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## SUPRIYO V. UNION OF INDIA (2023): A CASE COMMENTARY ON SAME-SEX MARRIAGE AND JUDICIAL RESTRAINT

~ Gagandeep Kaur

**Case title:** Supriyo @ Supriya Chakraborty vs. Union Of India

**Court:** Supreme Court of India

**Citation:** 2023 INSC 920

**Bench:** Chief Justice D.Y. Chandrachud, Justice Sanjay Kishan Kaul, Justice S. Ravindra Bhat, Justice Hima Kohli, and Justice P.S. Narasimha

**Date of Decision:** October 17, 2023

### 1. INTRODUCTION

The Apex Court of India's judgement in *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*<sup>1</sup> is a pivotal yet highly contentious development in the country's evolving jurisprudence on LGBTQIA+ rights. The decision has attracted considerable scholarly, judicial, and public attention, reflecting the broader constitutional debate surrounding the recognition of marriage equality and the scope of fundamental rights afforded to sexual and gender minorities. This judgement is marked by a complex division on key issues, presenting a nuanced, though contested perspective on the interplay between constitutional rights, societal change, and the separation of powers. Historically, queer individuals in India have faced persistent legal and social discrimination, with limited recognition of their constitutional rights. Landmark decisions in *Naz Foundation*, *NALSA*, and *Navtej Singh Johar* marked significant progress by decriminalizing consensual same-sex relations, recognizing the rights and dignity of transgender persons, and affirming sexual orientation as a constitutionally protected attribute.<sup>2</sup> Nevertheless, these advances have not translated into full legal recognition or equal access to rights, leaving the promise of substantive equality unfulfilled.

### 2. FACTS OF THE CASE

*Supriyo @ Supriya Chakraborty & Anr. v. Union of India* arose from petitions filed by same-sex couples seeking legal recognition of their marriages. The lead petitioners, Supriya Chakraborty and Abhay Dang, a

<sup>1</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920.

<sup>2</sup> See *Naz Foundation v. Government of National Capital Territory of Delhi*, (2009) 111 DRJ 1 (Delhi HC); *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

couple from Hyderabad in a relationship since 2012, approached the Supreme Court in November 2022. Another couple, Parth Phiroze Mehrotra and Uday Raj Anand, filed a connected petition. Eventually, around 20 writ petitions and transfer cases involving 52 petitioners from the LGBTQIA+ community were tagged together.

The petitioners primarily challenged the Special Marriage Act, 1954 (SMA)<sup>3</sup>, particularly Section 4(c), which requires marriage between a “male” and a “female.” They also contested similar restrictive provisions under the Foreign Marriage Act, 1969<sup>4</sup>. They argued that these exclusions violated their fundamental rights under Articles 14, 15, 19, and 21 of the Indian Constitution. The petitioners sought a gender-neutral interpretation of the statutes or a declaration of unconstitutionality so that queer couples could marry, jointly adopt children under the Juvenile Justice Act<sup>5</sup> and CARA Regulations<sup>6</sup>, inherit property, and access spousal benefits such as insurance, succession rights, and medical decision-making.

The Union of India opposed the petitions, contending that marriage is traditionally and statutorily understood as a heterosexual institution. It submitted that any change in the definition of marriage involved complex social, cultural, and religious considerations that should be addressed by Parliament rather than the judiciary.

On 13 March 2023, a three-judge Bench referred the matter to a five-judge Constitution Bench. After extensive hearings, the Constitution Bench reserved judgment on 11 May 2023 and delivered its verdict on 17 October 2023.

### 3. LEGAL ISSUES RAISED

- a) Whether there exists a fundamental right to marry under the Indian Constitution, particularly for same-sex couples, flowing from Articles 14, 15, 19, and 21?
- b) Whether the exclusion of same-sex marriages under Section 4(c) of the Special Marriage Act, 1954, violates the rights to equality and non-discrimination?
- c) Whether the Court could read down or interpret gender-specific terms in the SMA and allied laws in a gender-neutral manner to include queer couples?
- d) Whether non-recognition of same-sex unions denies queer couples essential civil rights such as joint adoption, inheritance, and spousal benefits?
- e) Whether the recognition of same-sex marriage or civil unions falls within the domain of the judiciary or is exclusively a matter for Parliament?

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<sup>3</sup> Special Marriage Act, No. 43 of 1954.

<sup>4</sup> Foreign Marriage Act, No. 33 of 1969.

<sup>5</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016.

<sup>6</sup> Central Adoption Resource Authority, *Adoption Regulations*, 2022.

#### 4. ARGUMENTS FROM THE PETITIONERS

The petitioners advanced a compelling constitutional case for the recognition of same-sex marriage. They contended that the right to marry a person of one's choice is a fundamental right implicit in Articles 14, 15, 19, and 21 of the Indian Constitution.

Relying on *Navtej Singh Johar*<sup>7</sup> and *Puttaswamy*<sup>8</sup>, the petitioners argued that Article 21<sup>9</sup> encompasses the rights to dignity, privacy, autonomy, and the freedom to form intimate relationships and family units. They submitted that denial of legal recognition to same-sex unions forces queer couples to live with persistent stigma and legal insecurity, violating their constitutional dignity.

Under Article 14, they challenged Section 4(c) of the Special Marriage Act, 1954<sup>10</sup>, which restricts marriage to "male" and "female," as manifestly arbitrary and lacking any reasonable nexus with the Act's secular objective. They further argued that the exclusion constitutes discrimination on the basis of sexual orientation, which is inextricably linked to discrimination on the ground of "sex" under Article 15. Invoking the doctrine of indirect discrimination, they highlighted the disproportionate impact on queer persons.

The petitioners also invoked Article 19(1)(a) and (c)<sup>11</sup>, asserting that marriage involves expressive conduct and the freedom of association. Practically, non-recognition deprived them of vital rights including joint adoption, inheritance, succession, spousal benefits, insurance, and medical decision-making. They urged the Court to interpret the SMA in a gender-neutral manner by reading "husband" and "wife" as "spouse," or to strike down the offending provisions, emphasizing the secular nature of the Act and the judiciary's duty to enforce fundamental rights in the face of legislative inaction.

#### 5. ARGUMENTS FROM THE RESPONDENT

The Union of India strongly opposed the recognition of same-sex marriage. It submitted that marriage, both under Indian law and societal understanding, is inherently a union between a biological male and a biological female. This definition is consistently reflected in personal laws as well as the secular Special Marriage Act, 1954 (SMA).<sup>12</sup>

The respondents contended that the Constitution does not recognise a fundamental right to marry. While Article 21 protects individual autonomy, privacy, and the right to choose a partner, it does not impose a positive

<sup>7</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>8</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

<sup>9</sup> INDIA CONST. art. 21.

<sup>10</sup> Special Marriage Act, No. 43 of 1954, § 4(c).

<sup>11</sup> INDIA CONST. art. 19(1)(a), (c).

<sup>12</sup> Special Marriage Act, No. 43 of 1954.

obligation on the State to legally recognise every intimate relationship as marriage. Marriage, being a statutory and social institution, falls squarely within the domain of legislative policy.

Regarding the SMA, the Government argued that the Act was enacted to facilitate inter-faith and inter-caste heterosexual marriages. The classification based on “male” and “female” in Section 4 was deliberate, reasonable, and did not violate Articles 14 or 15. The respondents cautioned that any judicial rewriting of the statute would amount to judicial legislation and violate the separation of powers. They emphasised that such far-reaching changes, with implications for adoption, succession, and personal laws in India’s diverse society, must be decided by Parliament after democratic deliberation.

## 6. ANALYSIS OF THE JUDGEMENT

The Supreme Court’s judgment exemplifies judicial restraint in the domain of socio-legal reform. In a fractured 3:2 verdict delivered on 17 October 2023, the five-judge Constitution Bench unanimously held that there is no unqualified fundamental right to marry under the Indian Constitution.<sup>13</sup> Marriage, the Court observed, is essentially a statutory and social institution rather than a pre-existing constitutional right. This finding effectively rejected the petitioners’ claim that the exclusion of same-sex couples from the Special Marriage Act, 1954 (SMA) violated Articles 14, 15, 19, and 21.<sup>14</sup>

The majority opinion authored by Justice S. Ravindra Bhat (joined by Justices Hima Kohli and P.S. Narasimha) adopted a formalistic and deferential approach. It upheld the validity of Section 4(c) of the SMA, holding that the heterosexual framework represented a permissible classification consistent with the Act’s legislative intent of facilitating inter-faith and inter-caste marriages.<sup>15</sup> The majority refused to read down gendered terms such as “husband” and “wife” as “spouse,” reasoning that such an exercise would amount to judicial legislation and encroach upon Parliament’s domain. It emphasised the doctrine of separation of powers, noting that questions involving social policy, cultural values, and redefinition of marriage ought to be resolved through democratic deliberation.

In contrast, the minority opinion led by Chief Justice D.Y. Chandrachud (with Justice Sanjay Kishan Kaul) was more progressive. While agreeing that there is no fundamental right to marry, it recognised a right to enter into abiding intimate unions under Article 21.<sup>16</sup> The minority issued directions for protection against discrimination and harassment of queer couples and recommended the formation of a high-powered committee to examine

<sup>13</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920, ¶¶ 21-30 (Bhat, J.).

<sup>14</sup> INDIA CONST. arts. 14, 15, 19 & 21.

<sup>15</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920, ¶¶ 40-48 (Bhat, J.).

<sup>16</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920, ¶¶ 136-139 (Chandrachud, C.J.).

civil rights and benefits.<sup>17</sup> However, even the minority stopped short of directing the creation of a civil union regime or compelling legislative action on marriage equality.

The judgment advances queer dignity by reaffirming autonomy in intimate relationships and providing limited safeguards. Nevertheless, it has drawn criticism for deferring substantive equality and failing to build robustly upon the transformative jurisprudence of *Navtej Singh Johar*.<sup>18</sup> By prioritising institutional caution over positive rights enforcement, the Court has underscored the limits of judicial intervention in deeply contested social institutions. While pragmatic in India's pluralistic democracy, the verdict leaves the momentum for marriage equality firmly with the legislature.

This approach reinforces the central theme of judicial restraint but raises questions about the Court's role as the guardian of constitutional morality in an evolving society.

## 7. CONCLUSION

The Supreme Court's verdict in *Supriyo v. Union of India*<sup>19</sup> marks a significant, albeit incremental, milestone in India's queer rights jurisprudence. While unanimously affirming the dignity and autonomy of LGBTQ+ persons, the Court exercised notable judicial restraint by declining to recognize a fundamental right to marry or rewrite the Special Marriage Act.<sup>20</sup> This approach upholds the separation of powers but leaves the realization of full marital equality to the legislature. The judgment reinforces constitutional protections for intimate unions while highlighting the limits of judicial intervention in deeply social institutions. Ultimately, *Supriyo* serves as a call for democratic deliberation and legislative reform to bridge the gap between constitutional promises of equality and the lived realities of queer citizens in India.

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<sup>17</sup> Id. ¶¶ 245-247.

<sup>18</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>19</sup> *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920.

<sup>20</sup> Special Marriage Act, No. 43 of 1954.