
THE CONSTITUTIONAL PROMISE OF EQUALITY AND THE JUDICIAL REFUSAL TO RECOGNIZE SAME-SEX MARRIAGE

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ABSTRACT

This case critically examines the Supreme Court's decision which denied legal recognition to same-sex marriage in India. It analyzes the facts, issues, arguments and judicial reasoning of the case while evaluating its impact on LGBTQIA+ rights. The case highlights key concerns arising from the judgment, including the denial of marriage equality, discriminatory adoption regulations under CARA, exclusion from financial and succession benefits, and the continued marginalization of queer families. While the Court reaffirmed the dignity, autonomy and constitutional protection of LGBTQIA+ persons, its refusal to grant substantive legal rights has been widely criticized as a missed opportunity to advance equality and constitutional morality. The case emphasizes the need for legislative and judicial reforms to ensure full legal recognition and equal rights for queer individuals and couples in India.

INTRODUCTION

Supriyo & Ors. V. Union of India (2023)¹ is a landmark Constitution Bench decision where the Supreme Court of India considered whether queer persons possess a fundamental right to marry under the Constitution. Decided by a 3:2 majority on October 17, 2023, this case arose from multiple petitions were filed by a diverse group of petitioners, including same-sex couples, transgenders persons, LGBTQIA+ activist, and various governmental organizations seeking recognition of same-sex marriages under the Special Marriage Act, 1954² and the Foreign Marriage Act, 1969³.

The majority judgement given by justice (Bhat, Kohli, and Narsimha, JJ.) held that there is no fundamental right to marry under the Constitution of India and that the Special Marriage Act cannot be interpreted in a gender-neutral manner to include same-sex couples, as such judicial rewriting would exceed the limits of constitutional interpretation and encroach upon legislative domain. However, the minority judgement by justice (Chandrachud, C.J., and Kaul, J.) recognized that queer persons possess a constitutional right to enter into intimate unions under Article 21⁴, that discrimination based on sexual orientation violates Article 15⁵, and that the State must protect queer couples from coercion and violence. The Court directed the Union Government to constitute a high-powered committee to examine and delineate the scope of entitlements including joint bank accounts, succession rights, inheritance rights, medical decision-making, tax benefits, and other benefits available to queer unions. While declining to legalize same-sex marriage, the judgment significantly expanded the discourse on queer rights by recognizing “atypical families” and “chosen families,” affirming that queerness is neither Western nor urban-elite but historically indigenous to India, and establishing that constitutional morality must prevail over majoritarian social morality.

BACKGROUND

The judgment traces the legal journey preceding Supriyo through its own detailed discussion of prior cases. It begins with case Naz Foundation v. Government of NCTD (2009)⁶, where a

¹ Supriyo v. Union of India, AIR 2023 SC 5283 (India).

² Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

³ Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1954 (India).

⁴ INDIA CONST. art. 21.

⁵ INDIA CONST. art. 15.

⁶ Naz Foundation v. Govt. of NCT of Delhi, (2009) 160 DLT 277.

Division Bench of the Delhi High Court read down Section 377 of the Indian Penal Code, 1860, to exclude consensual homosexual sexual activity between adults. On appeal, a two-Judge Bench of the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation (2013)*⁷ reversed the High Court's judgment, reinstating the criminalization of consensual same-sex relations. Subsequently, a three-Judge Bench referred the matter to a larger Bench, observing that the "order of nature" in Section 377 is not constant and that a section of the population should not remain in a constant state of fear. The Court then decided *Navtej Singh Johar v. Union of India (2018)*⁸, where a five-Judge Bench held Section 377 unconstitutional to the extent it criminalized consensual sexual activities by the LGBTQ community, ruling that it violated Articles 14, 15, 19(1)(a), and 21. The judgment recognized that sexual orientation is a core and innate trait, that Article 15⁹ prohibits discrimination based on sex which includes sexual orientation, and that LGBTQIA+ members are entitled to the full range of constitutional rights including the right to choose whom to partner with. Crucially, the *Navtej Singh* case also recognized an individual's right to a "union" under Article 21¹⁰, specifically clarifying that "when we say union, we do not mean the union of marriage, though marriage is a union." It is from this recognition and the Petitioner's grievance that despite decriminalization, queer persons remain excluded from the civic institution of marriage that the present batch of petitions arose.

FACTS OF THE CASE

The case arose from a batch of writ petitions filed before the Supreme Court by members of the LGBTQIA+ community seeking legal recognition of same-sex marriages in India. The petitioners approached the Supreme Court under Article 32¹¹ of the Constitution and argued that although consensual same-sex relationships had been decriminalized in *Navtej Singh* case, queer couples still lacked legal recognition and equal status under law.

The petitioners challenged the provisions of the Special Marriage Act, 1954¹² and Foreign Marriage Act, 1969¹³, arguing that the use of gender-specific words such as "man," "woman," "husband," and "wife" effectively excluded same-sex couples from marriage. They sought a

⁷ *Suresh Kumar Koushal v. Naz Foundation*, AIR 2014 SC 563.

⁸ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

⁹ INDIA CONST. art. 15.

¹⁰ INDIA CONST. art. 21.

¹¹ INDIA CONST. art. 32.

¹² Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

¹³ Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1954 (India).

gender-neutral interpretation of these statutes by replacing such terms with expressions like “person” or “spouse.”

The petitioners contended that exclusion from marriage violated Articles 14, 15, 19 and 21 of the Constitution. They argued that denial of marriage deprived LGBTQIA+ persons of Right to Equality, Right to Dignity, Right to Privacy, Right to Autonomy and Right to Freedom to choose a partner. They further submitted that marriage provides important legal rights relating to inheritance, adoption, pension, insurance, succession and medical decision-making, from which queer couples were excluded.

The Union Government opposed the petitions and argued that marriage in India has traditionally been understood as a union between a biological man and a biological woman. It submitted that recognizing same-sex marriage would require major legal and social changes and that such reform falls within the domain of Parliament rather than the judiciary.

ISSUE RAISED

1. Whether the right to marry a person of one’s choice is a fundamental right guaranteed under the Constitution of India to persons belonging to the LGBTQIA+ community.
2. Whether the exclusion of same-sex and queer couples from the ambit of the Special Marriage Act, 1954¹⁴ and Foreign Marriage Act, 1969¹⁵ violates Articles 14, 15, 19 and 21 of the Constitution.
3. Whether the provisions of the Special Marriage Act can be read in a gender-neutral manner by substituting words such as “husband,” “wife,” “man,” and “woman” with terms like “spouse” or “person.”
4. Whether this Court, in exercise of its constitutional powers, can read down or reinterpret statutory provisions to recognize same-sex marriages.
5. Whether non-recognition of same-sex marriages deprives LGBTQIA+ persons of legal and social benefits associated with marriage and thereby violates constitutional

¹⁴ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

¹⁵ Foreign Marriage Act, 1969, No. 33, Acts of Parliament, 1954 (India).

guarantees of equality and dignity.

6. Whether queer couples possess a right to form unions and families, including rights relating to adoption and recognition of non-traditional family structures.
7. Whether the recognition of same-sex marriage is a matter to be determined by the judiciary or falls within the legislative domain of Parliament.

ARGUMENTS OF THE PARTIES

Petitioner's (Supriyo Chakraborty and Others)

- The petitioners argued that LGBTQIA+ persons possess a fundamental right to marry a person of their choice under Articles 14, 15, 19, 21 and 25 of the Constitution. Exclusion from marriage violates their equality, dignity, liberty and autonomy.
- The exclusion of same-sex couples from the Special Marriage Act, 1954 and Foreign Marriage Act, 1969 amounts to discrimination based on sexual orientation and gender identity, thereby violating Articles 14 and 15.
- Petitioners argued that marriage is not merely a social institution but a source of social recognition, dignity, security and legal rights, including inheritance, tax benefits, pension, adoption and succession rights. Denial of marriage amounts to denial of equal citizenship.

They submitted that denial of marriage infringes Article 21¹⁶, including the rights to dignity, privacy, decisional autonomy and intimate association.

- The petitioners argued that entering into marriage is protected as a form of expression under Article 19(1)(a)¹⁷ and as an association under Article 19(1)(c)¹⁸.
- They contended that the Constitution is a living document and must evolve with changing social realities. Courts should interpret statutes in light of constitutional

¹⁶ INDIA CONST. art. 21.

¹⁷ INDIA CONST. art. 19, cl. (1)(a).

¹⁸ INDIA CONST. art. 19, cl. (1)(c).

values.

- Petitioners sought a gender-neutral interpretation of marriage laws and requested that words such as “husband,” “wife,” “man,” and “woman” be replaced with “person” and “spouse.”
- They relied upon the doctrines of reading-in, reading down and updating construction to save the Special Marriage Act from unconstitutionality.
- It was argued that there is no legitimate state interest in excluding queer couples from marriage.
- Petitioners argued that constitutional morality should prevail over social morality, and constitutional rights cannot depend upon majority opinion.
- They argued that marriage is not solely meant for procreation, and inability to biologically reproduce cannot justify exclusion.
- Petitioners contended that civil unions are not equivalent to marriage, because a separate status would perpetuate inferiority and inequality.
- They argued that queer and transgender persons suffer violence, family coercion and police harassment, and therefore sought judicial protection and guidelines.
- Petitioners further challenged CARRA adoption regulations, arguing that they discriminated against same-sex couples and violated equality rights.

They relied on precedents including *National Legal Services Authority v. Union of India* (2014)¹⁹, *Justice K.S. Puttaswamy v. Union of India* (2017)²⁰, and *Navtej Singh Johar v. Union of India* (2018)²¹, to support recognition of queer rights.

Respondent’s (Union Government)

- The Union Government argued that marriage in Indian law traditionally means a union

¹⁹ *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863.

²⁰ *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

²¹ *Navtej Singh Johar and v. Union of India*, AIR 2018 SC 4321.

between a biological man and a biological woman. Existing marriage laws recognize only heterosexual marriages.

- It contended that there is no fundamental right to marry recognized under the Constitution.
- The Government argued that marriage is a socio-legal institution created and regulated by statutes and customs rather than solely by constitutional rights.
- It submitted that recognition of same-sex marriage would require extensive changes across several statutes, including succession, maintenance, guardianship, adoption and personal laws.
- The Government contended that replacing gendered terminology in statutes would amount to judicial legislation, which lies beyond the powers of the Court.
- It argued that matters involving marriage policy and legal reform belong within the exclusive legislative domain of Parliament.
- The Union submitted that courts should exercise judicial restraint and avoid rewriting an entire statutory framework.
- It argued that Parliament is institutionally better equipped to undertake broad consultations and determine social policy questions involving marriage.
- The Government also raised concerns regarding practical consequences involving family law, personal laws and related legal frameworks.

Therefore, the Union maintained that any recognition of same-sex marriage should come through legislative action rather than judicial interpretation.

REASONING OF THE COURT

The Supreme Court recognized that LGBTQIA+ persons are entitled to right to equality, dignity, privacy, autonomy and protection under the Constitution and acknowledged that queer persons continue to face social stigma, family violence, police harassment and exclusion

despite earlier judgments such as *National Legal Services Authority v. Union of India* (2014)²², and *Navtej Singh Johar v. Union of India* (2018)²³. However, the Court reasoned that recognizing identity and decriminalizing same-sex relations is different from granting legal recognition to marriage because marriage is a statutory and socio-legal institution regulated through legislation. The majority held that there is no expressly guaranteed fundamental right to marry under the Constitution and although individuals possess a right to choose partners and form intimate relationships, this does not automatically create a constitutional right to demand recognition of marriage. The Court further observed that the Special Marriage Act, 1954 forms a complete legislative framework and replacing gender-specific terms such as “husband,” “wife,” “man,” and “woman” with “spouse” or “person” would substantially alter its structure and amount to judicial legislation. The Court emphasized the doctrine of separation of powers, holding that courts cannot create a new sociolegal institution by rewriting statutes and that recognition of same-sex marriage would affect numerous interconnected laws relating to adoption, succession, maintenance, guardianship and family rights, making it a matter for Parliament. Nevertheless, the Court recognized the right of queer persons to enter unions and form “chosen families,” reaffirmed protection against discrimination, and urged the Government to take measures safeguarding the rights and welfare of queer couples.

FINAL JUDGEMENT

The Supreme Court, by a 3:2 majority, declined to recognize same-sex marriage under existing Indian law and held that there is no fundamental right to marry under the Constitution. The Court ruled that although LGBTQIA+ persons possess rights to dignity, privacy, autonomy and equal protection, these rights do not automatically create a constitutional right to legal recognition of marriage.

The Court refused to read gender-neutral terms into the Special Marriage Act, 1954²⁴, holding that replacing words such as “husband,” “wife,” “man,” and “woman” would substantially alter the legislative framework and amount to judicial legislation. It held that recognition of same-sex marriage involves policy choices and extensive legal consequences affecting several statutes, making it a matter for Parliament rather than the judiciary.

²² *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863.

²³ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

²⁴ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

However, the Court recognized that queer persons have a constitutional right to form relationships, unions and “chosen families.” It directed the State to protect LGBTQIA+ persons from discrimination and violence and urged the Government to examine measures for safeguarding rights and benefits available to queer couples. Thus, while marriage equality was denied, constitutional recognition of queer relationships and rights was reaffirmed.

CRITICAL ANALYSIS

The judgment in *Supriyo and Ors. v. Union of India (2023)*²⁵, is considered both progressive and disappointing. While the Supreme Court recognized the dignity, identity and constitutional rights of LGBTQIA+ persons, it refused to extend legal recognition to same-sex marriage. The decision has been criticized for creating a contradiction between recognizing queer relationships constitutionally and simultaneously denying them legal protection and equal status. The Court accepted that queer couples face discrimination and exclusion but declined to provide a concrete remedy, thereby leaving the community without enforceable marital rights.

One major loophole in the judgment is the Court’s finding that there is no fundamental right to marry. Earlier judgments such as *Shafin Jahan v. Asokan (2018)*²⁶, and *Shakti Vahini v. Union of India (2018)*²⁷, had recognized the right to choose a partner as part of Article 21²⁸. Critics argue that marriage is closely connected to dignity, autonomy and decisional privacy, and therefore denying marriage equality weakens constitutional protections already recognized in earlier cases.

The Court adopted a narrow interpretation by separating the “right to relationship” from the “right to marry,” even though marriage is the legal recognition of that relationship. This distinction has been viewed as artificial and inconsistent with constitutional morality.

Another significant criticism relates to the Court’s excessive reliance on the doctrine of separation of powers. The Court held that recognizing same-sex marriage would amount to judicial legislation because it would require changes in multiple statutes such as succession, adoption and maintenance laws. However, critics point out that Indian constitutional courts

²⁵ *Supriyo and v. Union of India*, AIR 2023 SC 5283.

²⁶ *Shafin Jahan v. Asokan K.M.*, AIR 2018 SC 1933.

²⁷ *Shakti Vahini v. Union of India*, AIR 2018 SC 1601.

²⁸ INDIA CONST. art. 21.

have historically adopted expansive interpretations to protect fundamental rights, including in cases involving privacy, transgender rights and decriminalization of homosexuality. Therefore, the refusal to interpret the Special Marriage Act, 1954²⁹ in a gender-neutral manner is viewed by many scholars as judicial restraint at the cost of substantive equality. The Court recognized discrimination but shifted responsibility entirely to Parliament, despite the immediate violation of constitutional rights.

The judgment has been strongly criticized regarding adoption rights and CARA regulations. The Court failed to strike down discriminatory provisions under the Central Adoption Resource Authority (CARA) regulations that effectively prevent same-sex couples from jointly adopting children. Petitioners had argued that these regulations violate Articles 14 and 15 because they privilege heterosexual married couples while excluding queer couples. Critics argue that the judgment indirectly reinforces the stereotype that queer couples are unfit parents despite the absence of scientific evidence supporting such assumptions. The Court also failed to adequately consider the “best interests of the child” principle because denying stable homes to children available for adoption may itself harm children awaiting families. By refusing equal adoption rights, the judgment continues structural discrimination against queer families.

The judgment also leaves LGBTQIA+ couples without access to several important financial and civil benefits associated with marriage. Since same-sex marriages remain unrecognized, queer couples continue to face exclusion from inheritance rights, pension benefits, insurance nominations, maintenance rights, tax benefits, joint bank accounts, succession rights and medical consent privileges. This creates economic insecurity and unequal citizenship. The Court acknowledged these hardships but merely directed the Government to constitute committees and examine possible welfare measures instead of granting enforceable legal rights. Critics argue that constitutional rights cannot depend upon future executive action or political willingness.

Another major weakness is the Court’s treatment of discrimination and equality. Although the Court accepted that discrimination based on sexual orientation violates constitutional values, it failed to provide an effective constitutional remedy. The judgment recognizes “chosen families” and queer unions symbolically, but such recognition has little practical value without legal enforceability. LGBTQIA+ couples still remain legally invisible in matters involving

²⁹ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

family law, property rights, guardianship and social welfare schemes. Critics therefore argue that the judgment creates a gap between constitutional recognition and actual legal protection.

The judgment has also been criticized for adopting a heteronormative understanding of marriage. While the Court accepted that marriage as an institution has evolved historically through reforms such as inter-caste marriage, widow remarriage and divorce laws, it still refused to extend this evolution to same-sex couples. Scholars argue that the Court missed an important opportunity to transform family law in accordance with constitutional morality and inclusiveness. By treating marriage primarily as a legislative issue, the Court avoided addressing whether exclusion itself was unconstitutional. The refusal to grant marriage equality, equal adoption rights and associated civil benefits has been widely viewed as a significant limitation of the decision. As a result, the judgment is often described as symbolically progressive but practically inadequate because it recognized rights in theory while denying their full legal realization in practice.

CONCLUSION

The judgment in *Supriyo and Ors. v. Union of India*³⁰ represents a significant yet incomplete step in India's constitutional journey toward LGBTQIA+ equality. The Supreme Court acknowledged the dignity, identity, autonomy and constitutional protection of queer persons and recognized their right to form unions and "chosen families." However, by refusing to recognize same-sex marriage and equal adoption rights, the Court left LGBTQIA+ couples without substantive legal protection and equal access to financial, social and familial benefits associated with marriage. The judgment has been criticized for excessive judicial restraint, overreliance on separation of powers and failure to provide an effective remedy despite acknowledging discrimination faced by queer persons. Its refusal to invalidate discriminatory CARA adoption regulations and denial of equal financial rights such as inheritance, pension, insurance and succession benefits continue to perpetuate structural inequality. Although the Court advanced constitutional discourse on queer rights, it ultimately shifted responsibility to Parliament, making the realization of marriage equality and full citizenship rights for LGBTQIA+ persons dependent upon future legislative action.

In this context, the judgment reflects constitutional recognition of LGBTQIA+ dignity but falls

³⁰ *Supriyo and v. Union of India*, AIR 2023 SC 5283.

short of ensuring substantive equality. The Court could have adopted a more progressive and rights-oriented interpretation of the Special Marriage Act, 1954 to remove discrimination against same-sex couples without undermining the legislative framework. Equal marriage and adoption rights should be recognized irrespective of sexual orientation because constitutional guarantees of equality, dignity and personal liberty cannot remain dependent upon legislative delay or prevailing social morality. The Government must also undertake reforms in CARA regulations and related family laws to ensure equal financial, social and parental rights for queer couples in India. Therefore, while *Supriyo* strengthened the constitutional recognition of queer identity and relationships, it simultaneously revealed the continuing gap between symbolic recognition and actual legal equality.