

**CASE COMMENT: SUPRIYA CHAKRABORTY AND ANR. V. UNION OF INDIA**

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**Prithve R\* Diviyaa Sri R\* Thendral A\*****INTRODUCTION**

Supriya Chakraborty v. Union of India<sup>1</sup> is a landmark legal case that brought to the forefront significant issues related to the recognition of same-sex marriages and the rights of the LGBTQIA+ community in India. The legal process underwent a significant transformation with the landmark judgment in Navtej Singh Johar v. Union of India<sup>2</sup>, where Section 377 of the Indian Penal Code<sup>3</sup> was decriminalized in 2018. With decriminalization of section 377, the rights of LGBTQ individuals were recognized and affirmed, including the right to marry. This pivotal decision marked a departure from the colonial-era law that criminalized consensual same-sex relations this brought an expectation and anticipation regarding the marital rights of the LGBTQ community. This case revolves around the constitutional validity of certain provisions, particularly those in the Special Marriage Act, 1954, and addresses broader questions concerning the fundamental rights of individuals in non-heteronormative relationships. However, the judgement resulted in a split opinion acknowledging the right to form a union though not the right to marry. Several questions were raised about the judiciary's role in societal transformation its connection with the legislative policy and interpretive processes in constitutional adjudication. Thus, the case acted as a specific parameter for various legal paradoxes.

**FACTS OF THE CASE**

November 2022, Supriyo Chakraborty before the hon'ble Supreme Court filed a petition seeking legal recognition of same-sex marriages under the Special Marriage Act, 1954. Supriyo faced challenges leading a private marriage ceremony during the COVID-19 pandemic. They were denied legal rights, despite living like as married couple Two same-sex couples, including Supriyo and Abhay Dang, filed petitions challenging the SMA's constitutionality on 14<sup>th</sup> of November 2022. The Supreme Court directed the Union to respond on 25<sup>th</sup> November 2022,

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<sup>1</sup> Supriya Chakraborty vs Union Of India, 2023 INSC 920: W.P.(C) No. 1011/2022;

<sup>2</sup> Navtej Singh Johar v. Union of India, (2012) 6 SCC 1

<sup>3</sup> Indian Penal Code 1860, Sec 377

and transferred similar cases from Delhi and Kerala High Courts on 6<sup>th</sup> January 2023. On March 13, 2023, a three Judge Bench referred the case to a five-Judge Constitution Bench. A five-judge Constitution Bench, consisting of Chief Justice of India D.Y. Chandrachud, Justice S.K. Kaul, Justice S.R Bhat, Justice Hima Kohli and Justice P.S. Narasimha, heard 20 connected cases brought by 52 petitioners. After hearings starting on April 18, 2023, the Bench reserved judgment on May 11, 2023 and on 17<sup>th</sup> October 2023, the 5-Judge Bench pronounce its verdict on petitions seeking marriage equality for LGBTQIA+ persons. The Bench unanimously held that there was no fundamental right to marry and that the Court could not recognize LGBTQIA+ persons' right to marry under the SMA.

### LEGAL ISSUES

- Is there a fundamental right to marry?
- Do queer couples have a right to enter into a “civil union”?
- Is the Special Marriage Act, 1954 unconstitutional for excluding non-heterosexual couples?
- Can the right to marry be read into the provisions of the Special Marriage Act, 1954?
- Can unmarried non-heterosexual couples adopt?
- Can transgender person's in heterosexual relationship marry under existing laws?

### OBSERVATIONS OF THE SUPREME COURT

The Supreme Court unanimously held that the constitution does not expressly recognize a right to marry. The Petitioners placed reliance on *Shafin Jahan v Asokan K.M*<sup>4</sup> and *Shakti Vahini v Union of India*<sup>5</sup> to argue that the marriage was a fundamental right. The Court clarified that in *Shafin Jahan* and *Shakti Vahini*, the Court held that no State or non-State entity can interfere with their right to marry a person of their choice. The statutory right to marry is only enforceable in relationships which are already approved by the Union government in pursuance of the power conferred by Articles 245<sup>6</sup> and 246<sup>7</sup> read with Entry 5 of the Concurrent List. The

<sup>4</sup> *Shafin Jahan v Asokan K.M*, (2011) 10 SCC 781

<sup>5</sup> *Shakti Vahini v Union of India* (2018) 7 SCC 192

<sup>6</sup> Constitution of India 1950, Art 245

<sup>7</sup> Constitution of India 1950, Art 246

Chief Justice Chandrachud reasoned that if the right to marry were a fundamental right, it would imply that "even if Parliament and the State legislatures have not created an institution of marriage in exercise of their powers under Entry 5 of the Concurrent list, they would be obligated to create an institution because of the positive postulate encompassed in the right to marry" which is unacceptable.

The court by 3:2 majority decision held that the queer couples do not possess the right to enter into a civil union. The Chief Justice of India (CJI) and Justice S.K. Kaul held that there is a right to enter into a lasting civil union, stemming from Articles 19<sup>8</sup>, 21<sup>9</sup>, and 25<sup>10</sup>. They observed that the state has an obligation to recognize such relationships to give meaning to these rights. However, the majority, consisting of Justices Ravindra Bhat, Hima Kohli, and P.S. Narasimha, disagreed with this interpretation, contending that the right to a civil union or a lasting cohabitational relationship does not confer a legally enforceable status under Fundamental Rights. Justice Bhat, representing the majority opinion, differentiated between the right to relationship and the right to union as proposed by the CJI. While the Right to Relationship encompasses the freedom to choose a partner, cohabit, enjoy physical intimacy, and live according to personal preferences, Justice Bhat did not attribute these rights to Articles 19 or 25. He placed them within the broad scope of Article 21, citing precedents such as *Navej Johar vs. Union of India* and others. However, Justice Bhat disagreed with the idea that a civil right to a union necessitates a new law, arguing that creating a social institution requires an entirely different legal framework with new rights and obligations. Regarding directing the state to recognize civil unions, Justice Narasimha argued that it violates the doctrine of separation of powers.

The majority decision held that the challenge to the constitutionality of Special Marriage Act, 1954 must fail. Justice Bhat reasoned that "as long as an objective [of a law] is clearly discernible, it cannot be attacked merely because it does not make a better classification." It was pointed out that the sole intention of the SMA was to facilitate marriage between persons professing different faiths. The Court noted that the SMA cannot be condemned on the ground of irrelevance, due to passage of time since the rationale remains just as applicable today as it was when the law was enacted. The Court through Chief Justice Chandrachud observed that

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<sup>8</sup> Constitution of India 1950, Art 19

<sup>9</sup> Constitution of India 1950, Art 21

<sup>10</sup> Constitution of India 1950, Art 25

striking down Section 4 would undermine the progressive purpose of the SMA, which was enacted to facilitate marriages between individuals of different religions and castes. Such a decision would regress India to a pre-independence era of social inequality and religious intolerance, forcing the Court to choose between eliminating one form of discrimination while permitting another.

The Chief Justice Chandrachud observed that if the Court reads words into the provisions, it would intrude into legislative territory, a task beyond its institutional limits. Judicial legislation is impermissible, and the Court must be cautious not to overstep into the legislative domain. Determining the SMA's unconstitutionality due to under-inclusivity would be futile given the Court's limited power to provide a remedy. The decision on changes to the legislative regime should be left to Parliament, which has access to diverse information and represents various viewpoints.

The court by 3:2 majority decision held that unmarried non-heterosexual couples are not eligible to adopt. CJI Chandrachud, in the minority opinion, referred to Section 57 of the JJ Act<sup>11</sup>, noting that it doesn't expressly prohibit unmarried couples from adopting as it uses the term "spouse" rather than "married couples." Contrarily, Justice Bhat, leading the majority, disagreed with CJI Chandrachud. He held that Section 57(2) specifically pertains to joint adoption by married couples and interpreting it otherwise is not based on established principles of interpretation. The requirement of marriage for adoption is aimed at protecting the "best interest of the child" in cases where the marital relationship breaks down, rather than enabling adoption for all. Marriage is seen as a framework that ensures that if one parent abandons the relationship, the other can still provide for themselves and the child, a remedy not available to unmarried couples without legal recognition. The Court further unanimously held that the transgender persons in heterosexual relationships are entitled to marry under existing laws including personal laws. These laws, framed in the context of heterosexual relationships, accommodate unions involving transgender individuals, such as a transwoman with a transman or a transwoman with a cisgender man. The Chief Justice Chandrachud observed that any interpretation of marriage laws contrary to these principles would be inconsistent with Section 3 of the Transgender Persons Act<sup>12</sup> and Article 15 of the Constitution<sup>13</sup>.

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<sup>11</sup> Juvenile Justice (Care and Protection of Children) Act, 2015, Sec 57

<sup>12</sup> The Transgender Persons Act, 2019, Sec 3

<sup>13</sup> Constitution of India 1950, Art 15

## DECISION

The Supreme Court laid the following propositions:

- The Court unanimously held that the right to marry is not a fundamental right and the denial of the "right to marry" cannot be challenged under Articles 19(1)(a) or 21 of the Constitution.
- The Court upheld the constitutional validity of Sections 4 of the Special Marriage Act, 1954, and the Foreign Marriage Act, 1969. - In a 3:2 split, Section 57(2) of the Juvenile Justice Act, 2015, restricting adoption rights to "couple[s]," refers only to married couples. Regulation 5(3) of the Adoption Regulations, 2022, prescribing "two years of stable marital relationship" for adoption eligibility, is deemed intra vires the JJ Act.
- A combined reading of Articles 19(1)(c), 19(1)(e), 21, and 25, does not warrant the imposition of a "positive obligation" on the state to recognize a "civil union" of same-sex couples.
- Transgender persons in heterosexual relationships can marry under personal law and the SMA.

To address violence and discrimination faced by queer individuals, Chief Justice Chandrachud issued various directions, including ensuring access to goods and services without discrimination, sensitizing the public about the naturalness of queer identity, establishing hotlines and safe houses, banning conversion therapy, and prohibiting forced operations on intersex children. The court also directed the police to refrain from harassing queer couples and issued guidelines for preliminary investigations before registering FIRs against them.

Additionally, a high-powered committee chaired by the Cabinet Secretary was tasked with defining entitlements and rights for queer persons. The court recommended considerations such as recognizing queer partners in ration cards, permitting joint bank accounts, and ensuring access to deceased partners' bodies for last rites. Justice Bhat emphasized that the State should address the indirect discriminatory impacts on queer couples in terms of benefits and entitlements. He proposed the establishment of a high-powered committee to comprehensively examine relevant factors.

Furthermore, the court urged the State to consider the circumstances of de facto families where single individuals adopt, ensuring they are not excluded from benefits available to adopted children of married couples. The court underscored the need to protect the choice of queer and LGBTQ couples to cohabit, ensuring freedom from violence or coercion. The directions related to transgender persons were emphasized as part of, and not diminishing, previous judgments.

## **ANALYSIS**

The analysis of the Supreme Court's judgment in *Supriya Chakraborty v. Union of India* reveals a cautious and nuanced approach to complex legal and societal issues. The Court, in refraining from declaring the right to marry as a fundamental right, demonstrates a commitment to avoiding expansive interpretations and recognizes the primary role of the legislature in recognizing new rights.

The distinction made between recognizing relationships and conferring legally enforceable status is notable, emphasizing that acknowledgment by the state doesn't necessarily translate into a constitutionally enforceable fundamental right. This approach reflects a prudent consideration of the potential implications and consequences of recognizing new rights within the legal framework.

The validation of the Special Marriage Act, 1954, underscores the Court's respect for original legislative intent, indicating that while societal norms may evolve, laws serving their intended purpose should not be hastily struck down. This reflects a judicial understanding of the delicate balance between adapting to societal changes and preserving legal structures that fulfill specific objectives.

The majority's stance on adoption rights for unmarried non-heterosexual couples reflects a nuanced understanding of family structures, balancing societal norms with the perceived welfare of the child. This decision recognizes the evolving nature of family dynamics and strives to strike a balance between traditional norms and the changing landscape of familial relationships.

The affirmation of marriage rights for transgender persons in heterosexual relationships aligns with principles of inclusivity, recognizing diverse relationship dynamics. The Court's proactive approach in recommending a high-powered committee and issuing directions to address violence and discrimination against queer individuals showcases judicial recognition of its role in promoting inclusivity and protecting marginalized communities.

The majority's reluctance to judicially legislate or impose positive obligations on the state demonstrates a commitment to limited judicial activism. This cautious approach acknowledges the separation of powers and leaves room for ongoing legislative deliberations and public discourse on issues related to marriage, civil unions, and LGBTQ+ rights in India. Overall, the judgment strikes a delicate balance between tradition and progress, providing a framework for navigating evolving societal norms within the legal landscape.

## **CONCLUSION**

The nuanced decision of the Supreme Court in Supriya Chakraborty case, while refraining right to marry as a fundamental right which have a far-sighted inference for the LGBTQIA+ community. This specific case holds both a challenge and a promise for the community. While discriminations imposed on the queer individuals the court proposed a measure for the protection and put an end for recognizing civil unions as “positive obligation” of the state. The significance lies on the catalyst for ongoing discussions on LGBTQIA+ rights in the legal arena. The ultimate hope for LGBTQIA+ rights rests with the parliament whereas the court acknowledges the limitation of judicial intervention in matter relating to legislative action. Thus the case urges the lawmakers to address human rights and ensure equality and dignity for all, regardless of sexual orientation.