

SC Refuses To Accord Recognition To Same Sex Marriages

Why In News

- A **five-judge bench** of the Supreme Court that was headed by Chief Justice of India DY Chandrachud, unanimously ruled against legalising same sex marriage in India.
- The bench also ruled in a **3:2 verdict against civil unions** for non-heterosexual couples. It **comprised Justices** Sanjay Kishan Kaul, Ravindra Bhat, Hima Kohli and PS Narasimha.



Judgement

- All Judges Were Unanimous In **Holding That There Is No Unqualified Right To Marriage** And Same-sex Couples Cannot Claim That As A Fundamental Right.
- Court Also Unanimously Turned Down The Challenge To Provisions Of The Special Marriage Act. Also Held Civil Unions Between Same Sex Couples Are Not Recognised Under Law & Cannot Claim Right To Adopt Children Either.
- The ruling means that Indians will now be free to **engage in same-sex relationships**, assured of constitutional protection. But marrying someone of the same sex remains forbidden. “It includes the right to choose a partner and enjoy physical intimacy with them, including the right to privacy, autonomy, etc, and should enjoy this right undisturbed from society and when threatened State has to protect the same.”



Special Marriage Act

- The **Special Marriage Act, 1954** is an Act of the Parliament of India with provision for civil marriage (or "registered marriage") for people of India and all Indian nationals in foreign countries, irrelevant of the religion or faith followed by either party.
- The Act originated from a piece of legislation proposed during the late 19th century. Marriages solemnized under Special Marriage Act are not governed by personal laws.

SMA 1954

- TWO PERSONS OF OPPOSITE SEX OF ANY RELIGION –SIMILAR AS HMA 1955.
- NOTICE OF INTENDED MARRIAGE TO THE MARRIAGE OFFICER IN PLACE WHERE ANY PARTY REMAINED FOR ATLEAST 30 DAYS.
- IF ANYBODY HAS OBJECTION-WITHIN 30 DAYS CAN OBJECT IT
- PLACE OF MARRIAGE-AT OFFICE OR WHERE PARTIES DESIRE [REASONABLE] ON PAYMENT MADE IN SUCH REGARD BY PARTIES.

What Petitioners Argued

- Petitioners through senior advocates including Mukul Rohatgi, Abhishek Manu Singhvi, Raju Ramachandran, Anand Grover, Geeta Luthra, KV Viswanathan, Saurabh Kirpal, and Menaka Guruswamy stressed on **the equality rights of the LGBTQIA+ community**.



- They pushed to acknowledge such a union which would ensure LGBTQIA lead a "dignified" life like heterosexuals.
- The petitioners said that **"India is a marriage-based culture"** and that LGBT (lesbian, gay, bisexual, and transgender) couples should be granted the same rights as any heterosexual couples.
- Like the status of "spouse" in finance and insurance issues; medial, inheritance, and succession decisions, and even in adoption and surrogacy matters.



What Does Center Argued

- The Centre had **opposed the pleas arguing** that the legislative policy of India has consciously validated a union only between a biological man and a biological woman.
- The Centre told the top **court it would constitute a committee** headed by the cabinet secretary to examine administrative steps that could be taken to address "**genuine concerns**" of **same-sex couples** without going into the issue of legalising their marriage.

Arguments from both sides

WHAT CENTRE SAID

- Family issues are far beyond mere recognition and registration of marriage between persons belonging to the same gender
- Living together as partners and having sexual relationship by same-sex individuals is not comparable with the Indian family unit concept of a husband, a wife and children which necessarily presuppose a biological man as a 'husband', a biological woman as a 'wife' and the children born out of the union between the two

PETITIONERS' RESPONSE

- The government's position is curious given the (Hindu Marriage) Act itself wiped out several recorded Hindu traditions that existed prior to codification. Whoever drafted the response also seems clueless about the 60-odd genders recognised in Hindu historical texts not to mention it has failed to provide any textual basis prohibiting the marriage of these 60-odd genders.
- The progeny argument is particularly ridiculous because it implies any marriage shorn of biological offspring is not a marriage

Majority Opinion

- Justices **Bhat, Kohli, and Narasimha** collectively delivered the majority opinion.
- The entire panel of judges reached a consensus that the right to marriage is not an absolute entitlement, thereby disallowing same-sex couples from asserting it as a fundamental right.
- The Court, in agreement, **rejected the challenge posed** to the provisions of the Special Marriage Act.
- Furthermore, the majority of Justices Bhat, Kohli, and Narasimha emphasized that the legal system does not recognize civil unions between same-sex couples, nor do such couples possess the right to adopt children.
- All judges concurred in the decision that an unqualified right to marriage does not extend to same-sex couples.

SUPREME COURT JUDGMENT IN A NUTSHELL

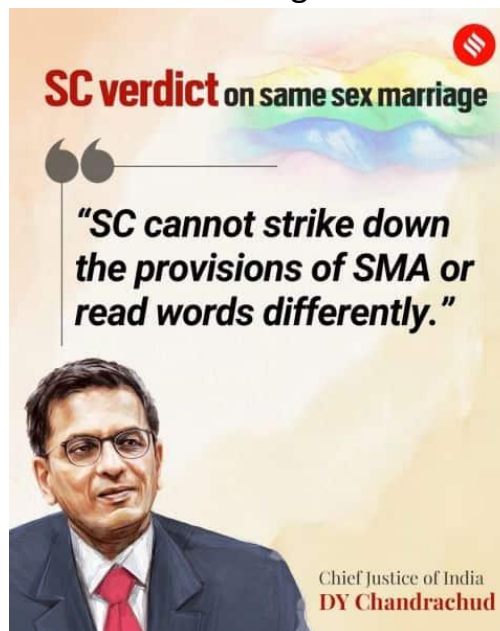
MAJORITY OPINION



- ▶ **No right to marriage;**
- ▶ **No right to civil union; it can be only through laws;**
- ▶ **No right to adopt children;**
- ▶ **Have the right to choose their own partner;**
- ▶ **Transgender persons have right to marry.**

Minority Opinion

- A **Queerness transcends urban** or elite contexts, signifying its diverse nature. Marriage itself lacks a universal definition, having acquired legal status through regulatory measures.
- The **Constitution does not confer a fundamental right** to marriage, preventing its elevation to such a status.
- The Court is not authorized to nullify provisions within the Special Marriage Act; the legality of same-sex marriage lies within the jurisdiction of Parliament, and judicial intervention in policy matters is unwarranted.
- **The freedom of the queer community** to form unions is constitutionally protected. Any denial of their rights amounts to a violation of fundamental rights, and the right to enter into unions should not be contingent on sexual orientation.
- Transgender individuals maintain the right to marry under existing laws.
- Queer couples **possess the right to jointly adopt a child**, and Regulation 5(3) of the Adoption Regulations, as established by the Central Adoption Resource Authority (CARA), contravenes Article 15 of the Constitution by discriminating against the queer community.
- The central government, states, and union territories are prohibited from obstructing queer individuals from entering into unions to access state benefits.



Conclusion

- The Court Said That Law As It Stands Today **Does Not Recognise** Right To Marry Or The Right Of Same-sex Couples To Enter Into Civil Unions, And That It Is Upto The Parliament To Make Laws Enabling The Same. The Court Also Held That The Law Does **Not Recognise Rights Of Same-sex Couples To Adopt Children.**

