its intentions, the Transgender Persons (Protection of Rights) Act, 2019 may inadvertently perpetuate exclusion by reinforcing societal binaries. Although it grants the right to self-identify, those choosing the third gender face distinct limitations, particularly within the realms of adoption and surrogacy. Existing laws, such as CARA guidelines and the Surrogacy (Regulation) Act, 2021, cater primarily to male and female identities, effectively marginalising those who do not conform to these categories.

This imbalance reflects an indirect form of discrimination, where the practical application of laws results in unequal treatment, as Justice Chandrachud articulated in *Navtej Singh Johar*. The true inequity lies *not in the intent behind these provisions but in their disproportionate impact* on marginalised identities. While some transgender individuals can navigate these legal frameworks, others, such as those identifying as eunuchs, face systemic barriers that severely restrict their rights.

Tarunabh Khaitan's exploration of structural discrimination resonates here, as existing social and legal structures subtly yet pervasively disadvantage certain groups. The *NALSA* judgement foresaw the unique challenges of non-binary individuals, urging their distinct recognition. However, the incomplete integration of these insights into the Transgender Act forces many to remain dependent on judicial intervention to secure rights that should have been guaranteed.

A Conflict of Legislative and Judicial Visions

Ultimately, the court's reasoning in *Supriya Chakraborty* presents a conflict between the Chief Justice's progressive reading of the law and the more cautious approach of the dissenting judges. While the Chief Justice's interpretation aligns with a broader understanding of family and equality, the dissent's reasoning stresses the importance of ensuring legal and social

stability for the child. The case underscores the tensions between evolving societal norms and existing legislative frameworks that continue to prioritise traditional marital structures, particularly in matters as sensitive as adoption.

From an administrative law standpoint, the courts have acted as crucial checkpoints, ensuring constitutional principles are upheld while balancing their role with legislative and executive powers. In *Navtej Singh Johar*, the judiciary took an activist approach by reading down Section 377, expanding LGBTQ+ rights in the absence of legislative action. This proactive intervention underscores the court's role in safeguarding fundamental rights, especially when the legislature fails to act. However, in *Supriyo Chakraborty*, the court exhibited judicial restraint, emphasizing that the matter of same-sex marriage requires democratic deliberation and legislative action. Here, the judiciary adhered to the administrative principle of separation of powers, acknowledging that altering marriage laws involves a broader policy framework, which falls within the domain of legislative and executive bodies. This contrasting approach between *Navtej* and *Supriyo* reflects a deliberate judicial decision to defer to administrative processes in matters of family law, signalling that certain complex rights issues, such as LGBTQ+ family and guardianship rights, may necessitate legislative reform rather than judicial activism.

The future of LGBTQ+ rights, particularly in family and guardianship matters, may face delays as courts increasingly defer to administrative bodies. This judicial minimalism in *Supriyo* highlights the ongoing challenge of balancing administrative law with the judiciary's responsibility to protect constitutional rights, leaving the fate of LGBTQ+ rights contingent on future legislative action.

Conclusion

The discourse surrounding LGBTQ parental rights often centers on apprehensions regarding potential harm and the slippery slope argument, which posits that the legalization of same-sex marriage could jeopardize the institution of marriage and adversely affect children nurtured within same-sex families. Critics frequently articulate fears that recognizing gay marriage may precipitate societal degradation, asserting that it could devalue the institution of marriage and disrupt conventional family structures. However, this perspective overlooks the fact that the acknowledgment of same-sex unions does not inherently destabilise heterosexual marriages. The real challenge stems from entrenched societal prejudices that erroneously conflate sexual

orientation with compromised familial integrity.

Moreover, the concerns regarding the welfare of children raised by LGBTQ parents lack robust empirical support. Extensive research consistently demonstrates that children reared in same-sex households develop and flourish just as effectively as their counterparts raised by heterosexual parents, thereby challenging the notion that parental sexual orientation negatively influences child development.²¹ Opponents frequently express anxieties about potential social ostracism and bullying that children of gay parents may encounter; however, these concerns misdirect the focus onto LGBTQ families rather than addressing the underlying societal biases. In truth, the issue lies not with same-sex couples but rather with a societal framework that perpetuates discrimination and exclusion.

The slippery slope argument further maintains that granting marriage rights to same-sex couples could lead to the legitimization of polygamous or incestuous unions. This reasoning, however, fails to acknowledge the necessity of assessing each relationship type based on its unique characteristics and potential ramifications. The absence of demonstrable harm stemming from same-sex marriage suggests that these unions should not be subjected to unwarranted restrictions. Furthermore, historical precedents illustrate that the right to marry has evolved in tandem with shifting societal norms, often countering moral objections that lack a solid foundation.²²

At the heart of the arguments against gay marriage lies a sincere concern for societal well-being; nonetheless, many of these arguments reflect personal biases rather than sound ethical reasoning. John Stuart Mill articulated that governmental authority should only intervene to prevent harm to others: "[T]he only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others."²³ The moral objections of the majority cannot serve as justification for infringing upon the rights of minority groups, as evidenced by landmark Supreme Court rulings that dismantled discriminatory laws aimed at LGBTQ individuals.²⁴

In conclusion, the arguments opposing LGBTQ parental rights and same-sex marriage falter

²¹ Patterson, *Children of Lesbian and Gay Parents: Summary of Research Findings*, in *Same-Sex Marriage: Pro and Con: A Reader*, pp. 240-245

²² *Loving v. Virginia*, 388 U.S. 1 (1967)

²³ Mill, *On Liberty and The Subjection of Women* 13 (Hertfordshire: Wordsworth Editions Limited, 1996)

²⁴ *Lawrence v. Texas*, 539 U.S. 558 (2003)

when subjected to rigorous scrutiny against empirical evidence and fundamental principles of rights. There exists no compelling rationale for denying marriage rights to LGBTQ individuals; rather, focus must shift toward dismantling societal prejudices that unjustly restrict family rights and perpetuate systemic inequality.

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