

19.10.2023

STATEMENT

We are a group of former Judges, the conscientious and concerned citizens of India appreciate the Supreme court verdict on same-sex relation delivered on 17 October 2023 has received overwhelming applaud from the society except the LGBTQ+ community and minuscule section thereof. The judgement is a blend of interpretation of statutory provisions, culture and morality. It is relevant in the context of Indian culture, ethos, and heritage. Honourable Supreme Court has unanimously ruled, that right to marriage is not a fundamental right. On the question of same-sex marriage, the court has again unanimously held that marriage being not a fundamental right, such a right can only be conferred and regulated by the statute enacted by appropriate legislative body (the subject being in concurrent list), both Parliament and STATE assembly are competent to legislate . It also convincingly ruled that it is not within the jurisdiction of the court to make provisions for recognising such marriages either by interpreting or down reading the existing statutes (In particular reference to “THE SPECIAL MARRIAGE ACT 1954”) and it is within the domain of Parliament? Hon’ble Court has reconfirmed the well settled principle of separation of power enshrined in the Constitution of India holding that the jurisdiction of the court is to interpret the constitutional/statutory provisions, and not to venture into legislative domain, which solely vests with the competent legislature.

Thrust of minority view on equality, individual dignity, choice of civil union irrespective of sexual orientation and privacy emanating from Articles 19, 21 and 25 of constitution of India did not find favour with the majority in the bench. An important feature of the majority view is recognition of the marriage as a social institution in existence from times immemorial, pre-dating the concept of state. This gives credence to the bond of marriage between a man and a woman constituting family as a primary unit of civil society as propounded by our scriptures.

Queers right to adoption has also not been recognised by the Apex Court and rightly so . Even existing statutory provisions also restrict the rights of single person to adopt e.g. under the section

57 of The Juvenile Justice (care and protection of children) Act 2015 , a single male is prohibited to adopt a female child. Similarly section 11 of The Hindu Adoption and Maintenance Act,1956 prescribe an age difference of 21 years ,if male is to adopt a female child or if a female is to adopt a male child. Notwithstanding the debate , unanimity in some areas and differing views on other issues, the judgement particularly the majority view representing indian traditions and belles-letter deserves all appreciation.

With highest regards

Yours Faithfully

Justice Permod Kohli

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-----List of Signatories Attached-----