

Supriyo Chakraborty V UOI

Date of Judgement: 17.10.23

Decided by: 5 Judge Constitutional Bench **CJI DY Chandrachud, Justice SK Kaul, Justice Ravindra Bhat, Justice PS Narasimha and Justice Hima Kohli**

**SC refused to grant legal recognition for queer marriages in India. Queer couples have a right to cohabit without any threat or violence, coercion or interference.**

**Issue no 1:** Are certain provisions of Special Marriage Act, 1954 unconstitutional and violates the right of LGBTQIA+ persons?

Court held The Supreme Court unanimously agreed that it cannot strike down or read the provisions of SMA to recognize queer marriages. It is the domain of Parliament and legislature to decide upon. Thus, wherever a word is used, the overall context of its location plays a role; sometimes, its meaning changes wherever the context is different. The Court have hence held that the expressions in the SMA ["wife" and "husband" or "male" and "female"] cannot, have a uniform meaning, because there is an intended gendered binary [e.g., male and female] in the specific enacting provisions.

**Issue No 2:** Do LGBTQIA+ persons have a right to adopt?

Court Held: the Supreme Court declined the right to adoption by 3:2 majority.

CJI +Jus Kaul held that queer couples could jointly adopt a child. Regulation 5(3) of CARA Regulation (which prohibited queer couples from adoption) are in violation of Article 15 of the Constitution.

Majority Opinion of judges held that 5(3) of CARA Regulation cannot be held to be unconstitutional and is not violative of Article 15 of the constitution.

What is regulation 5(3) of CARA?

Regulation 5 of CARA outlines the Eligibility criteria for prospective adoptive parents.—

(3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship except in the cases of relative or step-parent adoption.”

**Issue no 3:** whether LGBTQIA+ persons have right to form Civil Unions?

To understand the issue lets understand the difference between Marriage and Civil Union?

Civil union resembles a marriage and couples do have rights and responsibilities and certain benefits as normally conferred upon married couples. It does not have same legal recognition as in personal law for marriage.

CJI + Jus Kaul favoured the extension of Civil Union to protect the same sex couples for benefits of taxation, inheritance and being a nominee for the bank account.

The Majority of the Judges held that entitlement to Civil Union could only be through enacted law. A Committee chaired by the Cabinet Secretary will be constituted to set out the rights which will be available to queer couples in unions.

**Issue No. 4:** Whether Articles 19 and 21 of the Constitution guarantee all persons the right to marry a person of their choice, including LGBTQIA+ persons?

Court Held: There is no unqualified right to marriage guaranteed by the Constitution, that qualifies it as a fundamental freedom. There is no unqualified right to marriage except that recognised by statute including space left by custom.

The earlier judgment by this court was to protect them and give them the right to relationship and right to choose partners. The State shall ensure - consistent with the previous judgment of this Court in K.S. Puttaswamy (supra), Navtej Johar (supra), Shakti Vahini (supra) and Shafin Jahan (supra)- that the choice exercised by queer and LGBTQ couples to cohabit is not interfered with and they do not face any threat of violence or coercion. This court has recognized that marriage is a social institution. Therefore, marriage as an institution is prior to the state, i.e., it precedes it.

The Court held that transgender persons in heterosexual relationships have the freedom and entitlement to marry under the existing statutory provisions.