

GLIMMER OF HOPE: ON RIGHTS OF SAME-SEX COUPLES

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In a welcome move, the Supreme Court has transferred to itself petitions pending in several High Courts seeking legal [recognition of same-sex marriage](#). A Bench of Chief Justice D.Y. Chandrachud and Justices P.S. Narasimha and J.B. Pardiwala asked the Centre to file its reply to all the petitions on the issue by February 15 and has listed the case for directions on March 13. Petitioners are looking for an authoritative ruling legalising same-sex marriage, especially on the question of whether it will be brought within the ambit of the Special Marriage Act of 1954, which allows a civil marriage for couples who cannot marry under their personal law. After the transformational judgment in *K.S. Puttaswamy* (2017) upholding the right to privacy and *Navtej Johar* (2018) decriminalising homosexuality, the courts have shown the way to end uncertainty regarding the [rights of the LGBTQIA+ community](#). Petitioners have argued that denying the community the same rights as heterosexual couples violates a clutch of fundamental rights on life and liberty including Articles 14, 19 and 21 of the Constitution and Article 16 of the Universal Declaration of Human Rights, to which India is a signatory. Article 16 says, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family".

The apex court will first have to contend with the response from the Centre, which has said it is opposed to same-sex marriage, stating that judicial intervention will cause "complete havoc with the delicate balance of personal laws". There are also other issues on which the LGBTQIA+ community, which already faces prejudice in society, will need clarity from the court. Under Sections 5, 6 and 7 of the Special Marriage Act, parties to the marriage have to give prior notice to the Marriage Officer of the district who has to publicise the notice and call for objections. In the past, many inter-caste and inter-faith marriages faced violent opposition from those acting in the name of honour or community. Though the Allahabad High Court ruled in 2021 that people marrying under the Special Marriage Act can choose not to publicise their union, saying that mandatorily publishing a notice of the intended marriage and calling for objections violates the right to privacy, the LGBTQIA+ community will look for a definitive directive on this from the Supreme Court. Awareness campaigns are also a must to sensitise society about the rights of all individuals. By legalising same-sex marriage, India can join the 30-odd countries which allow it, and lead from the front in Asia where only Taiwan has legalised it.

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