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READING BETWEEN THE LINES: JUDICIAL SILENCE ON SAME-SEX MARRIAGE IN SUPRIYO V. UNION OF INDIA

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INTRODUCTION

The case of *Supriyo v Union of India*¹ marked a significant constitutional milestone where the Supreme Court of India was reluctant to give same-sex couples the right to marry. Even after the decriminalization of homosexual relationships in *Navtej Singh Johar v. Union of India* (2018)² LGBTQIA+ people in India still lack access to key civil and legal rights in areas such as marriage, adoption, and family recognition. Accordingly, their presence is decriminalized, but they do not possess any rights to signify their presence and claim their existence. Despite being noteworthy for acknowledging queer dignity, this ruling did not significantly advance substantive equality.

Homosexuality was considered taboo or evil in most parts of ancient scriptures, due to a long-held belief that sexual activity was solely for procreation. Anything that did not conform to heterosexuality was viewed as impure. Today, sexual expression is no longer limited to reproduction, and our psychological and legal perspectives have evolved. This shift resulted in the landmark judgment delivered on October 17, 2023, by a five-judge bench. Because of India's revolutionary constitutionalism, international law commitments, and comparative jurisprudence, this commentary examines the constitutional issues raised, the judicial reasoning employed, and the implications of the verdict.

FACTS OF THE CASE

The case was filed as a writ petition under Article 32 of the Constitution to pursue constitutional remedies for violations of LGBTQIA+ and queer rights. The petitioners

¹ 2023 SCC Online, SC 1348

² AIR 2018 SC 4321, AIR 2018 SC(CRI) 1169

contended that existing rules governing marriage, adoption, and other related issues are discriminatory, denying them inclusion and representation. The Petitioners argued that constitutional safeguards under Articles 14, 15, and 19 must extend to their freedom to marry, citing *Navtej Singh Johar v. Union of India (AIR 2018 SC 4321)*, in which Section 377 was deemed unconstitutional for criminalising consensual same-sex relationships.

Following this landmark ruling, many people petitioned in several High Courts for legal recognition of same-sex marriages, claiming that denying this right violated their rights to equality, dignity, autonomy, and privacy. They argued that the legal system unfairly excludes LGBTQIA+ people from civil institutions like marriage, which are open to heterosexual couples.

The Supreme Court took the Suo-moto jurisdiction after looking into the gravity of the situation that prevailed at that time. The court further merged all twenty related petitions from all around the country, involving fifty-two people, including seventeen same-sex couples, and referred the case to a constitutional bench.³

LEGAL ISSUES

The critical issues that were petitioned in this case are: -

- 1) Whether right to marry a fundamental right under the Indian Constitution?
- 2) Can the Supreme Court interpret or change the Special Marriage Act, 1954, in a gender-neutral manner?
- 3) Whether the denial of the fundamental right to marry for same-sex couples violates articles 14, 15, and 21?

COURT'S DECISION AND RATIONALE

The court also noted that weddings between queer people cannot be understood under the Special Marriage Act of 1954, reflecting a social view of marriage as a union between a biological male and a biological female. The majority also ruled that the judiciary lacks the authority to pass laws or change the definition of marriage, and the matter is best addressed democratically while respecting and upholding the separation of powers.⁴ The court also stated

³ Ashish Rawat (2024). *Navigating the path to equality: The landmark case of Supriyo v UOI and the future of LGBTQIA+ Rights*. Available at: https://articles.manupatra.com/article-details/NAVIGATING-THE-PATH-TO-EQUALITY-THE-LANDMARK-CASE-OF-SUPRIYO-V-UNION-OF-INDIA-AND-THE-FUTURE-OF-LGBTQIA_Plus_-RIGHTS

⁴ Prachi Bhardwaj (2023). *SC Verdict on Same Sex Marriage: Breakdown of the Agreements and Disagreements*. Available at: <https://www.sconline.com/blog/post/2023/10/18/supreme-court-verdict-on-same-sex-marriage-breakdown-of-the-agreements-and-disagreements-legal-news-lgbtqia/>

that weddings between LGBT individuals are incompatible with the Special Marriage Act of 1954, which reflects a social perception of marriage as a union between a biological male and a biological female.

While the court refrained from recognizing same-sex marriages, some judges, including CJI D.Y. Chandrachud and Justice Sanjay Kishan Kaul, had some dissenting opinions and proposed acknowledging Civil unions as a compromise flowing from part III of the Constitution of India. This compromise might provide same-sex couples legal rights and protections like inheritance, adoption, and medical decision-making without changing the traditional definition of marriage. However, this proposal was not accepted as a binding decree, and the bench, in a 3:2 verdict, ruled against this.⁵ Through all this, the Court found that non-recognition of LGBTQIA+ unions did not restrict individuals' ability to exercise their right to privacy, choice, and autonomy under Articles 14, 15, and 21 of the Constitution.

Former Chief Justice Chandrachud also established that a transgender person in a heterosexual relationship can marry, after offering a harmonious reading of existing marriage rules and the Transgender Persons Act, 2019, giving reasons that marriage laws in India permit marriages arising out of heterosexual relationships and a person is recognized as a transgender person by virtue of their gender identity, rather than sexual orientation, was established as a right in the case *National Legal Services Authority v Union of India & Ors.*⁶

The court, however, had directed the central government and state government to take proactive measures, suggesting that they should create a framework to offer legal rights and safeguards, including access to healthcare facilities, inheritance rights, and joint property ownership, maintaining the dignity of these LGBTQIA+ individuals.⁷

ANALYSIS

Although the 2023 landmark ruling recognized the rights and dignity of queer people, the Court unanimously held that the Constitution did not accord a fundamental right to marry, refusing legal status to same-sex marriages in India. The bench underscored the point that the acceptance of marriage is a legislative rather than constitutional affair and made it evident that any extension of marital rights must be through legislation, and not by the courts. The majority of judges were reluctant to change the clauses of the Special Marriage Act to include marriage

⁵ Blog (2023). Available at: <https://privacylibrary.ccgnlud.org/case/supriyo-supriya-chakraborty-anr-vs-union-of-india>

⁶ MANU/ SC/ 0309/ 2014, AIR 2014 SC 1863, (2014) 5 SCC 438, [2014] 5 SCR 119

⁷ Indian Kanoon, Available at <https://indiankanoon.org/doc/81084437>

of same-sex couples. They took the defence of the Separation of Powers. While Chief Justice D.Y. Chandrachud and Justice Kaul favoured legalising civil unions for homosexuals and awarding them adoption rights, the rest of the bench disagreed, citing that current adoption laws do not provide for such setups, and any shift would need to be brought up by legislative changes only, maintaining the separation of powers.

A strong criticism against judicial evasion of transformative constitutionalism was brought after this judgment. After *Navtej Singh Johar* (2018) and *Puttaswamy* (2017)⁸, the Court reaffirmed the primacy of dignity, privacy, and identity in understanding constitutional rights. In light of the same, the reluctance to extend such principles to the area of marriage indicates an unwillingness to advance equality. The majority's focus on the separation of powers — that such decisions have to be made by the legislature — neglects the Court's history of reading down discriminatory legislation even without legislative intervention.

Further, the majority believed that there is no constitutional right to marry and that statutes, rather than constitutional commands, are the source of legal recognition of marriage. This rule has not only neglected the rights of such individuals but has also neglected that marriage is more than just a legislative setup; it grants a lot of rights to couples for their maintenance, including inheritance, adoption, medical decision making, etc., it is more of a socio-legal institution. In the present times, by excluding LGBTQ+ individuals from these rights in this institution, the court has unintentionally increased inequity.

Though all judges acknowledged LGBT people's institutional obstacles, CJI Chandrachud and Justice Kaul's minority judgment was the only one that suggested a legal sanction for civil unions. They had this dissenting opinion, but the majority failed to provide an effective remedy by refusing to take even modest steps such as recognising civil unions.

Earlier judgments such as *Kesavananda Bharati*⁹, *Vishaka guidelines*¹⁰ and *Nirbhaya guidelines* were given in the absence of a legislative vacuum or lack of will. By opposing Parliament in the face of no legislative action on LGBT rights, the Court abdicated its responsibility to protect minority rights.

The view of the court that marriage is not a fundamental right not only neglected the various rights of the LGBTQIA+ individuals but has also contradicted the already established

⁸ AIR 2018 SC (SUPP) 1841, 2019 (1) SCC 1, AIRONLINE 2018 SC 237

⁹ AIR 1973 SUPREME COURT 1461, 1973 4 SCC 225

¹⁰ AIR 1997 SUPREME COURT 3011, 1997 AIR SCW 3043

international human rights laws like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), where marriage is recognized as a fundamental right of the individual be it of any identity and sexuality.¹¹ Although the Supreme Court's ruling in *Supriyo v Union of India* acknowledged the rights of the LGBTQIA+ community, it did not rule on the controversial issue of same-sex marriage, leaving it to the legislature to enact the necessary legal reforms to address this long-felt need.

CONCLUSION

The ruling in *Supriyo v. Union of India* is a paradoxical decision. While denying queer people institutional recognition through marriage, it also affirms their dignity. Although the decision demonstrates judicial restraint and respect for legislative authority, it risks perpetuating systemic discrimination in the name of the separation of powers. Legislation recognising same-sex marriages or civil unions must be passed by Parliament to bring about significant change. Major legislative reforms need social acceptance. To dispel myths and generate awareness, advocacy organizations, media, and educational institutions need to join hands. Mass contact campaigns can alleviate societal resistance and create support for marriage equality. Parliament should move at speed to pass legislation recognizing same-sex relationships, starting with civil unions as a stepping stone to complete marital equality. In the meantime, the judiciary should proceed to monitor the enforcement of LGBTQIA+ rights, punishing discrimination, and ensuring that all changes meet constitutional ideals of equality and non-discrimination. The judiciary should keep defending queer people's fundamental rights in the interim, including those related to inheritance, medical autonomy, and discrimination against individuals. To eliminate biases and uphold the constitutional guarantee of equality for all, legal reform must be accompanied by persistent social activism.

¹¹Saumya Kalia (2023). 'SC's verdict on same-sex marriages. Available at <https://www.thehindu.com/news/national/supreme-courts-verdict-on-same-sex-marriages-explained/article67429494.ece>

