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When the Court Waited for Parliament: Supriyo and the Dilution of Article 21

Krishna Manoj

Introduction

Can a fundamental right be left to the mercy of a majoritarian Parliament? This is the troubling constitutional question that lies at the heart of *Supriyo v. Union of India* (2023)¹. Confronted with a historic opportunity to expand the secular architecture of the Special Marriage Act, 1954², the Supreme Court instead chose a path of hyper-technical judicial deference. While unanimously acknowledging the systemic discrimination faced by LGBTQIA+ individuals, the majority bench ultimately held that the "right to marry" is a statutory privilege rather than a fundamental constitutional right. This commentary examines how the Court erroneously weaponized the doctrine of "Separation of Powers" to shirk its foundational duty as the ultimate guarantor of Part III rights, leaving India's sexual minorities stranded in a legal vacuum.

The case comment critiques a singular, deeply significant decision that abruptly halted a decades-long trajectory of transformative constitutionalism in India. Rather than upholding the progressive precedents that expanded personal freedoms, the majority judgment actively diluted the constitutional protections guaranteed under Article 21. In treating marriage as nothing more than a statutory creature, the Court drew a line in the sand—an artificial, harmful barrier separating private intimacy from public recognition. The significance of this critique lies in exposing the internal logical inconsistencies of the ruling and analysing how the bench's self-imposed restraint inflicts material and stigmatic harm upon queer citizens. To uncover these inconsistencies, thus this commentary maps out the case to uncover these inconsistencies thus this commentary maps

¹ *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) SCC Online SC 1348

² The Special Marriage Act, No. 43 of 1954, India Code

out the case factual background and fractured holding before diving into a critical evaluation of the majority's reasoning

Facts

The litigation arose from a cluster of writ petitions filed under Article 32 of the Constitution of India by various same-sex and queer couples, social activists, and human rights organizations. The primary petitioners, Supriyo Chakraborty and Abhay Dang, along with several others, sought legal recognition for marriages between non-heterosexual couples.

The core of the petitioners' legal challenge was aimed directly at the Special Marriage Act, 1954 (SMA). The SMA was originally enacted by Parliament as a secular, civil marriage law designed to permit marriages irrespective of religion or caste. The petitioners argued that the gender-specific language of the SMA—which explicitly employs terms like "male," "female," "husband," and "wife" throughout its provisions—violates the fundamental rights of queer couples. Specifically, they asserted that the exclusion of same-sex marriages from the ambit of civil law directly contravenes Article 14 (Equality before Law), Article 15 (Prohibition of Discrimination), Article 19 (Freedom of Speech and Expression), and Article 21 (Protection of Life and Personal Liberty) of the Constitution.

The Union of India strongly opposed the petitions. The state's primary arguments rested upon institutional competence and social policy. The Union contended that the legal definition of marriage is inherently anchored in heteronormative tradition and that any alteration to its socio-legal architecture falls strictly within the domain of the legislature. They argued that expanding the definition of marriage would cause a cascading effect, disrupting over a hundred separate statutes governing succession, adoption, maintenance, and tax, thereby requiring extensive legislative redrafting.

Decision

This section outlines the final holding, the *ratio decidendi*, the notable *obiter dicta*, and the split opinions within the bench. The Supreme Court of India referred the matter to a five-judge Constitution Bench, which ultimately delivered a fractured 3:2 split decision denying marriage equality to queer couples.

The legal rule essential to the majority decision—formulated by Justice S. Ravindra Bhat, Justice Hima Kohli, and Justice P.S. Narasimha—is that there is no fundamental constitutional right to marry under the Indian Constitution. The majority held that marriage is a statutory institution created and regulated by the state; hence, the power to grant legal recognition to new forms of marriage belongs exclusively to Parliament and state legislatures under Entry 5 of the Concurrent List. Consequently, the majority refused to read down or alter the gendered language of the SMA, asserting that doing so would amount to the judiciary stepping into the role of the legislature and rewriting statutory architecture.

In contrast, the dissenting minority opinions, authored by Chief Justice D.Y. Chandrachud and Justice Sanjay Kishan Kaul, presented a vastly different interpretation. While the minority also agreed that the Court could not directly rewrite the SMA due to institutional limitations, they held that the right to enter into a "civil union" or "abiding cohabitational relationship" is protected under Articles 19 and 21. The minority explicitly directed the state to create a legal framework to recognize these civil unions and grant queer couples the accompanying material benefits.

Crucial *obiter dicta* emerged across all five opinions. Unanimously, all five judges explicitly recognized that LGBTQIA+ persons face deep-seated systemic discrimination and possess the right to be free from violence and harassment. The entire bench affirmed the right of queer individuals to choose their partners and live together in peace, yet the majority decoupled this choice from any legally recognized status or institutional protection.

Analysis

1. The Internal Contradiction of Article 21 and the Departure from Precedent

The decision in *Supriyo* represents an abrupt, regressive departure from the Court's own established jurisprudence on individual autonomy. In *Navtej Singh Johar v. Union of India*³, the Court successfully decriminalized homosexuality and promised queer individuals full, uninhibited citizenship. Furthermore, in *Shafin Jahan v. K.M. Asokan*⁴ and *Lata Singh v. State of U.P.*⁵, the Court held unequivocally that the right to marry a person of one's choice is an integral component of Article 21.

The majority in *Supriyo* attempted a hyper-technical, artificial distinction: they upheld the "right to choose a partner" as fundamental but stripped the "right to marry" of constitutional protection, classifying it as a mere statutory privilege. This reasoning is internally contradictory. If the choice of a life partner is a fundamental expression of an individual's autonomy and dignity under Article 21, the legal manifestation of that choice cannot be completely insulated from constitutional review. By decoupling the choice from its institutional validation, the Court has left queer citizens with a hollowed-out right to intimacy in private, while ensuring they remain structurally excluded in public.

2. The Separation of Powers Used as a Judicial Shield

The majority heavily relied on the doctrine of the separation of powers, arguing that restructuring the SMA to accommodate queer couples would result in a polycentric crisis affecting dozens of other personal laws. However, this defence conflicts directly with the principles of transformative constitutionalism laid down in *National Legal Services Authority (NALSA) v. Union of India*⁶. In *NALSA*, the Court did not wait for Parliament to enact a statutory framework before recognizing the rights of transgender persons; it read the Constitution expansively to protect a marginalized minority and directed the executive to implement those changes.

³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁴ *Shafin Jahan v. K.M. Asokan*, (2018) 16 SCC 368

⁵ *Lata Singh v. State of U.P.*, (2006) 5 SCC 475.

⁶ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

By retreating into rigid judicial deference in *Supriyo*, the Court abandoned its historic role as the counter-majoritarian institution responsible for safeguarding fundamental rights from legislative inaction or majoritarian prejudice. When a statutory framework like the SMA systematically denies an entire class of citizens equal access to state-sanctioned benefits based on sexual orientation, it creates an unconstitutional classification that the judiciary is duty-bound to correct under Article 14.

3. Material Harm and the Illusion of Dignity

The court's decision leaves critical questions unanswered and creates deep systemic vulnerabilities. While all five judges utilized extensive, empathetic rhetoric acknowledging the dignity of queer individuals, the majority's refusal to act leaves these couples entirely exposed to severe material and structural harm. Denying the legal status of marriage or a civil union bars queer couples from essential rights regarding spousal inheritance, joint bank accounts, medical co-decision making during crises, and spousal insurance benefits.

Additionally, by upholding regulations that restrict unmarried couples from joint adoption, the decision solidifies a rigid form of bionormativity that excludes non-traditional families. The ruling essentially offers compassion without codification, providing a rhetorical shield while withholding any enforceable legal weapon.

Conclusion

Ultimately, *Supriyo v. Union of India* stands as an inappropriate and deeply flawed judgment that fails to conform to the progressive evolution of Indian constitutional law. It creates an unsustainable legal paradigm wherein a minority group is granted the right to exist but denied the right to belong. By shifting the burden of fundamental rights protection entirely onto the legislative branch, the Supreme Court has compromised its own legacy of human rights expansion. The judgment does not mark the end of the struggle for queer liberation in India, but it represents a tragic, institutional pause—a moment when the highest court possessed the legal tools to grant true equality, but chose instead to wait for Parliament.