

Cannot legalise same-sex marriage, says SC Bench

A majority opinion of the five-judge Constitution Bench says only the legislature can recognise such marriage, and courts cannot intervene; it adds there is no fundamental right to marry

Krishnadas Rajagopal
NEW DELHI

A Constitution Bench of the Supreme Court on Tuesday held that only the legislature can recognise or regulate same-sex marriage. The Bench reasoned that since there was no fundamental or unqualified right to marry, the courts cannot intervene.

However, the Bench failed to reach a consensus on providing even long-abiding relationships between same-sex couples the status of a legally recognised "civil union". This was despite all five judges on the Bench unanimously accepting that it was time to end discrimination against same-sex couples.

Chief Justice of India D.Y. Chandrachud, who be-



Day of despair: LGBTQIA+ community members react to the Supreme Court order, in Mumbai on Tuesday. EMMANUEL YOGINI

came a minority on the Bench with Justice Sanjay Kishan Kaul, declared that queer people had a fundamental right to form relationships and the State was obligated to recognise and grant legal status to such unions, so that same-sex couples could avail them-

selves of the material benefits provided by law.

Justices S.R. Bhat and Hima Kohli, in their opinion backed by a separate one by Justice P.S. Narasimha to form the majority judgment, held that "an entitlement to legal recognition of the right to union

LGBTQIA+ activists voice disappointment

NEW DELHI

Voicing their disappointment in the Supreme Court verdict on same-sex marriage, LGBTQIA+ activists and legal experts said that whatever recognitions have been granted in the minority judgments were good and welcome but "not enough". » **PAGE 16**

– akin to marriage or civil union, or conferring legal status upon the parties to the relationship – can be only through enacted law".

CONTINUED ON

» **PAGE 14**

MORE REPORTS

» **PAGE 12 & 16**

Activ
Go to 6

Cannot legalise same-sex marriage: SC

The Bench refused to tinker with the Special Marriage Act. Chief Justice Chandrachud said it was within the legislative domain to rid the 1954 Act of its "institutional limitations". Justice Bhat found the petitioners' plea to read various provisions of the Act in a gender-neutral manner for enabling same-sex marriage, "unsustainable".

The majority view held that the court's judgment decriminalising homosexuality in 2018 did not extend to legal recognition of queer unions.

In his minority opinion, the Chief Justice held that the right to form a union was a feature of the fundamental right to choose partners and lead a dignified, meaningful life. Equality cannot be denied to same-sex couples on the basis of their sexual orientation, he said, emphasising that queer persons have a right to form abiding relationships. He held that queerness was a natural phenomenon, neither urban nor elite, adding that the conception of marriage was neither universal nor static.

"It is insufficient if persons have the ability and freedom to form relationships unregulated by the State. For the full enjoyment of such relationships, it is necessary that the State accord recognition to such relationships," Chief Justice Chandrachud said.

Justice Kaul agreed that legal recognition to same-sex relationships was a step forward towards "marriage equality". He noted: "Legal recognition aids social acceptance, which in turn increases queer participation in public spaces."

He said the next step in due course would be to create a regulatory framework or an "edifice of governance to give meaningful realisation to the right to enter into a union, whether termed as marriage or a union". Both judges urged the Centre to constitute a high-powered committee to set out the scope of benefits available to such unions.

The majority of judges on the Bench, however, held a different view.

"Previous judgments of this court have established that queer and LGBTQ+ couples too have the right to union or relationship – be it mental, emotional or sexual – flowing from the right to privacy, right to choice, and autonomy. This, however, does not extend to a right to claim entitlement to any legal status for the union or relationship. A sequitur of this is that the court cannot enjoin or direct the creation of such regulatory framework resulting in legal status," Justice Bhat said.

Law and custom

Court verdict leaves queer people with long struggle ahead for equality

The Supreme Court of India's refusal to accord legal recognition to marriages between persons of the same sex is a huge legal setback to the queer community in the country. Given the progress in law in recent years and the deepening of the meaning of individual rights, there was widespread expectation that the five-judge Constitution Bench would give the Special Marriage Act (SMA), a law that allows any two people to marry, a gender-neutral interpretation to include people belonging to the same sex. Over the years, the amplitude of Article 21 of the Constitution has been expanded to cover the rights of privacy, dignity and marital choice, but the highest court has stopped short of the extra step needed to allow marriages or civil unions that are not heterosexual. All five judges have chosen to leave it to the legislature to enact such a law. Chief Justice of India D.Y. Chandrachud and Justice Sanjay Kishan Kaul have ruled that queer couples have a right to seek recognition for their union, but declined to read down the provisions of the SMA to that effect. On the other hand, Justices S. Ravindra Bhat, Hima Kohli and P.S. Narasimha reject the position, holding that any such recognition can only be based on statute. In effect, the Court has accepted the government's view that any move to legalise same-sex marriages will fall in the legislature's domain.

In concluding that there is no fundamental right to marry, the Court has negated the expectation that it would not allow discrimination against same-sex couples in the marital domain to continue. Marriage is indeed a social institution, with its own legal requirements and conditions for what constitutes a valid marriage. The right to seek social and legal validation through marriage is a matter of individual choice protected by the Constitution, but the Court still views it as being subject to statutory limitations. The majority disfavours the position that queer couples have a right to adopt children, but agrees with the minority that there is no bar on transpersons entering into heterosexual marriages. There is no disagreement among the judges about the right of such same-sex couples to cohabit and be free from coercion and threats. Given that large sections of India may be opposed to the legalisation of same-sex marriages on religious and cultural grounds, the possibility of Parliament taking the initiative to do so is quite bleak. The LGBTQIA+ community may now have to take heart from the Court's direction that the government should form a committee to decide the rights and entitlements of queer couples. The community, however, still has quite a struggle ahead before the law catches up with its yearning for equality.

‘Strengthened, human-rated rocket is ready for Gaganyaan’

ISRO Chairman says hundreds of tests are planned as India prepares to send astronauts into space in 2025; he says it sought a lot of technology from Russia, Europe, and the U.S. but many didn't come... so the space agency will have to develop systems such as environmental control and life support systems internally; he says the number of astronauts to be sent to orbit in the first attempt is not fixed

INTERVIEW

S. Somanath

T.S. Subramanian

In a crucial step in India's ambitious programme to lift its astronauts into space, the Indian Space Research Organisation (ISRO) will test its crew escape system (CES) on October 21.

The flight, which will begin at Sriharikota at 8 a.m., will test if the CES can protect the astronauts should the launch vehicle malfunction. The ISRO has designated this mission TV-D1. It will be uncrewed.

In the ultimate mission that will hoist the astronauts into a low-earth orbit in 2025, the rocket will be the Launch Vehicle Mark-3 (LVM-3), but that on October 21 will be a single-stage rocket powered by liquid propellants. It was purpose-built for the TV-D1

mission and wheeled to the launch pad on October 15. ISRO Chairman S. Somanath spoke about this test, the crew module, and preparations for the human spaceflight programme, aka Gaganyaan. Edited excerpts:

You will be soon testing the crew escape system of the Gaganyaan project, which will ultimately take Indian astronauts into space. Have you made the LVM-3 rocket more powerful to carry the big crew module?

Gaganyaan has many, many elements [and] components. The rocket is one part of it. The rocket LVM-3, which will take the crew to orbit, is being strengthened. The process of strengthening it is already completed. That is called the 'human rating' of the vehicle. It is already over. All systems and engines have been tested and



ISRO Chairman S. Somanath and, right, the test crew module. K. HIRALI KUMAR, ANI

confirmed. So our rocket – human-rated – is virtually completed.

There is another element called the crew module and the crew escape system. The new crew module is under development. It is being tested. There is no capability in India to manufacture it. We have to get it from outside. That work is currently going on.

We wanted a lot of technology to come from out-

side, from Russia, Europe, and America. But many did not come. We only got some items. That is going to take time. So we have to develop systems such as environmental control and life support systems. We call it 'ECLSS'. That has to be developed internally. We have developed its engineering model. This is basically for controlling the temperature, oxygen, waste process, vibration, fire hazards, and so many

[other] things. We have to make a crew escape system. That is, in the case of any damage to the rocket, the crew will [have to] be taken away from the rocket and saved.

Finally, there is a system called Integrated Vehicle Health Management System, or IVHMS, which has intelligence. It will sense an imminent failure and take abort action. It will autonomously decide. This system is under develop-

ment. These are new things. We have to test all of them over a period of time.

Hundreds of tests are planned: helicopter-based tests, test-vehicle-based tests, rocket-based tests, abort tests, unmanned [tests], robotic missions, and so on. All these will be done. For the next one year to a year and a half, this will be our programme.

Every day, there is some

test happening. Every subsystem and component goes through hundreds of tests. When a major test happens, the press will know about it.

The test vehicle test will happen in October [i.e. October 21]. It will be an abort test.

The launch vehicle will take the unmanned crew module up to a height of 17 km. Then we will say the mission is 'aborted'. It will [have to] be saved using the crew escape system. It will bring back the module to the sea and we will collect it.

In the real mission, will three Indian astronauts go in the crew module to low-earth orbit?

Finally how many people will go, we will decide later. Not now. We don't have to send three... We can also send one in the first mission. There is no hurry to send three. We can send one by one. Ultimately, we

can send even 10 astronauts. Why limit to three? That is not a measure of anything. If you are able to send a human being into space, that is it.

It depends on our confidence at that point of time... Only when we are very sure of ourselves, we will send human beings into space. Otherwise, we will not do that.

In my opinion, it will take more time than we really thought of. We are not worried about it. What we are worried about is that we should do it right the first time.

The schedule is secondary here. Even if I send a person tomorrow, I am not going to achieve anything other than claim that I have sent this person.

The capability development is most important. Technology development is most important. Some claims I made last year are not important. I am focusing on capability development. *ACTIVE*

Modi 'directs' ISRO to land man on moon by 2040, work towards interplanetary missions

Jacob Koshy
NEW DELHI

Signalling a road map for India's future space ambitions, Prime Minister Narendra Modi has "directed" the Indian Space Research Organisation (ISRO) to set up an Indian-crafted, indigenous space station by 2035 and land an Indian on the moon by 2040. This followed a review of preparations for the Gaganyaan mission – India's first manned mission to space, scheduled for 2025 – on Tuesday.

"Building on the success of the Indian space initiatives, including the recent Chandrayaan-3 and Aditya L-1 missions, the Prime Minister said that India should now aim for new and ambitious goals, including setting up a "Bha-



Narendra Modi chairing a high-level meeting to assess the progress of India's Gaganyaan Mission, in New Delhi on Tuesday. PTI

ratiya Antariksha Station" (Indian Space station) by 2035 and sending the first Indian to the moon by 2040," said a statement from the Prime Minister's Office.

Mr. Modi "called upon" scientists to work towards interplanetary missions, including a space vehicle to orbit Venus and one that will land on Mars.

Mr. Modi chaired the meeting to assess the progress of the Gaganyaan mission and outline the future of Indian space exploration. The Department of Space, under which the ISRO functions, presented the state of preparedness and technologies developed for Gaganyaan. A critical test of a module called the Crew Escape

System Test vehicle is scheduled for Saturday.

The ISRO, in a separate statement, said the TV-D1 test flight was scheduled between 7 a.m. and 9 a.m. on October 21. It would be a short-duration mission, and visibility from the launch view gallery the Satish Dhawan Space Centre in Sriharikota would be limited. Students and the public could witness the launch free from the gallery by registering on <https://lvg.shar.gov.in/VSCREGISTRATION/>

The DoS will make a road map for moon exploration, which will consist of a "series of Chandrayaan missions, developing a new generation launch vehicle, constructing a new launch pad, setting up human-centric laboratories and associated

technologies," the PMO statement said.

The International Space Station, developed and maintained by the U.S., Russia, Canada, Japan, and European agencies, is the largest space station but is expected to be decommissioned by 2030.

Experts have said a manned mission to the moon and a space station will require large, sustained investments and significant contribution from the private sector. While space stations and moon missions of the U.S. and Russia were a product of military space races, future space stations will need to follow a different template, an expert connected to the ISRO told *The Hindu* on condition of anonymity. (With inputs from Bengaluru Bureau)

President gives away film awards; actor Waheeda Rehman gets Phalke Award

The Hindu Bureau
NEW DELHI

President Droupadi Murmu gave away the national film awards for 2021 under various categories at the 69th edition of the ceremony on Tuesday. The prestigious Dada Saheb Phalke Award was conferred on veteran actor Waheeda Rehman.

Speaking on the occasion, the President said Ms. Rehman had established herself at the pinnacle of the film industry with her art and personality. Even in her personal life, she had made her mark as a woman of dignity, self-confidence and originality. She set an example that women themselves should also take the initiative for women empowerment. Ms. Murmu also congratulated the other awardees. She said the award ceremony painted a picture of diversity of India and the unity inherent in it.

Union Minister Anurag Thakur said: "Today nothing is regional, if the content is good, regional content will find the global



Droupadi Murmu presents the Phalke Award to Waheeda Rehman at the 69th National Film Awards on Tuesday. SUSHIL KUMAR VERMA

audience." He said the government stood shoulder to shoulder with the industry in its efforts to counter movie piracy and it had brought in the Cinematograph Act, which was a big step in curbing the menace.

S.S. Rajamouli's blockbuster *RRR* took away six awards and *Gangubai Kathiawadi* by Sanjay Leela Bhansali bagged awards in five categories. *Rocketry: The Nambi Effect* got the award for the best feature film.

The best male actor award went to Allu Arjun

for *Pushpa (The Rise Part 1)*. Alia Bhatt and Kriti Sanon shared the best female actor award for *Gangubai Kathiawadi* and *Mimi*, respectively.

Vivek Ranjan Agnihotri-directed *The Kashmir Files* bagged the Nargis Dutt Award for Best Feature Film on National Integration. The Indira Gandhi Award for Best Debut Film of a Director was given to Meppadiyan and the Best Direction to Godavari (*The Holy Water*).

RRR also got the award for the best popular film providing entertainment.

How synergistic barriers are affecting progress on SDGs

Synergistic barriers have come to the fore as the world is set to achieve only 15% of the 169 targets

ANALYSIS

Leena Srivastava

Lamenting the lack of progress on various Sustainable Development Goals (SDGs), world leaders at the SDG Summit in New York on September 18 and 19, once again reaffirmed their shared commitment to eradicate poverty and end hunger. They recognised that the world was on track to meet only 15% of its 169 targets that make up the 17 goals and have committed to an SDG stimulus of \$500 billion annually.

While this political declaration needs to be welcomed as a renewed commitment to Agenda 2030, there is little to inspire confidence that there will be greater progress. A 2023 report of the United Nations Conference on Trade and Development estimated the investment gap in SDGs in developing countries to be greater than \$4 trillion. Of this, nearly \$2

trillion needs to be directed towards energy transition alone. These staggering figures, representing the estimated sum of investment required by specialised agencies responsible for tracking each SDG, seem unachievable.

Lack of synergistic action

A fundamental statement in the Agenda 2030 document detailing the SDGs, recognises the indivisible and integrated nature of the 17 SDGs and their contribution to the three pillars of sustainable development. A lot of academic literature has also focussed on the 'synergies' and 'trade-offs' that exist in the pursuit of specific SDGs. One such paper, published in the journal *Proceedings of the National Academy of Sciences* on October 30, 2019, identified five types of (dis)synergies that can be estimated along the value chain of an SDG intervention – those arising from resource allocations; creation of enabling environments; co-benefits; cost-effectiveness; and saturation limits.

A recently launched UN Expert Group Report, entitled 'Synergy Solutions for a World in Crisis: Tackling Climate and SDG Action Together', also laments the lack of synergistic action in the face of significant (modelled) evidence.

Barrier for small-scale applications

This said, policymaking processes are generally robust, with a clear view on synergistic outcomes, especially when multi-stakeholder approaches to policymaking are practised. For example, in India, the push for renewable energy started with both energy security and air pollution in focus, and received an impetus with climate commitments. However, it hasn't been able to leverage the health benefits arising from lower air pollution to strengthen arguments for greater incentives for renewables. At the same time, the ambitious renewable energy targets themselves became a barrier for small scale applications due to a misalignment of deliverables. While the energy departments had targets in

gigawatts, primary health centres had needs in kilowatts, leading to their neglect in energisation, even though the health outcomes could have been significant.

Therefore, simply recognising interlinks without a robust analysis and understanding of institutional barriers won't yield the outcomes India desires. As such, there is merit in both assessing as well as addressing barriers identified in the UN report in our national context. This in turn should prompt the country to strengthen the environment for synergistic action, and make transparent both the opportunities and limits to synergies arising from SDG interventions.

Every new investment we initiate today leading to a high-carbon outcome will likely result in higher dis-synergies or trade-offs in our ability to achieve our energy and climate goals. Establishing the domestic energy resources we have for reasons of enhancing resilience to shocks is a worthwhile goal but exploiting those resources without a full cost estimation - including weighing India's own vulnerability to climate-change impacts - of alternative pathways with their synergistic opportunities is detrimental to both national and global efforts. On the other hand, investing in clean energy options could have a significant synergistic impact on air pollution and human health, increasing the attractiveness of such interventions.

Leena Srivastava is Director, Ashoka Centre for a People-centric Energy Transition, Ashoka University

THE GIST

▼ Lamenting the lack of progress on various Sustainable Development Goals (SDGs), world leaders at the SDG Summit once again reaffirmed their shared commitment to eradicate poverty and end hunger.

▼ Policymaking processes are generally robust, with a clear view on synergistic outcomes, especially when multi-stakeholder approaches to policymaking are practised.

▼ However, simply recognising interlinks without a robust analysis and understanding of institutional barriers won't yield the outcomes countries desire.

A case for marriage equality: the legal arguments for same-sex marriage

Legal recognition of queerness and love should not be opposed by the state or by some supposedly well-meaning proponents of the doctrine of separation of powers. Queerness and queer love deserve not just legal recognition by the state, but to be celebrated

Rohin Bhatt

The five-judge Constitution Bench, which decided on the same-sex marriage case, by a majority view, has held that non-heterosexual couples cannot claim an unqualified right to marry. In this article dated April 5, 2023, Rohin Bhatt asserts that queer people, as equal citizens of the country, cannot wait until society thinks it is acceptable for them to have rights



On March 12, the Centre filed an affidavit in the Supreme Court frowning upon same-sex marriage. It invoked the "accepted view" that marriage between a biological man and woman is a "holy union, a sacrament and sanskar (culture)" in India. Many hold the view that the issue should be debated by Parliament and not by the courts. More than 20 retired judges issued a statement saying that legalisation of same-sex marriage will "strike at the very root of the family system" and that "such a sensitive issue concerning the society at large be debated in the Parliament and State Legislature as well." The Union Law Minister argued that the issue should be left to the "wisdom of the people." And law professors such as Tahir Mahmood and G.S. Bajpai have also written about it.

But this will never happen. As the Union government has made its position clear on the legalisation of same-sex marriage and holds the view that queer people like me will wreak havoc on social institutions with our demands, Parliament will never enact such a law.

Citizens with equal rights

Let us examine some of these arguments. First, it is argued that legalising queer marriages will destroy the concept of family, which is the "fundamental building block of society." For long, queer people have had to deal with their rights being granted as gifts from heteronormative society. But no more. We are equal citizens of the country and deserve the same rights as cisgender heterosexual people. Queer people are demanding equal rights, not just of marriage, but of horizontal reservation and protection from natal families. We don't demand these as largesse to be bestowed upon us by society, but that they be accorded to us as equal citizens of this democratic nation.

It is also argued that this is not a matter of judicial interference, but one of interpreting the statutes. For laypersons and lawyers alike, the interpretation of statutes is an art. It is not rare to find headlines with rulings that say 'frozen parathas are not rotis' or that 'Sachin Tendulkar is an actor and not a cricketer'. These examples simply show how lawyers often bend over backwards to interpret statutes in a way that fits their case. There is no reason that statutes cannot be interpreted creatively in favour of fundamental rights.

It is true that laws relating to marriage have a religious genesis. However, Indian law on marriage is a mixture of common law and religion. While traditionally, marriage under Hindu law is a sacrament, it stopped being so when divorce was introduced. Marriage is now nothing but a

status conferred by law. The court said in the Sabarimala case that religion must give way to constitutional morality, though a review of the judgment is pending. Nevertheless, most parties in the marriage equality case before the court are those who want to get married under the Hindu Marriage Act. Queer relationships were not an aberration in Hinduism, as scholars Ruth Vanita and Saleem Kidwai have demonstrated. The remaining petitions are filed under the Special Marriage Act, save for Zainab Patel's petition which argues for marriage equality under all religious laws.

It is also argued that the laws pertaining to marriage necessitate procreation. While this may be true, there seem to be no attempts to take away the marriage rights of heterosexual married couples who do not procreate as per mutual consent. While entering into a queer relationship, both parties are aware that they will be unable to procreate. This is called 'social' or 'circumstantial' infertility. The term was initially coined to describe women who did not have children despite no medical condition, and is now used in the context of queer people too. If both parties decide to marry with the knowledge that one or both of them are impotent, there cannot be a case for taking away their rights merely because they are queer.

It is also said that conventional conceptualisations of family and marriage are facing evolutionary challenges. This argument is based on the idea that a family comprises two parents of the opposite sex and their two children. This

argument makes it seem as though new forms of marriage which are non-heterosexual are new. They are not. The hijara 'gharana' system, maitri karar and other forms of alternative familial structures have existed for a long time in the sub-continent.

A legitimate legal need

This is not to argue that marriage will lead to queer liberation. In fact, marriage does not obfuscate but lays bare the caste hierarchies that embolden discrimination and segregation. But despite being a faulty institution, marriage is a legitimate legal need in order to file taxes jointly, inherit property, open bank accounts, and choose nominees for insurance policies. Queer people cannot wait until society thinks it is acceptable for us to have rights. We refuse to be polite citizens, we will continue to be unapologetic about our sexuality, and we will continue to challenge widespread notions of respectability, of marriage, and procreation. We refuse to cower in the terror of knowing that the only way we can survive is if we are smart, lucky, or are fighters. We demand that notions of family and traditions be broadened and notions of acceptability and respectability be demolished. Legal recognition of queerness and love should not be opposed by the state or by some supposedly well-meaning proponents of the doctrine of separation of powers. Queerness and queer love deserve not just legal recognition by the state, but to be celebrated.

Rohin Bhatt is a lawyer.