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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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CASE COMMENT ON SAME SEX RELATIONSHIP IN LIGHT OF SUPRIYO CHAKRABORTY CASE.

AUTHORED BY - B. SANTOSH KUMAR & SM. AYUB

INTRODUCTION

The Constitution of India enshrines fundamental rights for every citizen, emphasizing equality, freedom, and the protection of personal dignity. These rights, particularly those that guarantee equality and non-discrimination, serve as the bedrock of India's legal framework, obliging the courts to protect and uphold these freedoms for all individuals. However, despite these constitutional guarantees, India's current marriage laws — including the Hindu Marriage Act, the Muslim Personal Law (Shariat) Act, the Indian Christian Marriage Act, the Special Marriage Act, and the Foreign Marriage Act — are structured to recognize unions only between a man and a woman. These legal frameworks, which use terms like "bride," "bridegroom," "man," "woman," and "husband" and "wife," effectively exclude same-sex couples from the institution of marriage, thereby failing to accommodate the rights of the LGBTQIA+ community.¹

The fundamental connection between health and human rights is widely acknowledged. Human rights are inalienable and indivisible, entitling every individual to equality, liberty, and protection from discrimination. Various articles of the Universal Declaration of Human Rights (UDHR) enshrine these rights, including the right to equality, personal security, freedom from torture, and the right to marry and have a family. However, despite these universal principles, lesbian, gay, bisexual, transgender, and queer (LGBTQIA+) individuals are often denied the full spectrum of these human rights, putting them at risk for abuse, marginalization, and adverse health outcomes.²

The denial of human rights to any group undermines their dignity, with particularly severe consequences for LGBTQIA+ people. This can result in discrimination in employment and

¹ Prashanth Shivadass & Sumonto Chakravarty, Marriage – An LGBTQIA+ Perspective, 31 May 2024, 6:28 pm, available at: <https://www.barandbench.com/law-firms/view-point/marriage-an-lgbtqia-perspective> (accessed on 09 November 2024).

² Suzanne M. Marks, Global Recognition of Human Rights for Lesbian, Gay, Bisexual, and Transgender People, available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC5451102/> (accessed on 09 November 2024).

housing, limiting access to essential services such as healthcare, and contributing to financial insecurity. The psychological toll of such discrimination can lead to mental health challenges, substance abuse, and higher suicide rates. Moreover, stigma and exclusion can lead to higher rates of risky sexual behaviors, physical abuse, and even state-sanctioned violence or death in extreme cases. For LGBTQIA+ individuals, a rights-based approach to healthcare—one that acknowledges their existence and addresses their unique health needs—can help mitigate these risks and improve outcomes.

In many parts of the world, LGBTQIA+ people face systemic discrimination, violence, and even state-sponsored execution. While laws exist to punish those responsible for human rights violations in general, these abuses are often not considered violations of international human rights law when perpetrated against LGBTQIA+ individuals. In countries like Iran and Saudi Arabia, laws still exist that call for the execution of those engaged in same-sex relationships. Additionally, over 40 nations criminalize same-sex behavior, with many others imposing discriminatory laws specifically targeting men. In some of these countries, including India, Nigeria, and Uzbekistan, LGBTQIA+ individuals are subjected to legal persecution, police abuse, and physical harm.³

Globally, only a few countries have legally recognized same-sex marriage. These include Canada, Belgium, the Netherlands, Spain, and South Africa, the latter becoming the first country to constitutionally protect individuals from discrimination based on sexual orientation. Several European nations such as Denmark, Sweden, and the United Kingdom, along with countries like Israel and New Zealand, offer certain legal rights to same-sex couples, although these often fall short of full marriage equality.⁴

In the United States, significant progress was made with the landmark *Obergefell v. Hodges* ruling, which legalized same-sex marriage nationwide in 2015. The decision was grounded in four key principles: individual autonomy, intimate association, the rights associated with marriage, and the rights of parents. It also drew from the Fourteenth Amendment, which guarantees equal protection and due process. More recently, in 2022, the U.S. passed the Respect for Marriage Act, further securing the legal recognition of same-sex marriages at the federal level.

³ Kolika Mitra, *A Sociological Exploration of Same-Sex Desire and Intimacies in Select Small Towns of West Bengal*, (Thesis, Jawaharlal Nehru University, 2019).

⁴ Debapriya Chakraborty, "Towards Inclusive Legislation: Case Study for Recognizing Same-Sex Marriage Rights in India in Reference with *Supriyo Chakraborty v. Union of India*," *Jus Corpus Law Journal* 4 (2023): 66.

Similarly, the United Kingdom legalized same-sex marriage through the Marriage (Same-Sex Couples) Act in 2013. A unique aspect of this legislation was the "quadruple lock" mechanism, which ensures that religious organizations cannot be compelled to marry same-sex couples, while still allowing those who wish to do so. This was achieved through amendments to the Equality Act, 2010, ensuring that religious institutions retain their autonomy while providing same-sex couples with the option of marriage.

While these steps are a significant victory for human rights, challenges remain. Internationally, advocacy for the rights of LGBTQIA+ people has gained momentum in the past few decades, with organizations like Amnesty International and Human Rights Watch now actively campaigning against the violation of these rights. However, there are still considerable obstacles, including opposition from certain countries and religious groups. At the United Nations, support for LGBTQIA+ human rights has been inconsistent, with some states continuing to block initiatives aimed at addressing discrimination based on sexual orientation or gender identity.⁵

Despite these challenges, the recognition of LGBTQIA+ rights continues to evolve. Advocates continue to fight for full equality and protection under the law, pressing for the universal recognition of human rights for all individuals, regardless of their sexual orientation or gender identity. Only through continued advocacy and legal reforms will the international community move closer to ensuring the full realization of these rights for LGBTQIA+ people worldwide. In this paper, the researcher intends to discuss the status of same sex marriage from the perspective of Supriyo Chakraborty case. Firstly, overview of case wherein the whole thing is briefed out then to understand the current case the background is explored wherein the development the issues and concerns are addressed through numerous case laws. Then the facts of the case are addressed concisely and then issues raised, analysis

This paper aims to explore the status of same-sex marriage in India, focusing on the Supriyo Chakraborty case. The researcher begins by providing an overview of the case, summarizing its key facts and legal context. To better understand the current case, the background is explored, highlighting the development of issues and concerns surrounding same-sex marriage through various relevant case laws. Following this, the paper presents the specific facts of the Supriyo Chakraborty case and addresses the key legal issues raised. The contentions of both the appellant and the respondent are analyzed, along with the rationale behind the court's reasoning. The paper also critically examines the defects in the current legal framework, as

⁵ Akshat Agarwal. "Supriyo and the Politics of Indian Family Law." Indian Law Review (Forthcoming 2024).

well as the problems faced in the legalization of same-sex marriage in India. It discusses recent trends in both legal and social spheres, offering insights into global and domestic shifts regarding LGBTQ+ rights. The researcher then proposes legal policy recommendations to address the gaps in the current system, before concluding with a reflection on the future of same-sex marriage legalization in India.⁶

OVERVIEW OF THE CASE:

The Supreme Court of India recently heard a series of groundbreaking cases that sought to address whether members of sexual and gender minority groups should be granted the legal right to marry and establish families in India. The petition involved 52 individuals who filed 20 interconnected cases before a five-judge Constitution Bench, comprising Chief Justice D.Y. Chandrachud and Justices S.K. Kaul, S.R. Bhat, Hima Kohli, and P.S. Narasimha. The petitioners, consisting of couples and individuals from LGBTQIA+ communities, argued that their right to marry and start families should be recognized in light of constitutional protections against discrimination, as well as guarantees of equality, dignity, personal liberty, privacy, autonomy, and freedom of conscience and expression.

While the Court acknowledged the petitioners' constitutional rights, the decision did not immediately grant legal recognition to same-sex marriage. Instead, it directed the Union government to establish a committee to assess the rights of queer couples in relationships, thus leaving the issue of marriage equality unresolved for the time being. The ruling reflects the Court's institutional limitations and cautious approach to social change, emphasizing the need for further deliberation on the issue of queer rights. Although Justices Kaul and Narasimha expressed differing views on certain aspects, Justice Bhat's dissenting opinion rejected the notion that there is an inherent constitutional right to same-sex marriage.

This case, *Supriya Chakraborty and Others v. Union of India*⁷, represents a critical juncture in the ongoing legal debate surrounding LGBTQIA+ rights in India. The Court's decision underscores the challenges the judiciary faces when navigating the intersection of constitutional interpretation, social reform, and legislative action. The ruling raises important questions about the judiciary's role in advancing social change, particularly in a society where deeply ingrained cultural and religious norms often come into conflict with constitutional values of equality and justice.

⁶ Kuttappan and Dalliandeep Kaur Tiwana. "The Future of Same Sex Marriage in India—an Analysis with Other Countries." Available at SSRN 4851988.

⁷ Writ Petition (Civil) No. 1011 of 2022

Though the decision does not immediately alter the legal landscape regarding same-sex marriage, it marks an important step in the broader struggle for LGBTQIA+ rights in India. The judgment reflects the growing recognition of the need to address the rights of sexual and gender minorities within the framework of the Indian Constitution, even as the debate continues over whether marriage equality will be explicitly recognized. The outcome of this case will likely shape future discussions on LGBTQIA+ rights, impacting not only personal autonomy and reproductive rights but also the broader social and legal status of queer individuals in India.

BACKGROUND OF THE CASE

The legal journey regarding the rights of LGBTQIA+ individuals in India has been shaped by a series of landmark judgments that have challenged and redefined the scope of constitutional protections for sexual and gender minorities. The most prominent and foundational of these decisions stemmed from the controversial Section 377 of the Indian Penal Code (IPC), which criminalized "carnal intercourse against the order of nature." Enacted during British colonial rule in 1860, this provision continued to serve as a tool of state oppression, particularly targeting individuals who engaged in consensual same-sex relations or did not conform to conventional gender norms. Section 377 became a symbol of legal and societal discrimination, stripping LGBTQIA+ individuals of their dignity, autonomy, and freedom to express their sexual orientation or gender identity. Furthermore, it subjected them to social ostracization and legal persecution, denying them basic human rights.

The battle against Section 377 began in earnest with the *Naz Foundation v. Government of NCT of Delhi*⁸, where the Delhi High Court ruled that the provision violated the fundamental rights guaranteed by the Indian Constitution, specifically the right to equality and the right to life and personal liberty under Article 21. The court concluded that consensual same-sex activity between adults in private should not be criminalized, recognizing that such laws perpetuated discrimination against the LGBTQIA+ community. However, in *Suresh Kumar Kaushal v. Naz Foundation*⁹, the Supreme Court of India reversed this judgment, effectively reinstating Section 377. The Court held that any change to the law should come from Parliament rather than the judiciary, a decision that sparked widespread protests and calls for reform.

⁸ WP(C) No.7455/2001

⁹ CIVIL APPEAL 10972 OF 2013

In a dramatic shift, the *Navtej Singh Johar v. Union of India*¹⁰ ruling marked a historic victory for LGBTQIA+ rights in India. A five-judge bench of the Supreme Court revisited the issue of Section 377 and declared it unconstitutional, asserting that the law violated the fundamental rights of individuals, including their right to equality, dignity, and privacy. The court ruled that consenting adults should not live in fear of prosecution based on their sexual orientation. This landmark judgment affirmed that every individual has the right to express their sexuality freely and live without the threat of legal punishment for engaging in same-sex relationships. It marked a transformative moment for the LGBTQIA+ community in India, recognizing the importance of individual autonomy and personal freedoms.

The *National Legal Services Authority (NALSA) v. Union of India*¹¹ judgment further expanded the rights of gender minorities by recognizing transgender individuals as a "third gender." The Supreme Court ruled that the Indian state must provide constitutional protections to transgender persons, ensuring their right to self-identify their gender. The ruling also mandated that transgender individuals be granted access to healthcare, education, and employment, with legal recognition of their gender identity by both the Union and State Governments. This judgment was a milestone in the ongoing struggle for the rights of non-binary individuals, affirming their right to live with dignity and equality under the Constitution.¹²

The *Justice K.S. Puttaswamy v. Union of India*¹³ ruling further bolstered the rights of sexual minorities by recognizing the right to privacy as a fundamental right under Article 21 of the Indian Constitution. This judgment reinforced the idea that an individual's sexual orientation and the freedom to choose one's sexual partner are integral parts of personal privacy. The court made it clear that there could be no discrimination based on sexual orientation, and that individuals had the constitutional right to express their sexuality without facing state interference. This judgment laid the foundation for the legal recognition of LGBTQIA+ rights, extending constitutional protections to the community and signaling the Court's commitment to ensuring equality for all citizens, regardless of their sexual identity.

¹⁰ [2018 INSC 790](#)

¹¹ WRIT PETITION (CIVIL) NO.400 OF 2012

¹² Snehil. "Case Analysis: *Supriyo @ Supriya Chakraborty & Anr. v. Union of India* (2023) | Same-Sex Marriages in India." Legal Bites, published on 2 June 2024, <https://www.legalbites.in/landmark-judgements/case-analysis-supriyo-supriya-chakraborty-anr-v-union-of-india-2023-same-sex-marriages-in-india-1036221>.

¹³ Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1

Another important decision in favor of individual autonomy and personal choice was the *Lata Singh v. State of U.P.*¹⁴ case, where the Supreme Court upheld the right of an adult woman to marry a person of her choice, irrespective of caste or family objections. The Court emphasized that personal freedom to choose one's partner is an essential aspect of individual liberty. This principle was reiterated in the *Shafin Jahan v. Ashokan K.M.*¹⁵ case, where the Supreme Court invalidated a Kerala High Court ruling that had annulled a marriage between two adults without their consent. The Court declared that every individual has the fundamental right to marry whomever they wish, free from external interference, and this right is protected under Article 21.

Most recently, in *Laxmibai Chandaragi B. v. State of Karnataka*¹⁶, the Supreme Court further affirmed the right to choose one's partner, declaring that such a right is a fundamental aspect of personal liberty, which takes precedence over societal norms, parental consent, or caste-based restrictions. This ruling underscored that the constitutional right to marry and form relationships is fundamental to an individual's identity, irrespective of social expectations.

Together, these judgments form a cohesive legal framework that upholds the rights of LGBTQIA+ individuals in India, marking a profound shift in the country's legal landscape. The rulings on Section 377, transgender rights, and the recognition of individual autonomy reflect a growing commitment to ensuring that all citizens, regardless of sexual orientation or gender identity, can live freely, with dignity and equal protection under the law. These decisions underscore the judiciary's evolving interpretation of the Constitution, emphasizing the need for a more inclusive and progressive approach to personal rights and freedoms.

FACTS OF THE CASE

On November 14, 2022, two same-sex couples, Supriyo Chakraborty and Abhay Dang, along with Parth Phiroze Mehrotra and Uday Raj Anand, filed writ petitions before the Supreme Court of India, challenging the legal framework surrounding marriage rights for same-sex couples. The petitions focus on Section 4(c) of the Special Marriage Act of 1954, which currently restricts marriage to a "male" and a "female," thereby excluding same-sex couples from legal recognition. The petitioners argue that this provision is discriminatory and violates their fundamental rights, as it denies them access to crucial legal benefits such as surrogacy,

¹⁴ Writ Petition (Crl.) 208 of 2004

¹⁵ Criminal Appeal No. 366 of 2018 (arising out of SLP (Crl.) No. 5777 of 2017)

¹⁶ Writ Petition (Criminal) No. 359/2020

adoption, social security, work-related benefits, and others afforded to married couples under Indian law.

The petitioners contend that the refusal to recognize same-sex marriages infringes upon their constitutional rights, particularly the rights to equality, personal dignity, and freedom of expression. Their arguments draw upon two landmark judgments by the Supreme Court: *NALSA v. Union of India*¹⁷, which recognized the rights of transgender individuals, and *Navej Singh Johar v. Union of India*¹⁸, which decriminalized homosexuality. These rulings, they assert, set a precedent for the recognition of the rights of sexual and gender minorities under the Constitution.

On November 25, 2022, the Supreme Court, in a historic move led by Chief Justice D.Y. Chandrachud and Justice Hima Kohli, issued an order that directed the Union government to respond to the petitions, thereby initiating a formal discussion on the recognition of same-sex marriage in India. The case has gained significant attention, with similar petitions currently pending before the High Courts of Kerala and Delhi, reflecting a growing movement in India advocating for the equal treatment and recognition of LGBTQ+ rights. This legal battle represents a critical step forward in the struggle for marriage equality and social justice for sexual minorities in India. g movement in India to acknowledge the equality and rights of the LGBTQ+ population.

ISSUE RAISED

1. Does the Supreme Court have the jurisdiction to hear this case?
2. Do individuals who identify as LGBTQIA+ have the legal right to marry?
3. Can the Supreme Court issue a ruling affirming that LGBTQIA+ individuals have the right to marry?
4. Does the exclusion of LGBTQIA+ marriages under the Special Marriage Act of 1954 violate the principle of equality enshrined in Article 14?
5. Are unmarried gay couples legally permitted to adopt children?
6. Is it permissible for transgender individuals in heterosexual relationships to marry?
7. Is the Special Marriage Act of 1954 unconstitutional due to its exclusion of LGBTQIA+ marriages?

¹⁷ Ibid 11

¹⁸ Ibid 10

CONTENTIONS OF APPELLANT

The petitioners contended that the exclusionary provisions in Section 4(c) of the Special Marriage Act (SMA) and other related provisions are unconstitutional, as they infringe upon fundamental rights guaranteed under the Indian Constitution. They argued that the fundamental right to marry the person of one's choice is enshrined in Articles 14, 15, 19, 21, and 25. Denying LGBTQIA+ individuals the right to marry violates these constitutional protections. Article 21, which encompasses the right to life and personal liberty, includes the right to a fulfilling relationship with a person of one's choosing. The petitioners asserted that this right extends equally to queer individuals. They argued that the SMA should be interpreted in a gender-neutral manner, with terms like "husband" and "wife" being replaced by the more inclusive term "spouse." Furthermore, the legal concepts of "family" and "household" should not be restricted to traditional, biologically defined families but should encompass diverse family structures. The petitioners also highlighted that only legally married couples are eligible for surrogacy and adoption, which denies LGBTQ+ couples the opportunity to start a family. This exclusion results in discriminatory treatment, preventing LGBTQIA+ individuals from accessing legal protections and social benefits that are otherwise available to heterosexual married couples.¹⁹

CONTENTIONS OF RESPONDENT

In India, marriage is traditionally defined by social, cultural, and legal norms as a union between individuals of different genders. The argument is made that it is not within the purview of the judiciary to redefine this fundamental concept; instead, such changes should be made by lawmakers. Various personal laws in India govern marriage in different communities, with Hindu marriage emphasizing the reciprocal responsibilities between a man and a woman, and Islamic law defining marriage as a contract between a biological man and a biological woman. The petitioners are seen as unable to assert that Section 377 of the Indian Penal Code, which criminalizes same-sex relations, infringes upon their right to have same-sex marriages legally recognized. In the 2018 decision in *Navtej Singh Johar v. Union of India* (10 SCC 1), the Supreme Court clarified that while individuals have the constitutional right to form unions under Article 21, this does not automatically extend to a right to marry. Indian marriage laws, such as the Hindu Marriage Act of 1955 and the Christian Marriage Act of

¹⁹ Reetam Singh. "Legalisation of Same-Sex Marriages in India Through Specific Amendment to Special Marriage Act 1954." Dissertation submitted to *National Law University and Judicial Academy, Assam*, July 2022.

1872, continue to define marriage as a union between a biological man and a biological woman, with significant social and legal implications. The terminology used in various legal frameworks, such as "husband," "wife," "male," "female," "bride," and "bridegroom," reinforces this definition. Given the established legal framework, it is argued that the Court is not in a position to alter the country's longstanding legislative policy on marriage.

RATIONALE

In the past rulings of Justice KS Puttaswamy, Shafin Jahan, and Shakti Vahini, the Supreme Court did not address whether the Constitution explicitly grants the right to marry. However, the decisions in Navtej and Justice KS Puttaswamy (9J) recognize the right of LGBTQ+ individuals to freely choose whether or not to enter into relationships. These rulings affirm protection against external threats to such relationships. Article 15 of the Constitution, which prohibits discrimination on the basis of sexual orientation, reinforces this principle. In the case of Common Cause v. Union of India, the Court established that medical professionals must consult with a patient's family or next of kin when a terminally ill patient has not provided an Advance Directive. This reflects the broader principle that individuals in a union—whether in a familial or personal relationship—should be allowed to make decisions without outside interference. However, the Court has refrained from introducing new language into the Special Marriage Act (SMA) or related statutes like the Indian Succession Act (ISA) and Hindu Succession Act (HSA), recognizing that such changes fall within the legislative domain, not the judiciary's.²⁰

DEFECTS OF LAW

The majority decision to reject the legal recognition of same-sex marriage is undoubtedly disappointing, and there are several issues with the reasoning behind it. First, the majority's assertion that the right to marry is not a fundamental right contradicts the principles outlined in the Indian Constitution. Second, the claim that same-sex couples have sufficient legal alternatives is misleading, as live-in and civil partnerships do not offer the same legal rights and protections that marriage does. On the other hand, the dissenting opinion by Justices Chandrachud and Kohli presents a strong and well-argued case for the recognition of same-sex marriage. The dissent correctly highlights that same-sex couples possess the same fundamental right to marry as heterosexual couples, a right that is guaranteed under the

²⁰ Vibha, V. "Same Sex Marriages and Relationships: A Legal Analysis." International Journal of Law, Development and Administration, 2021. Available at: <https://thelawbrigade.com/wp-content/uploads/2021/07/Vibha-V-IJLDAI.pdf>

Constitution.

Overall, the Supreme Court's ruling in *Supriyo v. Union of India* feels like a missed opportunity. While the LGBTQ+ community in India may feel let down, there remains hope that the Court may eventually recognize same-sex marriage, particularly in light of the powerful dissenting opinion.²¹

PROBLEMS FACED BY LEGALISATION OF SAME SEX MARRIAGE

The legalization of same-sex marriage in India faces significant challenges due to a complex mix of legal, cultural, political, and social obstacles. While the 2018 Supreme Court ruling decriminalizing same-sex relations marked a major victory, the absence of legal recognition for same-sex marriages leaves LGBTQ+ couples without crucial rights such as inheritance, property ownership, spousal benefits, and legal protections. Deep-seated cultural and social stigma, often fueled by conservative religious and traditional values, further exacerbates the situation, leading to widespread discrimination, exclusion, and even violence against LGBTQ+ individuals. Opposition from political and religious groups, who cite moral and doctrinal beliefs, also hampers progress, creating resistance to reform within the legislative process. Moreover, the Indian Constitution does not explicitly address LGBTQ+ rights, and personal laws governing marriage remain rooted in religious traditions that do not accommodate same-sex unions.²² Although the judiciary has recognized the fundamental rights of LGBTQ+ individuals in various rulings, it has been hesitant to extend these rights to marriage equality, often passing the responsibility to the legislature, which is reluctant to act due to political concerns and fears of alienating conservative voters.

Beyond legal and social challenges, same-sex couples face significant economic disadvantages. Without legal recognition, they are denied financial benefits that married couples enjoy, including tax breaks, joint bank accounts, and social security. This lack of legal status also complicates adoption and child-rearing for LGBTQ+ couples, as they are excluded from the legal frameworks that govern parenting rights. Furthermore, many LGBTQ+ individuals continue to live in fear of backlash, rejection, or violence, particularly from their families and communities, when they seek to live openly or pursue marriage. Despite some progress, such

²¹ Khushboo Natholia. "Testing The Legal Status Of Same Sex Marriages An Analytical Study With Special Reference to India." Shodhganga@INFLIBNET, Banasthali Vidyapith, 2023. Available at: <http://hdl.handle.net/10603/521665>

²² Rayna Joshi. "Same-Sex Marriages in Contemporary Society." International Journal of Law Management & Humanities, Volume 7, Issue 5, 2021, pp. 2038-2044. Available at: <https://doi.org/10.1000/IJLMH.118476>

as the introduction of the Rainbow Savings Account for transgender individuals, the absence of a comprehensive legal framework addressing marriage rights leaves LGBTQ+ people in a state of legal limbo, perpetuating their marginalization.

The Supreme Court's refusal to grant legal recognition to same-sex marriages, despite its acknowledgment of expanding fundamental rights under Article 21—such as privacy, dignity, and autonomy—has been widely criticized as a setback for the LGBTQ+ community. While the Court suggested that the issue of marriage equality be left to Parliament, it failed to take the necessary step of interpreting the Special Marriage Act in a gender-neutral manner, leaving LGBTQ+ couples without the legal recognition and protections they deserve. The Court's decision has drawn criticism for failing to uphold the constitutional principle of equality and for overlooking the lived realities of LGBTQ+ individuals who continue to face discrimination and marginalization. Furthermore, critics argue that the ruling contradicts international human rights standards, which recognize the right to marry without discrimination based on sexual orientation or gender identity.²³

In the wake of this decision, the LGBTQ+ community faces an uncertain path to full legal recognition and equality. Legal challenges may continue, and political activism will be critical in advancing the cause, especially in the lead-up to future elections. At the same time, public education and awareness campaigns will play a vital role in shifting societal attitudes and pushing for legislative change. Although the Court has called for a government committee to explore the rights of same-sex couples, significant obstacles remain. The fight for marriage equality is far from over, and much work remains to be done to secure the legal rights and social acceptance that LGBTQ+ individuals deserve in India.

RECENT TRENDS:

A) The Legacy of Chief Justice D.Y. Chandrachud

Chief Justice Dhananjaya Yeshwant Chandrachud, who retired on November 10, 2024, leaves behind a profound and transformative legacy at the Supreme Court of India. As the 50th Chief Justice of India, his contributions to judicial work were marked by an impressive output of 92 judgments, a volume greater than the combined total of his four predecessors. To put this in perspective, his immediate predecessor, CJI Sharad Arvind Bobde, authored just 27 judgments

²³ Sanskriti Rai. "From Discrimination to Recognition-Supriyo Chakraborty & Ors v Union of India: A Commentary on Same-Sex Marriage Jurisprudence." *Jus Corpus Law Journal*, vol. 4, 2023, p. 67.

during his term, highlighting Chandrachud's exceptional work ethic and commitment to the judicial process, as noted by Anrghya Sengupta, Research Director at Vidhi Centre for Legal Policy.²⁴

A defining moment during his tenure was the controversial October 17, 2023 ruling on same-sex marriage. While the Supreme Court, under CJI Chandrachud, rejected the petitions for legal recognition of same-sex marriage, it emphasized the need for equal rights and protections for the LGBTQIA+ community. The Chief Justice's opinion stressed the court's role as an interpreter of law rather than a legislative body, stating, "This court cannot make law. It can only interpret it and give effect to it." He also underscored that queerness is a natural and widespread aspect of human identity, not confined to urban or elite circles. Although same-sex marriage was not legalized, Chandrachud's remarks about queer rights were a significant step forward in recognizing the broader need for equality.

In a reflective interview in January 2024, Chandrachud acknowledged the long-standing struggle for equal rights faced by queer individuals but maintained that judges must remain impartial and not align with any particular cause. He expressed confidence that the future would ultimately decide the course on same-sex marriage, leaving it to society to take the next step. His tenure is a testament to his intellectual rigor, commitment to human rights, and his balanced approach to evolving legal issues, ensuring that his legacy will continue to shape the Supreme Court's jurisprudence for years to come.

B) LGBTQ+ Community Gains Access to Joint Bank Accounts: Government's New Advisory²⁵

In a significant move toward financial inclusivity, the Indian government recently clarified that there are no longer any restrictions preventing LGBTQ+ individuals from opening joint bank accounts or nominating a partner in a queer relationship as a nominee. This clarification followed the Supreme Court's ruling on October 17, 2023, in the case of *Supriyo@Supriya Chakraborty vs Union of India*, and was further reinforced by an advisory issued by the Department of Financial Services on August 30, 2024. The advisory emphasized the need for

²⁴ "What Chandrachud Said on Article 377," MSN India, <https://www.msn.com/en-in/news/India/what-chandrachud-said-on-article-377/ar-AA1tP14Y?ocid=BingNewsVerp>.

²⁵ "Law and Custom: On the Supreme Court's Verdict on Same-Sex Marriage," The Hindu, <https://www.thehindu.com/opinion/editorial/law-and-custom-on-the-supreme-courts-verdict-on-same-sex-marriage/article67431076.ece>.

commercial banks to ensure that LGBTQ+ individuals are not denied access to banking services. This came in the wake of a clarification from the Reserve Bank of India (RBI) in August 2024, which reminded banks to eliminate any barriers that LGBTQ+ individuals might face.²⁶

This recent advisory builds upon earlier measures, including a 2015 RBI directive that mandated banks to offer a "third gender" option on forms, facilitating the opening of accounts for transgender persons. Additionally, in 2022, ESAF Small Finance Bank launched the 'Rainbow Savings Account,' a specialized account catering to the transgender community with features like higher interest rates and advanced debit ²⁷cards. The government's initiatives, including the formation of a committee in April 2024 aimed at ensuring equal access to financial services for the LGBTQ+ community, represent a broader effort to promote inclusivity.

These developments signal a notable shift towards greater financial inclusion for the LGBTQ+ community in India, reducing barriers to financial services and ensuring that LGBTQ+ individuals are afforded the same rights and protections as others. The government's proactive stance highlights a growing commitment to addressing discrimination and promoting equal opportunities across various sectors.

LEGAL POLICY AND RECOMMENDATIONS:

To advance the recognition of same-sex marriage in India, a series of legal and societal reforms are essential. The first critical step is amending existing personal laws, such as the Hindu Marriage Act and the Special Marriage Act, to explicitly permit marriages between same-sex couples. This change would not only grant legal recognition to same-sex relationships but also foster a culture of equality. Additionally, introducing a comprehensive LGBTQ+ rights bill that includes marriage equality, adoption rights, inheritance, and protection from discrimination would provide a robust legal foundation for the recognition of same-sex couples' rights.

One of the most pivotal changes would be to interpret or amend the Indian Constitution to include the right to marry as a fundamental right under Article 21. This would ensure that same-sex couples are guaranteed the same legal protections and dignities as their heterosexual

²⁶ Supra note 22

²⁷ Supra note 23

counterparts. Alongside this, legalizing adoption and parenting rights for LGBTQ+ individuals is necessary, ensuring equal access to joint adoption, surrogacy, and reproductive technologies for same-sex couples who wish to build families.

Equally important are reforms to financial and social security laws. Same-sex couples should be able to access the same financial benefits as heterosexual couples, including joint bank accounts, tax breaks, inheritance rights, and access to spousal benefits. These legal recognitions are not just about equality—they are about ensuring that same-sex couples can live their lives with the same financial security and dignity as anyone else.

To make these legal reforms effective, there must be a concerted effort to educate and sensitize law enforcement, the judiciary, and the public. Combating stigma and misinformation is crucial to creating a society where LGBTQ+ individuals and couples are treated with respect and understanding. Education campaigns and training programs can help shift attitudes, while also ensuring that the legal system works effectively for all citizens, regardless of sexual orientation. Additionally, public awareness campaigns and providing mental health support and legal aid services for LGBTQ+ individuals would go a long way in helping people navigate both legal and social challenges. These services could provide vital support, fostering acceptance and offering guidance to those facing discrimination or isolation.

Ultimately, achieving equality for same-sex couples in India will require a multi-faceted approach, combining legal reforms with changes in social attitudes. This can only happen through ongoing dialogue between lawmakers, activists, community leaders, and the public. The journey toward an inclusive society is not just about changing laws; it's about changing hearts and minds, ensuring that LGBTQ+ individuals are not only legally recognized but also fully accepted and celebrated as equal members of society.²⁸

CONCLUSION:

The legal recognition of same-sex marriage in India is not only a matter of acknowledging the love between two individuals of the same gender, but a critical step toward ensuring equality, dignity, and human rights for all citizens. Denying same-sex couples the right to marry

²⁸ Supra note 21

represents systemic discrimination that directly contradicts the core principles enshrined in the Indian Constitution, specifically Articles 14 and 21, which guarantee equality and non-discrimination. Just as heterosexual couples are afforded the legal protections and rights associated with marriage—such as inheritance, adoption, taxation, healthcare, and social security—same-sex couples deserve these same privileges. By denying them these rights, the state not only undermines their dignity but also perpetuates the stigma and marginalization that the LGBTQ+ community continues to face.

Marriage is not simply a social contract but a legal institution that offers individuals a host of critical benefits. Forcing LGBTQ+ individuals to live without these protections is not only unjust but carries severe personal, social, and legal consequences. Societal attitudes towards same-sex relationships have evolved significantly over the years, with increasing acceptance and support for LGBTQ+ rights. The Supreme Court's decision in 2018 to decriminalize homosexuality was a landmark step, recognizing that sexual orientation is an intrinsic part of an individual's identity. Legalizing same-sex marriage would be a logical next step in ensuring that all people, regardless of sexual orientation or gender identity, are able to live fulfilling lives free from discrimination. It would also align India with global norms, where marriage equality is increasingly viewed as a fundamental human right, reinforcing the country's commitment to human rights and equality.

The Supreme Court's recent decision in *Supriyo v. Union of India* is undoubtedly a setback for the LGBTQ+ community in India. The ruling, which deferred the issue to Parliament and denied legal recognition to same-sex marriages, was met with widespread disappointment and anger. However, the dissenting opinions of Justices Chandrachud and Kohli provide a glimmer of hope. Their stance—that the right to marry is a basic constitutional right, and that Section 4(c) of the Special Marriage Act violates the rights of same-sex couples—signals the possibility that the Court may reconsider this issue in the future. Their dissent not only challenges the majority's reasoning but also lays the groundwork for future progress in the fight for LGBTQ+ rights.

From my perspective, while the majority's decision is disheartening, it is important to remember that the legal battle for equality is far from over. The dissenting opinions offer hope and a reminder that change, though slow, is possible. The fight for same-sex marriage and broader LGBTQ+ rights will continue, and with growing public support and sustained legal advocacy, India may one day take the final step toward full marriage equality. The courage of those fighting for this cause and the unwavering support of the LGBTQ+ community will

undoubtedly keep pushing India closer to a future where everyone, regardless of their sexual orientation, is treated with the dignity, equality, and respect they deserve.

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