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SUPRIYO @ SUPRIYA CHAKRABORTY & ANR. v. UNION OF INDIA (2023)

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INTRODUCTION

Supriyo @ Supriya Chakraborty & Anr. v. Union of India (W.P.(C) 1011/2022) is a landmark Supreme Court case concerning marriage equality for same-sex couples in India. Two same-sex couples submitted petitions to the Indian courts because their relationships lacked recognition under marriage laws in India. A Constitution Bench consisting of five judges under Chief Justice D.Y. Chandrachud conducted the hearing of this case. The petitioners claimed that the Special Marriage Act 1954 together with other personal laws that restrict marriage to heterosexual couples violated their fundamental freedoms including choice, freedom and equality and dignity rights. The Supreme Court issued its landmark ruling on LGBTQ+ rights in India through its final judgment on October 17 2023. The Court unanimously decided that Parliament holds the authority to legalize same-sex marriage while the judiciary lacks this power. The Court established an order which required the government to establish a committee for investigating LGBTQ+ couple discrimination while suggesting legal change recommendations. The case established important developments that transformed how society and courts view marriage standards together with LGBTQ+ community rights across India.

BACKGROUND

Multiple same-sex couples together with LGBTQ+ activists in India have submitted petitions to obtain marriage recognition through Indian Law. Nikesh Pushkaran and Sonu Soman who are a gay couple in Kerala initiated a legal challenge against the heterosexual marriage clause

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of the Special Marriage Act in January 2020. The Kerala High Court under Justice Anu Sivaraman accepted their legal petition on January 27 2020. Four LGBTQ+ activists who include Abhijit Iyer Mitra and Gopi Shankar M along with Giti Thadani and G. Oorvas submitted their petition to obtain marriage recognition through the Delhi High Court on September 8 2020. A judicial panel composed of Chief Justice D.N. Patel and Justice Prateek Jalan accepted the petition on September 14 2020. These early cases were brought on the ground that Section 4(c) of the Special Marriage Act – which permits marriage only between a “male” and a “female” – was discriminatory.

Building on these earlier efforts, two same-sex couples approached the Supreme Court in late 2022. On November 14, 2022, Supriyo Chakraborty (also known as Supriya Chakraborty) and Abhay Dang, and Parth Phiroze Mehrotra and Uday Raj Anand filed writ petitions in the Supreme Court seeking recognition of their marriages. They argued that Section 4(c) of the Special Marriage Act, by limiting marriage to opposite-sex partners, denied same-sex couples the benefits of marriage (such as inheritance, adoption and retirement benefits) and violated their fundamental rights. On November 25, 2022, a two-judge Supreme Court bench (Chief Justice Chandrachud and Justice Hima Kohli) admitted these petitions together.

After admitting the petitions, the Supreme Court consolidated all related cases. A three-judge bench transferred nine pending petitions (eight from the Delhi High Court and one from Kerala) into the case in January 2023. On March 15, 2023, the Court admitted a total of 20 connected petitions filed by 52 individuals (including 17 couples). These petitions challenged various marriage laws (including the Special Marriage Act, the Hindu Marriage Act 1955, and the Foreign Marriage Act 1969) on similar grounds. The five-judge Constitution Bench began hearing the cases in April 2023. After nearly ten days of arguments, the Bench reserved its judgment on May 11, 2023. On October 17, 2023, the Constitution Bench delivered its verdict. The Court unanimously held that the Indian Constitution does not confer a fundamental right to same-sex marriage under the existing marriage statutes. It ruled that amending the law to allow same-sex marriage is a matter for the legislature, and that the courts cannot rewrite the Special Marriage Act to include same-sex couples. In its judgment, The Court acknowledged the necessity to stop LGBTQ+ discrimination while approving the establishment of a committee to research LGBTQ+ rights as well as legal safeguards. During the entire legal process Menaka Guruswamy and Jayna Kothari along with other notable lawyers represented the petitioners and the Union of India was defended by Attorney General R. Venkataramani

and Solicitor General Tushar Mehta. The October 2023 ruling brought closure to the extensive campaign by same-sex couples and their supporters for marital rights although it delegated marriage equality decisions to democratic institutions.

LEGAL QUESTIONS

The bench framed the issues into key legal questions. The court questioned whether the Constitution directly protects marriage choice rights for adults who wish to wed someone of the opposite or same sex. The question remains whether Articles 19 and 21 which protect freedom and personal liberty contain provisions that support same-sex marriage rights. Second, the Court looked at whether it could interpret marriage laws such as the Special Marriage Act and Hindu Marriage Act to include same-sex unions even though these laws did not explicitly contain such rights. The Court evaluated whether the current laws which exclude queer partnerships from marriage violate equality rights under Article 14 and non-discrimination rights under Article 15 by providing different treatment to lesbian, gay, and bisexual people without valid reasons. These questions also implicitly raised related issues, such as whether transgender marriage rights or adoption rights were affected.

PETITIONER'S ARGUMENTS

The petitioners argued vigorously that denying same-sex couples the right to marry infringes their constitutional freedoms. They said that the core principles of liberty and dignity include the freedom to choose one's life partner, as the Court recognized in cases like *Shafin Jahan*. On equality grounds, they noted that Sections 4(c) of the SMA (and parallel clauses in other marriage laws) impose an arbitrary gender-based rule – marriage is allowed only if one partner is male and the other female. This, they contended, creates an unjustified classification under Article 14, since it excludes queer people without any real connection to the law's purpose. They also invoked Article 15 (non-discrimination) to argue that sexual orientation and gender identity should be treated like protected characteristics; thus, laws that force them out of the “marriage fold” are unconstitutional.

The petitioners utilized international human rights standards and foreign court rulings as their sources of support. They referenced Article 16(1) of the Universal Declaration of Human Rights alongside Article 23(2) of the ICCPR which established marriage rights and presented *Obergefell v. Hodges* (US Supreme Court 2015) to demonstrate the growing recognition of

marriage equality as a worldwide human right. Finally, they asked the Court to resolve the conflict by either reading marriage statutes in a gender-neutral way or by striking down the discriminatory provisions. For example, they suggested substituting neutral terms like “spouse” in place of “husband” and “wife.” They emphasized that without reform, same-sex couples are denied all the legal benefits that marriage affords – adoption rights, pension and property rights, next-of-kin status, and so on. In sum, they urged the Court to secure for them the same legal recognition and protections enjoyed by heterosexual spouses.

RESPONDENT’S ARGUMENTS

The Union of India (through the Solicitor General and other advocates) responded that the petitioners were asking the Court to create a new legal institution by judicial decree. The government stressed that marriage as a social and legal institution has historically been defined by statute, not by fundamental rights, and it pointed to the Constitution’s Concurrent List (Entry 5), which grants Parliament the power to legislate on marriage. It argued that no provision of the Constitution expressly grants “a right to marry,” and that existing marriage laws themselves (like the SMA, Hindu Marriage Act, etc.) have clear gendered language. Changing those laws to include same-sex couples, the government contended, would amount to judicial lawmaking, which is beyond the Court’s power.

Government lawyers echoed cultural concerns as well. The ruling Bharatiya Janata Party administration had described arguments for same-sex marriage as “urban elitist” and emphasized that traditional Indian marriage is conceived as involving a husband, a wife, and children. In court, the Solicitor General noted practical difficulties: he said that recognizing same-sex marriage could affect some 160 Indian laws (on everything from adoption to inheritance), and thus only Parliament should undertake such sweeping reform. The state had acknowledged transgender rights and refused to deny LGBTQ+ people their complete rights yet it argued for legislative authority in deciding marriage equality rather than judicial intervention.

THE COURT’S DECISION (MAJORITY OPINION)

The Supreme Court delivered a multi-member judgment which provided a decisive answer to the following questions: the Constitution does not establish a specific right for individuals to marry any person just like it does with fundamental rights. The Court held unanimously that queer individuals do not enjoy an unqualified constitutional “right to marry”. All five judges

agreed that the petitioners' claim (of a guaranteed same-sex marriage right) must fail under current law. In practical terms, this meant that the Court upheld the validity of the existing marriage laws. Section 4(c) of the Special Marriage Act and similar provisions in personal laws were not struck down. The judges found no reason to read these statutes in a new way; as Justice Bhat's concurring opinion put it, the SMA "is neither unconstitutional nor can it be interpreted in such a manner so as to enable marriage between queer persons". In its reasoning, the Court reiterated a respect for the democratic process. Chief Justice Chandrachud's opinion emphasized that marriage is both a social institution and a legal one crafted by lawmakers. The Court explained that while Articles 14, 15, and 21 protect LGBTQ+ persons from discrimination in many spheres, there is no pre-existing fundamental right that demands marriage equality. The majority held that if society or Parliament wishes to extend marriage rights to same-sex couples, it is free to do so – but such a change goes beyond judicial authority. The Court noted that rewriting marriage laws would effectively require altering hundreds of provisions in different statutes (including inheritance, property, taxation, adoption, immigration rules, etc.). Therefore, it concluded that only the legislature can make the comprehensive changes needed to create same-sex marriage or similar institutions. Importantly, the Court also acknowledged that LGBTQ+ people "cannot be discriminated against" – in other words, it recognized the petitioners' larger equality concerns – but it chose to leave the remedy to legislative action.

SEPARATE OPINIONS

While all five judges agreed on the outcome (no constitutional guarantee of same-sex marriage), they wrote separately on what, if anything, the Court should do beyond that result. Chief Justice Chandrachud and Justice Sanjay Kishan Kaul issued opinions that stressed remedial steps. Both suggested that, as a partial relief, the Court could encourage or allow legal recognition of "civil unions" or partnerships for same-sex couples. Justice Kaul explicitly stated that formal civil unions would be a step toward equality, conferring many of marriage's rights without using the word "marriage". In particular, Chandrachud and Kaul emphasized that heterosexual marriage carries a "bouquet of rights" – such as inheritance rights, adoption permissions, spousal benefits in insurance and pensions, etc. – and argued that denying any legal framework for queer couples causes systemic inequality. They urged Parliament to consider civil-union legislation that would grant same-sex partners those benefits even if full marriage was not judicially created. Justice Ravindra Bhat (writing the majority opinion, joined

by Justices Kohli and Narasimha) disagreed with this approach. In a 3–2 decision on that issue, they refused to direct creation of civil unions or similar remedies. Justice Bhat’s opinion held that even a “civil union” is a novel institution which the Court could not impose; it reiterated that marriage equality must come through legislation. Bhat, Kohli, and Narasimha emphasized that the Court’s role is limited to enforcing existing rights and laws, not remaking social policy. They wrote that all the petitioners’ demands ultimately hinge on social reform and therefore “the matter is best left to Parliament” . Justice Narasimha presented his separate opinion which supported the arguments of the other justices. The judicial panel divided their opinions because two members supported legal recognition for queer partnerships yet the majority rejected any such proposal which left the matter for legislative resolution.

IMPACT OF THE RULING

The court decision establishes that same-sex marriage legalization does not exist in India at present. The current marriage legislation stands unchanged thus same-sex couples lack any lawful method to register their unions through these statutes. The court decision generates its own distinctive effects even though it does not establish new rights. It explicitly instructed the government to take steps to address the inequities identified. The Supreme Court directed the Union to set up a committee to study the many issues affecting queer couples – including inheritance, pensions, healthcare, immigration, and child custody – so that recommendations can be made on what legal rights should flow from such unions. In fact, the government has since complied: in April 2024, it issued a notification constituting a high-level committee (headed by the Cabinet Secretary) to examine “various issues relating to the queer community” as the Court directed.

The ruling has received widespread attention because it maintains the independence of governmental branches. Through its ruling the court established that marriage regulations belong to legislative authorities instead of constitutional requirements which sends the marriage equality debate back to India’s elected representatives. The legal decision recognizes that LGBTQ+ individuals should receive complete legal safeguards. The Court maintained that queer relationships should not face discriminatory treatment even though it declined to extend marriage rights. As one report summarized: India’s top court ruled that “parliament must decide” on same-sex marriage, while stressing that such unions “should not face discrimination” . The case has mobilized interest in legislative reform: activists and legal experts say the ball is now in Parliament’s court to consider civil unions, marriage amendments,

or other remedies. The Supreme Court's demand for a committee indicates that the state will at least study the question of extending benefits to same-sex couples.

CONCLUSION

Supriyo @ Supriya Chakraborty & Anr. v. Union of India marks a watershed moment in India's LGBTQ+ rights movement. The Court ruled (unanimously) that the Constitution does not itself entitle queer persons to marry and therefore declined to alter existing marriage laws to include same-sex couples. Through this action the court maintained existing legal standards but requested political bodies to review potential legislative changes. The petitioners did not succeed in obtaining same-sex marriage but the ruling established fundamental constitutional points that remain relevant. The judges agreed that marriage discrimination violates equality and dignity yet they stated courts lack the authority to solve it. In the end, the Supreme Court directed that the responsibility now lies with Parliament to decide on marriage equality. Meanwhile, it made clear that LGBTQ+ individuals should enjoy equal protection against discrimination. Through this case students and scholars can study how Indian constitutional law protects individual rights through democratic process since it both defends equality and liberty yet requires judicial restraint in creating broad social reforms. The court ruling blocks same-sex marriage rights immediately yet it could motivate lawmakers to develop alternative legislation which grants marriage-like benefits to queer couples.

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