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**RECLAIMING RIGHTS AND REDEFINING NORMS: A
LEGAL ANALYSIS OF LGBTQIA+ MARRIAGE
RECOGNITION IN INDIA WITH SPECIAL EMPHASIS ON
SUPRIYO V. UNION OF INDIA (2023 SCC ONLINE SC 1348)**

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INTRODUCTION

The LGBTQ+ community has faced a lengthy struggle in their pursuit of equal rights and acceptance within societies worldwide. Historically, they have been met with resistance and discrimination, making it challenging for them to integrate into society. Despite some progress in gaining acceptance, a new debate has emerged on a global scale regarding same-sex unions and marriages.

In India, the landmark case of *Navtej Singh v Union of India*¹, decriminalized homosexuality and allowed same-sex individuals to engage in physical relationships. However, recognition of the same-sex marriages is still an issue. Conversely, many countries in the West have taken significant steps towards legalizing same-sex marriages. Denmark, for instance, was the first country to implement laws recognizing same-sex unions. Most industrialized democracies worldwide have also granted legal recognition to same-sex marriages, with a few exceptions such as the Czech Republic, Italy, Japan, South Korea, and Greece. Exceptionally, none of the Islamic political structures right currently perceive homosexual relationships. Additionally, countries like China and Russia offer limited support for same-sex unions.

This particular case focuses on the rights of same-sex marriage within the context of India. The struggle for recognition and acceptance continues, as the LGBTQ+ community strives for equal treatment and the legal recognition of their unions.

FACTS OF THE CASE

In November 2022, a writ petition was filed by two same-sex couples in the Supreme Court of India, aiming to obtain legal recognition for same-sex marriage. This petition challenged several

¹ *Navtej Singh Johar v Union of India* (2018) INSC 790

provisions of the Special Marriage Act², Hindu Marriage Act³, and Foreign Marriage Act⁴. It is worth noting that numerous petitions regarding this matter are currently awaiting resolution in the High Courts of Delhi and Kerala. The initial petition was submitted by Supriyo Chakraborty and Abhay Dang, followed by another petition filed by Parth Phiroze Mehrotra and Uday Raj Anand. The crux of their argument lies in the contention that Section 4(c)⁵ of the Act solely acknowledges the solemnization of marriage between a 'man' and a 'woman,' thereby denying them gender equality rights and infringing upon their fundamental rights as guaranteed by Articles 14⁶, 19⁷, and 21⁸ of the Indian Constitution. To support their claim, they referenced the cases of NALSA v Union of India⁹ and Navtej Singh Johar v Union of India, where homosexuality was decriminalized. Nevertheless, the court has yet to address the issue of legal recognition for same-sex marriages, leaving it unresolved.

ISSUES RAISED

1. The question of whether the LGBTQ+ community has the fundamental right to marry and if this right is recognized.
2. The issue of whether section 4 (c) of the Special Marriage Act infringes upon the fundamental rights of LGBTQ+ individuals by failing to acknowledge their rights.
3. The debate over whether the Supreme Court possessed the authority to modify the statute by substituting the terms 'man' and 'woman' with 'spouse'.
4. The inquiry into whether queer groups in India are able to establish and participate in unions.

PETITIONER'S ARGUMENTS

Petitioners contended that the denial of the right to marry for same-sex couples would constitute a violation of the fundamental rights enshrined in Article 14 of the Indian constitution. Furthermore, they argued that this denial would also infringe upon the right to marry, which is protected under the right to life as guaranteed by Article 21¹⁰. They affirmed that the option to wed expands the privileges of living together, protecting, and picking one's life partner.

² Special Marriage Act 1954

³ Hindu Marriage Act 1955

⁴ Foreign Marriage Act 1969

⁵ Special Marriage Act 1954 Section 4 (c)

⁶ Constitution of India 1950 Article 14

⁷ Constitution of India 1950 Article 19

⁸ Constitution of India 1950 Article 21

⁹ NALSA v Union of India (2014) SCC 438

¹⁰ Constitution of India 1950 Article 21

Additionally, the petitioners highlighted that the striking down of certain provisions of section 377¹¹ of the Indian Penal Code (IPC) grants same-sex couples the right to engage in consensual physical relationships. This acknowledgment of their rights suggests that they ought to be dealt with similarly to heterosexual couples in all viewpoints, including their marital status and connections.

The petitioners further contended that the use of the terms 'man' and 'woman' in section 4C¹² of the Act limits marriage to only two genders, which discriminates against the rights of the third gender and the LGBTQ+ community. They argued that amendments should be made to replace the term 'spouse' with more inclusive language.

Moreover, the petitioners emphasized that while the main purpose of marriage is often associated with consummation and procreation, homosexual parents are granted adoption rights, enabling them to fulfill the responsibilities of raising a child just like heterosexual parents. They argued that past cases have demonstrated that heterosexual parents can be irresponsible and pose a threat to their children, thus it is not conclusive that homosexual parents are incapable of raising a child.

RESPONDENT'S ARGUMENTS

Marriage is viewed as a sacred bond that stems from various social, religious, cultural, moral, and legal factors. It is argued that this bond is traditionally reserved for heterosexual couples due to its historical and social significance. Moreover, proponents of this view suggest that the right to marry is not absolute and that the state is not obligated to recognize LGBTQ-plus marriages. The Special Marriages Act was initially designed to promote interreligious and inter-caste marriages among heterosexual couples. Extending this act to include non-heterosexual couples would go against the original purpose of the legislation and could potentially conflict with other existing laws. Therefore, the power to amend such laws lies solely with the parliament. Legalizing marriage between homosexual couples would necessitate the creation of a new law, which falls under the jurisdiction of the legislature, not the judiciary. Additionally, it is argued that examples from Western countries may not be directly applicable to a diverse society like India. Proponents also emphasize the importance of having both a mother and a father in a child's upbringing, citing concerns about societal stigma and its potential impact on the child's well-being.

¹¹ Indian Penal Code 1860 Section 377

¹² Special Marriage Act 1954 Section 4 (c)

JUDGEMENT

The Supreme Court's dismissal of the plea for the right of queer people to wed in India on October 17, 2023, was a critical misfortune for the LGBTQ+ people group. In a consistent choice, the five-judge constitutional bench presumed that there is no principal right to wed and that the current Unique Marriage Act doesn't perceive the marriage of strange people.

In a 3:2 judgment, the court additionally expressed that same-sex couples don't reserve the right to form civil unions, adding to the dismay of those supporting marriage fairness. The five-judge Constitutional bench gave four separate decisions on the side of marriage balance, each with changing lengths and contentions.

Chief Justice DY Chandrachud played a pivotal role in the ruling, drafting a comprehensive 247-page opinion out of the total 366-page ruling. Justice Bhat, writing on behalf of Justice Hima Kohli, contributed an 89-page opinion, while Justice Kaul wrote 17 pages, having joined the Chief Justice's opinion. Justice Narasimha composed a concise thirteen-page opinion.

The judges unanimously agreed that the right to marry is not a fundamental right, as it requires an established institution for marriage to be considered as such. They argued that such an institution for same-sex couples has not yet been recognized in India. Chief Justice Chandrachud further contended that including same-sex couples under the existing Act would violate the separation of powers, as it would require the court to declare the Special Marriage Act unconstitutional, potentially affecting interfaith and inter-caste marriages.

Emphasizing the importance of the judiciary's limited role in legislative matters, Chandrachud highlighted that the parliament holds the authority to make amendments to the statute. He argued that interfering with legislative decisions would undermine the principle of separation of powers. Furthermore, Chandrachud acknowledged that the institution of marriage has evolved over time and has undergone significant transformations throughout history. While he recognized the opposition to change, he emphasized that the institution is not static and should adapt to the evolving needs and aspirations of society.

The Supreme Court's rejection of the plea for marriage equality in India was a disappointing outcome for the queer community and their supporters. It highlighted the ongoing struggle for equal rights and recognition, underscoring the need for continued advocacy and efforts to bring about societal change.

The landscape, both physical and societal, has experienced a remarkable and profound metamorphosis over the past two centuries, diverging greatly from the era of our forefathers. This transformation has prompted a widespread agreement among the general populace that the legislative body should take necessary measures to address the changing dynamics. In line with

this consensus, Justices Hima Kohli, Ravindran Bhat, and Narasimha, forming the majority opinion, firmly believe that enacting legislation is imperative to adapt to the evolving landscape. Conversely, Chief Justice DY Chandrachud and Justice Kaul hold a dissenting viewpoint, advocating against the introduction of civil unions for same-sex couples. Despite acknowledging the significant transformation that has occurred, they argue against altering the traditional definition of marriage and maintaining the status quo. Their dissenting opinion emphasizes the preservation of societal norms and values that have been upheld for generations.

The majority opinion, supported by Justices Kohli, Bhat, and Narasimha, recognizes the need for legislative action to accommodate the changing landscape. They contend that the societal shifts, including advancements in technology, globalization, and the recognition of individual rights, necessitate a reevaluation of existing laws and the introduction of new legislation. They argue that failing to adapt to these changes would result in an outdated legal framework that fails to address the needs and aspirations of the current generation.

On the other hand, Chief Justice Chandrachud and Justice Kaul express concerns about the potential consequences of introducing civil unions for same-sex couples. They argue that such a move would undermine the sanctity of marriage as traditionally understood and could have far-reaching implications for society. Their dissenting viewpoint emphasizes the importance of preserving the institution of marriage as it has been historically defined, rooted in religious and cultural traditions.

While the majority opinion highlights the necessity of legislative action to accommodate the transformed landscape, the dissenting viewpoint emphasizes the importance of maintaining societal norms and values. This difference in opinion reflects the ongoing debate surrounding the role of the judiciary in adapting to societal changes and the balance between tradition and progress.

Ultimately, the decision on whether to enact legislation in response to the transformed landscape lies in the hands of the legislative body. The contrasting opinions of the justices provide a comprehensive understanding of the complex considerations involved in addressing the evolving landscape and highlight the need for a thoughtful and inclusive approach to legislation.

JUDGEMENT ANALYSIS

The Indian society already discriminates against the queer community as they have to face several prejudices in basic aspects of their lives, including employment, housing, and healthcare. The lack of legal recognition for same-sex marriages and the denial of adoption rights further perpetuate the marginalization of the queer community.

The argument that marriage is not essential for same-sex couples fails to acknowledge the societal and legal benefits that come with marriage. Marriage provides legal protections and rights, such as inheritance rights, healthcare decision-making power, and tax benefits. Denying these rights to same-sex couples not only denies them equal treatment under the law but also reinforces the notion that their relationships are less valid or deserving of recognition.

Besides, the forswearing of adoption rights to same-sex couples isn't simply unfair but additionally impeding the prosperity of youngsters. Various investigations have shown that kids raised by same-sex couples prosper similar as well as those raised by heterosexual couples. Denying same-sex couples the potential chance to adopt not only denies them the opportunity to fabricate a family yet in addition denies children the opportunity to be set in cherishing and strong homes.

The fight for equal rights for the LGBTQ+ community is not just about marriage and adoption. It is about challenging and dismantling the deeply ingrained homophobia and transphobia that exist within Indian society. It is about creating a society where individuals are free to express their true selves without fear of discrimination or violence.

The recent ruling may have sparked controversy and disappointment, but it has also ignited a renewed sense of determination within the LGBTQ+ community and its allies. They will continue to fight for their rights, to challenge discriminatory laws and practices, and to create a more inclusive and accepting society for all. This judgment, however, has prompted a positive step towards their dream, since it is a 3:2 majority and it is plausible that without further ado the government could give more freedoms to the community and corrections required can be made by the parliament following this judgment.

CONCLUSION

The Supreme Court's decision to deny the legal recognition of marriage to homosexual individuals in India, with a 3:2 majority, is undoubtedly a setback for the LGBTQ+ community. However, there is a glimmer of hope for a more inclusive future, as a larger bench may have the power to overturn this ruling. This situation mirrors the previous case of Navtej Singh Johar v the Union of India, where homosexuality was initially recriminalized but later decriminalized due to the resistance and activism of the LGBTQ+ community.

In this current appeal, the court had to examine the constitutionality of the Special Marriage Act and Foreign Marriage Act, which are the primary laws governing marriage in India. The denial of legal recognition to homosexual individuals under these acts raises questions about the rights

and equality of the LGBTQ+ community. However, there are two potential alternatives that could address this issue.

Firstly, the executive branch has the power to enact laws that broaden the scope of the Special Marriage Act and Foreign Marriage Act to include same-sex marriages. This would require a proactive approach from the government to recognize the rights and dignity of LGBTQ+ individuals and ensure their equal treatment under the law.

Secondly, the judicial route can be pursued by challenging other aspects of marriage that encompass legal rights. Marriage grants various legal rights, such as inheritance, property rights, protection against violence, pension schemes, and other benefits that may not be available in live-in relationships or other forms of partnership. By challenging the denial of these rights based on sexual orientation, the LGBTQ+ community can seek a more inclusive interpretation of the law. It is important to note that discrimination based on sexual orientation not only violates Articles 21 and 14 of the Indian Constitution, which guarantee the right to life and personal liberty and the right to equality, respectively, but also Article 15, which prohibits discrimination on various grounds, including sex. These constitutional provisions provide a strong foundation for challenging the denial of marriage rights to homosexual individuals.

Despite this setback, there is still hope for a more positive response from the justice system in the ongoing struggle for equality for the LGBTQ+ community in India. The fight for equal rights and recognition continues, and the opportunity for a more inclusive and just society remains open. With continued activism, legal challenges, and societal awareness, it is feasible to make a future where all people, no matter what their sexual orientation, can partake in the major right to wed and access the legitimate securities and advantages that accompany it.