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CASE COMMENTARY: SUPRIYO @ SUPRIYA CHAKRABORTY v. UNION OF INDIA

Divya Sharma

Case: Supriyo @ Supriya Chakraborty vs Union of India AIR 2023 SC 4904

Court: Supreme Court of India

Date of Decision: October 17, 2023

Bench: Five Judge Constitutional Bench (CJI D.Y. Chandrachud, Justice S.K. Kaul, Justice S.R. Bhat, Justice Hima Kohli and Justice P.S. Narasimha)

INTRODUCTION

When it comes to LGBTQ+ rights and same-sex partnerships in India, the landmark decision in *Supriyo @ Supriya Chakraborty v. Union of India*¹ (india, 2023) is one of the most significant constitutional judgments in recent Indian legal history. A five-judge Constitution Bench of the Supreme Court was asked to decide whether same-sex couples have a fundamental right to marry under the Indian Constitution. The Court unanimously ruled that no such unqualified right exists, and left the matter for Parliament to decide. While the judgment made important strides in affirming the dignity and rights of LGBTQ+ persons, it stopped short of granting marriage equality. This commentary argues that although the majority exercised appropriate judicial restraint, the minority opinions were more consistent with the Constitution's transformative spirit and with India's international human rights obligations.

The case is significant not only for what it decided, but for the rich constitutional debate it generated about the limits of judicial power, the meaning of equality, and the Court's role in protecting minority rights against majoritarian inaction.

FACTS OF THE CASE

In November 2022, two same-sex couples Supriyo Chakraborty & Abhay Dang, and Parth Mehrotra & Uday Raj Anand filed writ petitions before the Supreme Court. They challenged Section 4(c) of the Special Marriage Act, 1954 (SMA),² (india p. o., 1954) which allows civil marriages but defines the union using gender-specific terms (“male” and “female”), arguing

that this exclusion violated their fundamental rights under Articles 14 (Equality), 15 (non-discrimination), 19 (freedom of speech), and 21 (life and personal liberty) of the Constitution.³ (india c. a., 1950) Several similar petitions from High Courts across India were transferred and clubbed together, reflecting the widespread demand for marriage equality within the LGBTQ+ community.

PROCEDURAL HISTORY

On 13 March 2023, Chief Justice D.Y. Chandrachud referred the matter to a five-judge Constitution Bench, recognising that it raised substantial questions of constitutional law. After 10 days of extensive oral hearings concluding on 11 May 2023, the bench reserved judgment, which was finally delivered on 17 October 2023. Four separate but concurring opinions were written by the five judges.

LEGAL ISSUES RAISED

The Constitution Bench framed the following key legal questions for determination:

1. Does the Indian Constitution recognise a fundamental right to marry for same-sex couples?
2. Is the Special Marriage Act, 1954 unconstitutional in its exclusion of same-sex couples?
3. Can the Court interpret the SMA in a gender-neutral manner to include same-sex couples?
4. Does the State have a positive constitutional obligation to create a legal framework such as civil unions for same-sex couples?

ARGUMENTS OF THE PETITIONERS

The petitioners argued that denying marriage rights to same-sex couples was unconstitutional discrimination based on sexual orientation, violating Articles 14 and 15. They contended that Article 21 protects the right to marry, form a family, and live with dignity rights equally available to heterosexual couples. They urged the Court to read the Special Marriage Act in a gender-neutral manner, replacing terms like "husband" and "wife" with inclusive language. They also argued that protecting fundamental rights is a core judicial function, and the Court had both the power and duty to correct discrimination embedded in existing laws.

ARGUMENTS OF THE RESPONDENTS (UNION OF INDIA)

The Union of India argued that recognising same-sex marriage involves complex changes to multiple personal laws and statutory frameworks a task exclusively for Parliament, not the courts. It maintained that marriage has always been understood in India as a union between a biological man and woman, and changing this would require a fundamental restructuring of legal and social norms. The government also pointed out that there is no widespread public consensus on same-sex marriage in India, and that judicially imposing it could cause social disruption. Expanding the SMA's scope, it argued, would create serious legal inconsistencies across family law.

JUDGMENT AND REASONING

The bench delivered a split verdict on the core issues. On unanimous points, the Court affirmed that LGBTQ+ persons enjoy fundamental rights to identity, dignity, and freedom from discrimination, reaffirming the position established in *Navtej Singh Johar v. Union of India*⁴ (india s. c., 2018). The Court also unanimously recognised the right to cohabit and be in a relationship as protected under Article 21,⁵ (india c. a., the constitution of india, 1950) and held that the SMA was not unconstitutional in its original enactment.

MAJORITY (JUSTICES BHAT, KOHLI, AND NARASIMHA): The three judges held that interpreting the SMA in a gender-neutral manner would amount to judicial legislation, crossing the line between judicial interpretation and judicial lawmaking, and violating the doctrine of separation of powers. They further held that the Court cannot issue a mandamus directing the State to create a civil union framework that responsibility lies exclusively with the legislature.⁶ (bhat, 2023)

MINORITY (CJI CHANDRACHUD AND JUSTICE KAUL): These two judges held that the SMA could and should be read in a gender-neutral manner using the 'living tree' doctrine of constitutional interpretation. They further held that the State has a positive constitutional obligation to provide legal recognition to same-sex relationships through a framework such as civil unions, to ensure queer couples are not denied rights available to married couples in areas like succession, adoption, healthcare decisions, and joint finances.⁷ (CJI D.Y. chandrachud, 2023)

ANALYSIS AND CRITIQUE

STRENGTHS OF THE JUDGMENT: The unanimous affirmation of LGBTQ+ fundamental rights is genuinely historic. The Court's recognition of the right to form relationships under

Article 21, and its direction to the Union government to form a high-powered committee to examine the rights and entitlements of queer couples,⁸ (india s. c., 2023) create a constitutional mandate for executive action. These findings provide a strong legal foundation for advocacy against discrimination in employment, housing, healthcare, and public life, and mark a significant advance beyond the position in *Navtej Singh Johar* (2018).

CRITIQUE OF of THE MAJORITY: The majority's refusal to read the SMA in a gender-neutral manner is the most debated aspect of this verdict. The Supreme Court has historically taken bold interpretive steps to protect fundamental rights as it did in *Justice K.S. Puttaswamy v. Union of India*⁹ (india s. c., justice K.S puttaswamy v union of india, 2017) (2017), recognising privacy as a fundamental right, and in *Navtej Singh Johar* (2018), striking down Section 377 IPC. By contrast, the majority in *Supriyo* retreated to a position of strict institutional restraint, treating marriage law as a domain that can only be entered by Parliament.

The majority's approach also sits uneasily with India's international human rights obligations. Article 16(1) of the Universal Declaration of Human Rights¹⁰ (assembly, 1948) and Article 23(2) of the International Covenant on Civil and Political Rights¹¹ (assembly, 1966) both recognise the right to marry as a fundamental human right. Ironically, the CJI relied on these very instruments to prohibit conversion therapy calling it 'cruel, inhuman and degrading punishment' but did not apply them when deciding the right to marry. This selective use of international norms is difficult to reconcile with the Court's own principle, stated in *Vishaka v. State of Rajasthan*¹² (india s. c., vishaka v state of rajasthan, 1997) (1997), that international conventions "must be read into" fundamental rights to enlarge their content.

A further inconsistency is worth noting: Justice Bhat, who authored the majority opinion refusing to 'read words' into the SMA, delivered a broadly liberal interpretation of the Manual Scavengers Act just three days later in *Dr. Balram Singh v. Union of India*¹³ (india s. c., dr. balram singh v union of india, 2023) (2023). This contrast raises legitimate questions about whether consistent principles of statutory interpretation were applied in *Supriyo*.

THE MINORITY VIEW: The minority opinions of CJI Chandrachud and Justice Kaul are, in this commentator's view, more persuasive. Their use of the 'living tree' doctrine that statutes must be interpreted in light of evolving constitutional values is well-established in Indian jurisprudence. Reading the SMA in a gender-neutral manner would not have destroyed its essential character as a secular civil marriage law; it would have fulfilled its inclusive purpose. Their argument that the State has a positive constitutional duty to provide some form of legal

recognition to same-sex couples is also stronger from a rights-based standpoint: denying any legal recognition perpetuates real and ongoing discrimination.

SIGNIFICANCE AND LIMITATIONS: The judgment clearly identifies the legislative gap in India's marriage laws and places responsibility for reform on Parliament.¹⁴ (india s. c., supriyo @ supriya chakraborty v union of india, 2023) However, without marriage rights or a civil union framework, same-sex couples continue to face systemic discrimination they cannot adopt jointly, cannot claim spousal insurance or pension benefits, and have limited succession rights.¹⁵ (bhat, 2023) The majority acknowledged this discrimination but felt constrained by the perceived limits of judicial power. This leaves the LGBTQ+ community dependent on the political process for full equality a process that can be slow and vulnerable to majoritarian resistance.

CONCLUSION

Supriyo @ Supriya Chakraborty v. Union of India is a landmark but incomplete judgment. Its unanimous holdings on dignity, identity, and the right to relationship provide a strong constitutional base for future legal advocacy and are a genuine step forward for LGBTQ+ rights in India. The direction to form a committee to examine the rights of queer couples is a concrete mandate that must be followed up by the executive.

However, the majority's deferral of marriage equality and civil unions to Parliament at a time when legislative action seems uncertain is a significant missed opportunity. The minority opinions chart a more consistent path, one that aligns with the Court's own progressive precedents and with India's obligations under international human rights law. The path to full equality now lies in the legislative arena, where it remains vulnerable. Full legal recognition for same-sex couples will require either legislative will or a future, bolder judicial intervention one that finally builds on the constitutional foundations laid, but not fully realised, in this historic decision.