

## Beyond the Bench: Implications of the Supreme Court's Ruling on Marriage Equality in India

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### Introduction

On October 17, 2023, the Supreme Court of India gave a landmark judgement in the case of *Supriyo @Supriya Chakraborty & Anr. v. Union of India*<sup>1</sup> marking a significant legal setback for the LGBTQ+ community in India. The unanimous decision by the five-judge bench rejected the plea for the LGBTQ+ community's right to marry, denying them the recognition of fundamental rights within the institution of marriage. This judgement implies the numerous legal challenges surrounding the issue of marriage equality within the Indian legal framework and corresponds to the struggle of the LGBTQ+ community for equal rights and social recognition.<sup>2</sup>

The quest for marriage equality has become the key cause of the struggle of LGBTQ+ communities globally, which indicates the growth and spread of human rights and fairness. In India, where divergent cultures, customary ways of life, and legal structures converge, the pursuit of equal marriage has experienced distinct challenges and hurdles. This case has raised several issues pertaining to the interpretation of the Special Marriage Act, 1954 (SMA), which in turn have led to the exploration of the relationship between law, rights, and social transformation.<sup>3</sup>

As the interpretation of the SMA in the context of marriage equality in India's legal setup turns out to be of great importance, it is vital to analyse the effects of such a judgement and its broader implication for LGBTQ rights.

### Does the Constitution Recognize a Fundamental Right to Marry?

The Chief Justice Chandrachud has opined that the Constitution of India doesn't explicitly provide the fundamental right to marriage. The Chief Justice's statement underscores a fundamental aspect of Indian jurisprudence: the function of legislation in defining the institution of marriage. Nevertheless, he noted that such regulation of marriage is the jurisdiction of the Parliament, and states have the capacity to alter the existing laws as they deem fit according to contemporary situations.<sup>4</sup>

On the contrary, the petitioners in this case had made their arguments relying on precedents like the *Shafin Jahan v. Asokan K.M.*<sup>5</sup> and the *Shakti Vahini v. Union of India*<sup>6</sup> cases in order to assert their marriage as a fundamental right. These cases, which involved inter-faith and inter-caste marriages, highlighted the idea of individual freedom and the right to choose a life partner on one's own without the interference of the state. Yet, Chief Justice Chandrachud observed that these precedents were not applicable to the current situation. His rationale was that they specifically

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addressed scenarios where both state and non-state entities obstructed a couple, who were otherwise eligible to marry, from doing so. In essence, he clarified that the legal entitlement to marriage is only enforceable in relationships already sanctioned by the Union government.

It is this differentiation that emphasises the intricate legal system behind the battle for marriage equality in India. Although the constitutional right to marry may not be directly affirmed, the interpretation and application of existing laws play a pivotal role in determining access to this fundamental institution.

In essence, the judgement of Justice Chandrachud proposes that the statutory right to marry can be enforced only by a legally recognized relationship by the Union government, which leads to the debate on human rights and the inference of the government in personal matters. Furthermore, the argument for marriage as a fundamental right rests upon the foundations of wider societal attitudes towards LGBTQ+ rights and non-discrimination. The Chief Justice's decision highlights the need for nuanced discussions about the intersection of law, rights, and social change, particularly in the context of marginalised communities.

Justice Bhat concurred with Chief Justice Chandrachud's assertion that the Constitution does not explicitly recognize a right to marry. He emphasised that marriage exists independently of the state, suggesting that its source is societal rather than legal. Justice Bhat argued that while the state can regulate marriage, this power may not align seamlessly with the idea of marriage as a fundamental right. He further posited that any recognition of the right to marry would necessitate corresponding obligations on the part of the state, potentially invoking Articles 15 and 16 of the Constitution. However, he noted the limitations of the court in compelling the state to create social or legal status, framing the right to marry as a personal preference rather than an enforceable right.

Further, Justice Bhat elaborated on the state's role in creating conditions to further its goals, citing Articles 17, 23, and 24, which impose positive obligations on the state. However, he clarified that in the specific case under consideration, the court could not require the state to create social or legal status. He argued that the demand in this case was to access the "*publicly created and administered institution*" of marriage, which cannot then become a demand to create a legally recognized institution and status. As per Justice Bhat, the right to marry is a "*personal preference*" that "*confers social status*" but is not an "*enforceable right, which the courts can compel the state or governance institutions to provide.*"

In contrast, Justice Narasimha presented a different perspective, characterising marriage as a fundamental freedom rather than a right. His viewpoint challenges traditional notions of marriage as a legally enforceable entitlement, suggesting instead that it encompasses broader personal freedoms and choices.

These judicial insights prompt critical reflections on the intersection of law, rights, and social norms in shaping the institution of marriage, as well as the evolving understanding of equality and human rights in Indian society.

### **Interpretation of the Special Marriage Act, 1954**

The petitioners in the case argued for a purposive interpretation of the SMA, advocating for a gender-neutral approach that would include non-heterosexual couples. However, Chief Justice Chandrachud cautioned against adopting a "workability model," which would entail adding, deleting, or substituting words in Section 4 of the SMA. He highlighted institutional limitations, noting that such an approach would essentially entail judicial overreach by usurping the legislative domain, thereby violating the doctrine of separation of powers.

Justice Kaul, concurring with Chief Justice Chandrachud, acknowledged the multifarious interpretive

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difficulties associated with including non-heterosexual persons under the SMA. He emphasised the potential cascading effect across disparate laws and underscored the pervasive and structural nature of social discrimination against non-heterosexual individuals. Despite recognizing the limitations of the court in addressing these issues, Justice Kaul advocated extending the right to a civil union, which would afford all benefits arising from marriage.<sup>8</sup>

Justice Bhat offered insights into the importance of discerning parliamentary intent in interpreting statutes like SMA. He cautioned against construing something conceptually different from what Parliament intended, emphasising the primacy of legislative objectives. Justice Bhat also raised concerns about the implications of a gender-neutral interpretation of the SMA, warning that it could complicate the path to justice for women and undermine gender-specific provisions within the statute.

The deliberations surrounding the interpretation of SMA underscore the delicate balance between upholding individual rights and navigating legal realities. While there is a growing recognition of the need to address discrimination against non-heterosexual individuals, the Court faces significant challenges in reconciling competing interests and legislative intent.

## Reflections on the Complexities of Marriage Equality in India

The Supreme Court's decision has significant implications for the future trajectory of marriage rights in India. Firstly, it highlights the need for a nuanced understanding of the distinction between fundamental freedoms and enforceable rights within the context of marriage. While individuals may enjoy the freedom to marry, the absence of explicit constitutional recognition raises questions about the enforceability of this right.

Secondly, the judgement underscores the complexities of balancing personal freedoms with state regulation within the institution of marriage. The Court's reluctance to compel the state to create legal frameworks for same-sex marriage reflects broader societal attitudes and challenges in reconciling traditional norms with evolving concepts of equality and human rights.

Furthermore, the decision sheds light on the limitations of judicial intervention in matters of social policy and legislative reform. Despite recognizing societal shifts and evolving norms, the Court's deference to legislative prerogative underscores the importance of a democratic process in shaping legal frameworks related to marriage and family.

Moving forward, the implications of this decision are far-reaching. It calls for continued dialogue and advocacy within the LGBTQ+ community and broader society to address systemic discrimination and promote inclusivity. Moreover, it underscores the need for legislative reforms that reflect evolving societal values and ensure equal rights and protections for all individuals, irrespective of sexual orientation or gender identity.

## Conclusion

The interpretation of the Special Marriage Act, 1954, in the context of marriage equality represents a critical juncture in India's legal landscape. While the Court's decision underscores the challenges inherent in altering existing legislation, it also highlights the imperative to address systemic discrimination and promote inclusivity. By navigating the complexities of legal interpretation and engaging in meaningful dialogue, India can move towards a future where all individuals, regardless of sexual orientation or gender identity, have equal rights and opportunities within the institution of marriage.

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