

## High Powered Committee

The Court directed the government to constitute a High Powered Committee to study the impacts of these policies and have it suitably redressed. This must have members representing all stakeholders as well as States and Union Territories. As per this direction, the Centre constituted a six-member committee chaired by the Cabinet Secretary.

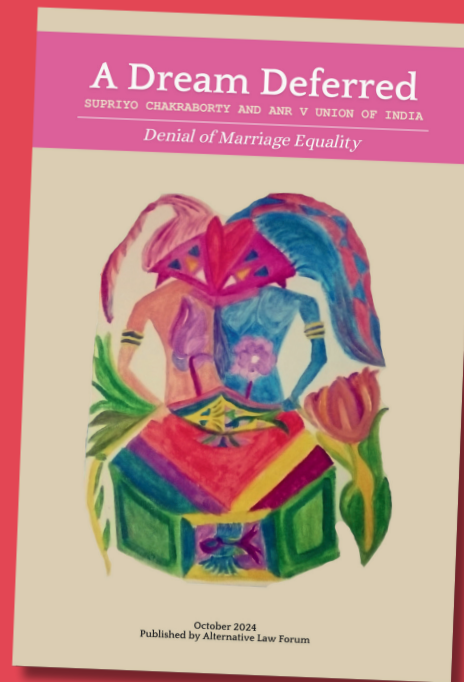
However, the government has not revealed any names of members from the LGBTQ+ community, despite being directed to be representative of all stakeholders.

## Going Forward

Firstly, a **Review Petition** challenging the denial of marriage equality in *Supriyo v. Union of India*, is pending in the Supreme Court.

Secondly, the High Powered Committee which has been constituted was directed to conduct a **wide range of consultations** across the country to understand the concerns and struggles of the LGBTQIA+ community. We must organise efforts to pressure this Committee to begin implementing the SC's directions at the earliest.

Finally, we must collectively challenge the mainstream and public discourse which continues to stigmatise same sex marriage. Over the last three decades, the LGBTQIA+ movement achieved significant victories and proved that such country-wide mobilisation and public assertions of rights and identities can drive change. Homosexuality was decriminalised and the transgender identity was legally recognised. **Our struggle on the ground to assert our right to civil union must therefore, continue with renewed vigour.**



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# How Did the Supreme Court Deny Marriage Equality to Queer Persons?

AN EXPLAINER



**Supriyo vs. Union of India**  
**October 17, 2023**

The Alternative Law Forum is a collective of lawyers invested in an alternative practice of law. ALF has a commitment to respond, through litigation, research and advocacy, to issues of social and economic injustice.

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## Context

In November 2022, two same-sex couples approached the Supreme Court asserting that the exclusion of LGBTQ+ persons from the institution of marriage under Indian laws amounted to a violation of their fundamental rights (to equality, dignity and freedom) under the Constitution.

Five judges heard this case, who all had differing opinions and authored different opinions. Only the majority opinion forms a judgement that is binding. The minority opinion/judgement is an alternative legal interpretation that can point to ways forward. In this case, Chief Justice Chandrachud & Justice Sanjay Kishan Kaul formed the minority opinion. Justices S Ravindra Bhat, Hima Kohli and P S Narasimha formed the majority opinion.

## What happened in Court?

The Court had to decide whether the right to marry was a Constitutional right to queer persons. It concluded:

1. That there is no fundamental right to marry under the Constitution.
2. That the Special Marriage Act (SMA) is neither unconstitutional nor can it be interpreted to enable marriage between queer persons.

**The Right to Marriage Equality was denied.**

Despite the denial of the right to marriage equality, the judges unanimously agreed that:

1. Queerness is a natural phenomenon known to India since ancient times. **It is neither urban nor elite.**
2. **Violence & discrimination against queer persons are systemic.** Not enough has been done by the government since the decriminalisation of homosexuality in 2018.

3. Transgender & intersex persons who identify as either male or female, and in heterosexual relationships have the right to marry.
4. Queer persons have the right to freedom from coercion from their natal families, as well as the state including the police.

## Is There a Constitutional Right to Marry?

No. The Court held that marriage is an institution governed by law, **not a Fundamental Constitutional Right**. The law in question, the Special Marriage Act (1954), specifies that it applies solely to heterosexual couples. The Court ruled that the current absence of a law governing marriages between queer persons does not violate the Constitution.

## Is There a Right to Civil Union?

No. The Court held that allowing same-sex couples to enter into civil unions can only be brought in through an enacted law.

A High-Powered Committee was mandated to be set up to enlist the benefits accessible to persons in a civil union such as nominating for insurance, creating joint bank accounts, adoption, inheritance, pension and healthcare.

## Is There a Right to Jointly Adopt?

No. The majority opinion held that **the Supreme Court is not the appropriate forum to assess queer persons' right to jointly adopt**. The Court has directed the Government to reconsider the adoption laws with a continued focus on the welfare of children.

The (CARA) guidelines on adoptions extend the right to jointly adopt only to those in stable

marital relationships. As of now, since queer marriages are neither recognised nor allowed in law, their partnerships are not stable marital relationships under the adoption guidelines.

## Minorities' Directions

The Union Government & State Governments are directed by the minority judges' opinion to address the systematic discrimination faced by the queer community as follows:

- Facilitate access to goods and services which are available to the public;
- Take initiatives to sensitise the public and state authorities on queer identity and rights;
- Run helpline numbers to respond to the harassment faced by queer persons;
- Run shelter homes for queer persons in all districts;
- Strictly prohibit conversion therapy and non-consensual sex-surgery of inter-sex children;
- Legally recognise the self-identification of queer persons as male / female / third gender regardless of the parameters of hormonal therapy or gender affirming surgery;
- Include mental health of queer persons in all of the Govt's public health efforts to promote mental health and reduce suicides;
- Police must end violence against queer persons including forceful return to their natal families when they flee harassment;
- Police must stop registering baseless FIRs against queer persons.

## Conclusion

The judgement recognised that marital status is a relevant eligibility factor for the enjoyment of several welfare benefits such as employment, provident funds, gratuity, family pension, ESI and medical insurance. In simpler words, without the right to marry, queer persons are deprived of other rights too.