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# **SOCIO-LEGAL IMPLICATIONS OF THE CASE** **SUPRIYO AKA SUPRIYA CHAKRABORTY &** **ANR. V. UNION OF INDIA**

AUTHORED BY - LAKSHITA MAHAJAN

## **\* Introduction:**

Society is evolving, and to be at par with it, the law needs to evolve as well. The idea of sexual orientation has now garnered a lot of importance in society, which calls for legal scrutiny of it. Deciding on their rights, provisions for their protection, ensuring their proper representation, etc. becomes very important. Amongst these, one such debatable rights are their “Right to Marry”, or recognition of same-sex marriage.

The recent case in this regard is Supriyo aka Supriya Chakraborty & Anr. v. Union of India<sup>1</sup>. The Supriyo case was a collection of several petitions filed in the High Court of Delhi where the LGBTQI+ community demanded recognition of same-sex marriage. This was so that they could enjoy several state benefits along with status granted to them as a married couple, and social and legal recognition. Thus, this was a writ petition filed in the Apex court under Article 32 invoking the judicial review power of the judiciary, by Supriya Chakraborty, and Abhay Dang on behalf of several other homosexual couples, seeking legal recognition of same-sex marriage under Special Marriage Act 1954, Foreign Marriage Act 1969, and Hindu Marriage Act 1955.

The Supriyo case, however, is not taken positively, and rather is criticized by a large number of people. The court in this case decided that the “Right to Marriage” is not a fundamental right hence the state is not obligated to carry out this duty. The court also held granting recognition to same-sex marriage is not the job of the judiciary but it is an outcome of deep discussion and deliberation by the parliament that could grant such recognition. Now, the judiciary is considered to be the last resort of any individual to seek justice, whether this step taken by the judiciary is justified or not poses a big question. Other things like provisions for the protection

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<sup>1</sup> Supriyo @ Supriya Chakraborty & Anr Versus Union of India (2023) Writ Petition (Civil) No. 1011 of 2022 ([https://main.sci.gov.in/supremecourt/2022/36593/36593\\_2022\\_1\\_1501\\_47792\\_Judgement\\_17-Oct-2023.pdf](https://main.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Judgement_17-Oct-2023.pdf))

of same-sex relationships, recognition of civil unions, etc. were other questions that remained unanswered by the Supreme Court.

### **\* Arguments in the case:**

Arguments by the petitioners-

- Not granting recognition to same-sex marriage is apparently violative of Articles 14, 15, 19, and 21, where the LGBTQI+ community's "right to marry" is not recognized, curbing their freedom to express themselves, debarring them from state benefits as received by other heterosexual couples, and also limiting them to exercise their personal liberty by marrying the partner of their choice.
- "Right to marry" is a fundamental right, that the state has to provide to all of its citizens no matter what. The state must ensure that certain provisions of statutes do not restrict this fundamental right.
- The restriction on the "Right to marriage" for the LGBTQI+ community can be implied from Section 4 (c) of the Special Marriage Act, where only recognized heterosexual couples by mentioning just 'man and woman' should be held ultra vires, and more gender-neutral legislation should be made.

Arguments by the Respondents-

- The judiciary is not entitled to make any legislation on such matters. The only forum suited in this regard is the Parliament, where after proper discussion and deliberation they could make any alteration in the status of marriage of the LGBTQI+ community.
- The Special Marriage Act is positive legislation in Indian society, abridging the gap between religion, caste, etc., and allowing individual to marry despite their different social backgrounds. Hence, it will be a gruesome step if the provisions of the act are considered ultra vires.
- Recognition of same-sex marriage would lead to making changes in 160 other legislations as well, which would be a very long and extensive procedure, again not within the power of the judiciary to make such changes.

\* **Rules and previous case laws applicable in the case:**

There have been several judgments ranging from Suresh Kumar Koushal v. Naz Foundation<sup>2</sup> to the well-celebrated case of Navtej Singh Johar<sup>3</sup>, which portrays how are judiciary has adapted to the changing needs of society, and has thus done the needful. From not recognizing the sexual orientation of the LGBTQI+ community in Suresh Kumar Koushal's case, to striking down Article 377 of the Constitution and marking it as unconstitutional in Navtej Singh Johar's case, has indeed being indeed a long journey.

The rule that the Supreme Court reiterated is that the "Right to Marry" is not a fundamental right. In judgments ranging from Lata Singh v. State of UP and Anr.<sup>4</sup>, Justice KS Puttaswamy (retd.) v. Union of India<sup>5</sup>, Shakti Vahini v. Union of India<sup>6</sup>, Shafi Jahan v. K.M. Asokan<sup>7</sup>, Laxmibai Chandaragi B. v. State of Karnataka<sup>8</sup>, and many more cases, the Supreme Court has made it clear that individual has the right to choose their partner and that it is a fundamental right ensured under Article 21 Right to Life and Personal Liberty. However, ensuring the right to marriage does not come within the scope of fundamental rights, hence not the duty of the state to ensure it. Thus, it may be a human right, but it is not a constitutionally guaranteed right, which if not fulfilled, could be challenged in the court of law.

They also held that it is indeed better for the legislature to decide on this matter, and enact proper legislation for the same.

\* **Observations, Analysis, and Learning from the case:**

Legally, the court has respected the doctrine of Separation of Power, by not encroaching upon

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<sup>2</sup> Suresh Kumar Koushal v Naz Foundation (2013) CIVIL APPEAL NO.10972 OF 2013 (<https://main.sci.gov.in/jonew/judis/41070.pdf>)

<sup>3</sup> NAVTEJ SINGH JOHAR VS UNION OF INDIA (2018) WRIT PETITION (CRIMINAL) NO. 76 OF 2016 ([https://main.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf))

<sup>4</sup> Lata Singh vs State Of UP & Another (2006) Writ Petition (crl.) 208 of 2004 (<https://main.sci.gov.in/jonew/judis/27831.pdf>)

<sup>5</sup> JUSTICE KS PUTTASWAMY (RETD) AND ANOTHER VERSUS UNION OF INDIA AND OTHERS (2018) WRIT PETITION (CIVIL) NO. 494 OF 2012 ([https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_Judgement\\_26-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_26-Sep-2018.pdf))

<sup>6</sup> Shakti Vahini Versus Union of India and others (2018) WRIT PETITION (CIVIL) NO. 231 OF 2010 ([https://main.sci.gov.in/supremecourt/2010/18233/18233\\_2010\\_Judgement\\_27-Mar-2018.pdf](https://main.sci.gov.in/supremecourt/2010/18233/18233_2010_Judgement_27-Mar-2018.pdf))

<sup>7</sup> Shafin Jahan Versus Asokan KM & Ors (2018) CRIMINAL APPEAL NO. 366 OF 2018 ([https://main.sci.gov.in/supremecourt/2017/19702/19702\\_2017\\_Judgement\\_08-Mar-2018.pdf](https://main.sci.gov.in/supremecourt/2017/19702/19702_2017_Judgement_08-Mar-2018.pdf))

<sup>8</sup> LAXMIBAI CHANDARAGI B & ANR VERSUS THE STATE OF KARNATAKA & ORS (2021) WRIT PETITION [CRIMINAL] NO.359/2020 ([https://main.sci.gov.in/supremecourt/2020/25061/25061\\_2020\\_39\\_31\\_25989\\_Judgement\\_08-Feb-2021.pdf](https://main.sci.gov.in/supremecourt/2020/25061/25061_2020_39_31_25989_Judgement_08-Feb-2021.pdf))

the legislature's function to make laws. However, for a layman, it is the judiciary which is the last resort, where they can go and claim their rights. It is no doubt, that our judicial system acts very actively in making sure that the purpose of justice is not defeated, we have several examples for it as well. The court also took a very progressive step in declaring Article 377 unconstitutional, and reiterating that every individual has a fundamental right to choose their partners. But concerning the marital, adoption, property, succession, and other rights of the LGBTQI+ community, the court has chosen to remain silent. Merely giving recognition to the civil union of homosexual couples is not enough.

Legal status is necessary or often is the first step towards granting social and cultural acceptance. Given the Indian scenario, same-sex marriage might not be easy for society to accept, hence giving them proper legal recognition becomes important and the first step towards earning even social acceptance. Article 15 mentions that there shouldn't be any discrimination amongst individuals, and the LGBTQI+ community is no exception to it. They too deserve respect, dignity, and a safe environment to express themselves.

It is true, that the judiciary might not carry out this process entirely, however, they should play a prominent role in recognizing same-sex marriage by giving their insights and suggestions to the parliament. Several of these cases had been pending for so long, that people had to wait for years to get what was already provided to the conventional heterosexual couples. Do those couples not deserve to adopt kids, have succession rights, property rights, etc.? Hence, it is of utmost importance for the judiciary to work along with the Parliament, in suggesting them ways through which the marital rights of homosexual couples could come into existence without any further delay.

Many countries have recognized same-sex marriage. Going along the conventional path of heterosexual relationships would make the purpose of the constitution in India stagnant. The living document would then fail to cater to the needs of the minority population. Declaring Article 377 was a progressive step taken by the court, however, the fight for equal recognition by the LGBTQI+ community remains. The judiciary is a beacon of hope for all the people, and the trust in the judiciary in this regard shouldn't be eroded. It should thus, play an active role along with the parliament in analyzing and designing a model which incorporates equal rights and recognition of homosexual couples.