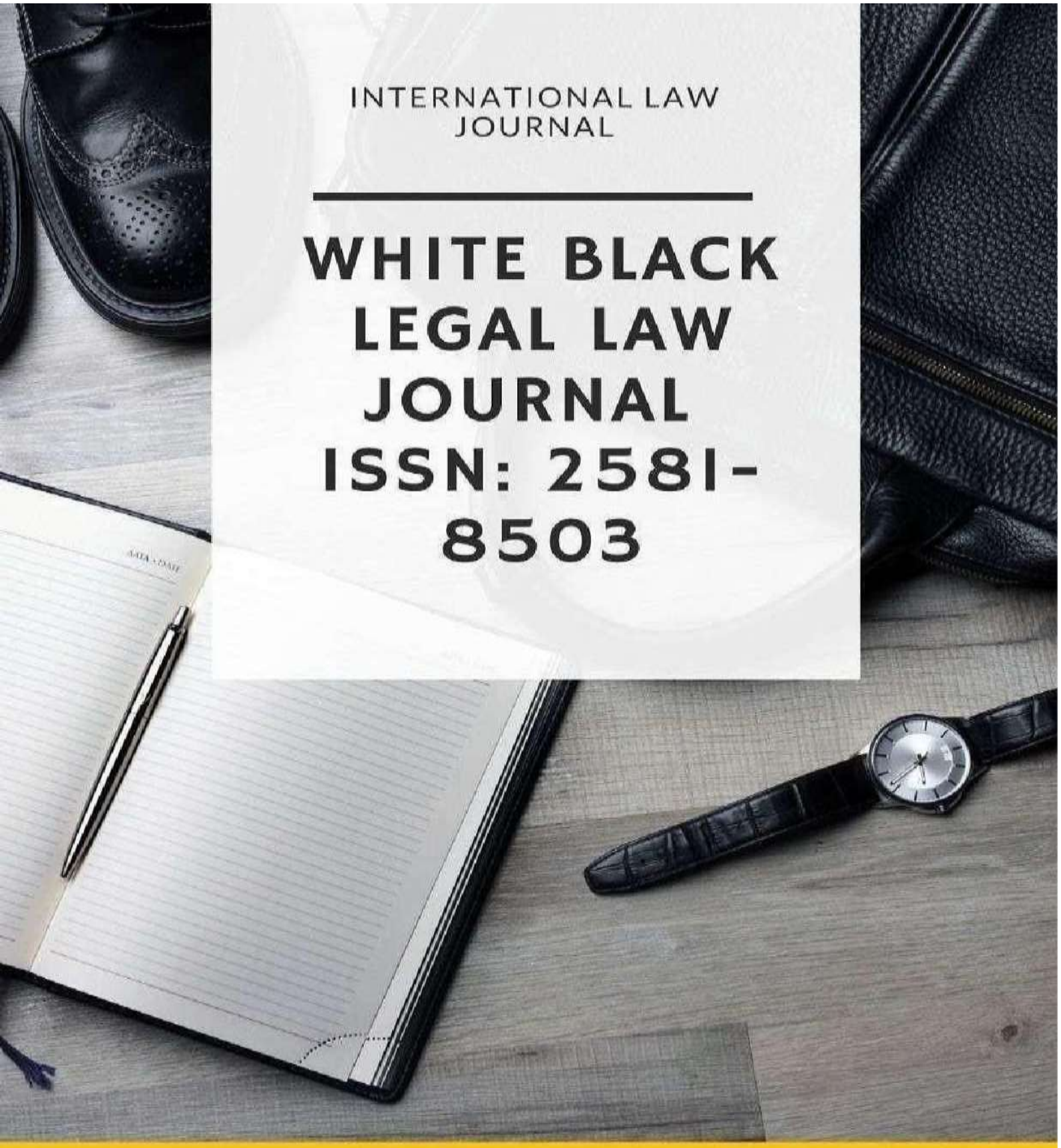

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

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CASE COMMENTARY ON SUPRIYO @ SUPRIYA CHAKRABORTY & ANR. V UNION OF INDIA, 2023

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Introduction

The right to marry is essentially embedded in the human experience, representing companionship, dignity, autonomy and state recognition. This right has come under a growing legal assessment in India, particularly in light of changing conceptions of gender, identity, and sexual orientation. The Supreme Court's Constitution Bench judgment in *Supriyo @ Supriya Chakraborty v. Union of India (2023)* was awaited with considerable anticipation as it promised to deliver a landmark ruling on whether same-sex couples in India have a constitutionally protected right to marry. Instead, a split decision emerged, with the Bench agreeing on many important issues but unanimously rejecting the legalisation of same-sex marriage. The case presents fertile ground for re-examining the parameters of Article 21 (right to life), Articles 14 and 15 (equality and non-discrimination), as well as the intersection of judicial power with legislative domain in personal law reform. This commentary attempts to analyse the judgment, its background, legal questions, judicial reasoning, and broader constitutional implications.

Background

The *Supriyo* case builds upon a series of landmark judgments that expanded LGBTQ+ rights in India. The foundation was laid in *National Legal Services Authority (NALSA) v. Union of India* (2014), which legally recognised transgender identities. This was followed by *Justice K.S. Puttaswamy v. Union of India* (2017), affirming privacy as a fundamental right, including sexual orientation. In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalised consensual same-sex relations by reading down Section 377 IPC. These rulings together opened the constitutional pathway for same-sex couples to demand marriage equality in *Supriyo case*.

Facts of the Case

On 14 November 2022, same-sex couples Supriyo Chakraborty & Abhay Dang and Parth Phiroze Mehrotra & Uday Raj Anand filed writ petitions before the Supreme Court of India, challenging the constitutionality of Section 4(c) of the Special Marriage Act, 1954. They argued that the Act's recognition of marriage solely between a "male" and a "female" violated their fundamental rights under Article 14 (Right to equality), Article 15 (Non-discrimination), Article 19 (freedom of expression), and Article 21 (right to life and personal liberty). The petitioners contended that the denial of marriage rights to same-sex couples deprives them of crucial legal and social benefits, including inheritance, adoption, employment-related entitlements, and recognition as each other's next of kin. Chakraborty and Dang emphasised that they had been in a committed relationship for several years and that denial of legal marriage recognition relegated them to second-class citizenship with no access to spousal rights and protections.

Issues

· ***Right to Marry as a Fundamental Right***

The Court examined whether the right to marry is a constitutionally protected fundamental right and whether it should be equally available to same-sex couples. The petitioners argued that excluding them from marriage violates their dignity and autonomy.

· ***Constitutionality of the Special Marriage Act, 1954***

The Court considered whether Section 4(c) of the Special Marriage Act, 1954, which permits only heterosexual marriages, discriminates against same-sex couples. The challenge was based on violations of equality, non-discrimination, freedom of expression, and personal liberty.

· ***Judicial Interpretation or Legislative Action***

The Court had to decide whether it could reinterpret marriage laws in a gender-neutral way or whether such recognition of same-sex unions must come through legislative reform. It also addressed whether civil unions could offer similar rights and protections.

Standpoint of the petitioners

It was submitted by the learned senior counsel that the Court’s jurisprudence affirmed that LGBTQIA+ persons have the right to dignity, equality, and privacy, which includes the right

to marry a partner of their choice. Statutory recognition of this right naturally follows from these constitutional principles.

Additionally, the Special Marriage Act, 1954, is unconstitutional as it excludes same-sex couples from marrying, amounting to discrimination based on sexual orientation. Article 15(1) of the Indian Constitution prohibits such discrimination under the broader ground of sex. The Act's requirement that marriage be between a man and a woman is rooted in ascriptive, socially imposed characteristics. This exclusion targets identity rather than conduct. Hence, it violates the equality and non-discrimination guarantees of the Constitution. The exclusion of same-sex couples from the Special Marriage Act violates Article 14 of the Constitution of India, as it lacks a rational nexus with any legitimate state objective despite the classification based on sexual orientation. It denies LGBTQIA+ individuals equal protection under the law and access to rights under social welfare legislation. A law's purpose itself cannot be discriminatory or unconstitutional. Its exclusion of same-sex and gender non-conforming couples is arbitrary, lacking any fair or reasonable justification. The classification based solely on sexual orientation and gender identity is constitutionally invalid. There is no intelligible differentia or rational link between this exclusion and the object of the Act. It also infringes Article 19, as marriage is a form of personal expression protected under Article 19 (1)(a), and the restriction is not a reasonable limitation under Article 19(2). Furthermore, it violates Article 21 of the Indian Constitution by undermining the dignity of same-sex couples. Denying them marriage rights sends a societal message of moral inferiority, comparable to caste-based temple entry bans or exclusion of disabled persons from opportunities.

Since the Special Marriage Act, 1954 aims to provide a civil marriage option beyond personal laws, excluding LGBTQIA+ couples contradicts its very purpose.

Contentions of Respondents

The respondents contended that the question of granting legal recognition to non-heterosexual relationships should not be decided by the Court but left to the people or their elected representatives. They argued that a judicial decision would pre-empt legislative debate on the matter. Their submission had two main points: first, that the Court lacks the authority to decide this issue, and second, that it must be resolved through democratic processes reflecting the will of the electorate.

Ratio Decidendi

Dissenting from the majority, Hon'ble Chief Justice D Y Chandrachud opined, *"The right to enter into a union includes the right to select one's partner and have that choice acknowledged; the failure to acknowledge such unions is deemed discriminatory"*

Justice Ravindra Bhat stated*: "The opinion of the Chief Justice, thereafter, classifies that status of two persons in relationship: (a) 'relationships' which do not have legal consequences, (b) 'unions' which have legal consequences and marriages. In my considered opinion, it is in positively mandating the State to grant recognition or legal status to 'unions' from which benefits will flow, that the doctrine of separation of powers is violated. The framing of a positive right and the positive entitlements which flow therefrom, essentially require the State to regulate such unions and benefits. In my opinion, the direction in effect is to amend existing statutory frameworks, if not to legislate afresh."*

The Supreme Court clarified that its power under Article 32 to enforce fundamental rights is distinct from the legislature's power to enact laws. Judicial review, a basic feature of the Constitution, allows courts to examine laws and executive actions against constitutional principles but does not permit them to create laws or policies. While respecting the doctrine of separation of powers, the Court emphasised that this doctrine cannot bar it from protecting fundamental rights. The Union of India argued that deciding on same-sex marriage violated the doctrine, but the Court maintained that judicial review remains valid. Additionally, the need for a comprehensive anti-discrimination law was highlighted, given the fragmented nature of existing laws. Such legislation would align with Article 15, Article 38 and ensure broader protection against discrimination, including by private actors. However, the Court held that positively directing the State to recognise same-sex unions and grant legal entitlements would intrude upon the legislative domain. The **majority opinion** held that there is **no fundamental right to marry**, and the **Special Marriage Act, 1954, cannot be judicially altered** to include same-sex couples. This view was taken by Justice Shripathi Ravindra Bhat, Justice Narasimha and Justice Hima Kohli. They emphasised that changes to marriage laws must come from the legislature, not the judiciary. On the other hand, the **minority opinion** by Chief Justice D Y Chandrachud and Justice Kaul supported **granting legal recognition to same-sex unions** and opined that the non-recognition of such relationships **violates constitutional rights of dignity, equality, and freedom of expression**. Despite this, the final outcome denied legal recognition of same-sex marriage but did acknowledge the need for an anti-discrimination legal framework.

Conclusion

The *Supriyo Chakraborty* case stands as both a milestone and a missed opportunity in the fight for equal rights in India. Although the Supreme Court recognised the autonomy, dignity, and fundamental rights of LGBTQIA+ people, the majority's unwillingness to legalise same-sex marriages shows a persistent hesitancy to address deeply ingrained prejudice in society. Chief Justice D.Y. Chandrachud and Justice Kaul's dissenting views, in particular, valiantly reaffirmed the requirement that constitutional morality must prevail over societal prejudices. Their progressive stance recognises that the denial of marriage rights to same-sex couples perpetuates systemic exclusion and violates core constitutional guarantees. True equality cannot exist without equal access to institutions like marriage. It is now imperative for the legislature to act and ensure that the law evolves to reflect the inclusive, rights-based vision of the Constitution.