

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

THE SOCIAL LIFE OF THE LAW: INTERPRETATIVE FALLACIES IN THE CASE OF SUPRIYO V. UNION OF INDIA.¹

AUTHORED BY - KHUSHI SAHNI

Facts

On November 14, 2022, the respondents, Abhay Dang and Supriya Chakraborty, petitioned the Supreme Court for legal recognition of their marriage. Their case, together with that of another homosexual couple, Parth Phiroze Mehrotra and Uday Raj Anand, was admitted by the two-judge panel of Chief Justice of India (CJI) D.Y. Chandrachud and Justice Hima Kohli. Nine similar petitions were eventually sent to the Supreme Court for decision-making alongside the initial petitions, as instructed by the Supreme Court. The majority of petitioners also contended that the secular marriage laws caused unwelcome disruptions in marriage, leading to multiple challenges to the laws' constitutionality.²

According to the petitioners, the provisions of Special Marriage Act violated their fundamental rights by failing to provide for the solemnization of marriage between same-sex, gender non-conforming, or LGBTQ couples. The petitioner contends that all marriages between homosexual couples in which either one or both of them are married are entitled to all the rights, and benefits associated with the solemnization and registration of marriage under the SMA. It was argued that depriving LGBTQ+ people of their fundamental right to marriage did not promote or protect any legitimate governmental interest. It was further argued that constitutional morality is upheld by acknowledging LGBTQIA+ couples' ability to marry. According to constitutional morality, the state's institutions, including the judiciary, should protect our society's diversity and promote its pluralism and inclusivity, allowing everyone to marry whoever they choose.³ The petitioners stood in solidarity to represent the contentions of 21 same sex couples from the LGBTQ community, voicing the indifferent treatment of the law towards persons who do not conform to social gender identity. However, the Apex Court failed

¹ Supriyo v. Union of India, 2023 SCC OnLine SC 1348

² Singh A, "CASE COMMENT: Supriyo v. Union of India - the Amikus Qriae" (*The Amikus Qriae*, March 4, 2024) <https://theamikusqriae.com/case-comment-supriyo-v-union-of-india/>

³ Chandrachud DY and others, "Supriyo and Ors. vs. Union of India (UOI)" (2023) https://clpr.org.in/wp-content/uploads/2024/11/42_Supriyo_v_Union_of_India.pdf

to recognize same-sex marriage under the Hindu Marriage Act of 1955, the Foreign Marriage Act of 1969, and the Special Marriage Act of 1954.

Issue.

Among the several violations of rights and legal breach, the issues that arise in the case at hand envisage the social life of the law which however fails to provide an inclusive space for all individuals notwithstanding their identity and gender. The legal issues that arise pertain to the constitutional validity of fundamental rights and provisions related to the institution of marriage and their application to homosexual and gender diverse couples. From contesting the provisions of the Special Marriage Act 1954 and the Articles of the Constitution, the case delves into whether the legal framework around the discourse of kindship and property is inclusive of homosexual individuals and relations. The reading down of these laws would direct whether same sex couples would be entitled to the rights and benefits given under the laws pertaining to inheritance, property, adoption.

Social acceptance of LGBTQ+ people and their relationships vary widely, especially in areas where same-sex relations are prohibited by tradition or religion. The question of who should decide whether same-sex marriage is legal—the state, individual, or the legal system, which is entrusted to uphold and protect the constitutional rights—is another issue that the case touches upon. The continuous fight for equality, dignity, and autonomy that LGBTQ+ persons endure globally is highlighted by these intertwined challenges. *The main issue that this case note intends to analyze is on the interpretative power of the judiciary.* Hence, it becomes essential to analyze whether the -

- Constitution guarantee the right to marry as a Fundamental Right to all individuals devoid of their gender and identity?
- Is the Supreme Court / Judiciary empowered to form legislations and give legal validation to same sex marriages matrimonial relations?
- Are the existing legislations with regards to marriage in the country unconstitutional?⁴

As the case becomes a nationwide uproar, it becomes socially necessary to recognise the fallacy of the court in not acknowledging and upholding the principles of inclusivity, and equality which the legislature advocates for.

⁴ Singh A, “CASE COMMENT: Supriyo v. Union of India - the Amikus Qriac” (*The Amikus Qriac*, March 4, 2024) <https://theamikusrqiae.com/case-comment-supriyo-v-union-of-india/>

Rule

The word of the law that the judiciary happens to apply in the given case comes from reading down *Section 4(c) of the SMA*⁵. After strictly scrutinizing and interpreting the laws in question, the courts seemed to have given a gendered understanding of the rule, rather than taking a pragmatic approach to deliver the judgement. The judiciary's interpretation of the laws on the anvil, did not transform the social life of the law but minimised it down to the black letter of the law. *The rules which identify heterosexual relationships and heteronormative couples were applied and read from a gendered lens* notwithstanding the need of the judiciary to expand the legal framework of laws and make gender diverse and homosexual couples a recipient of the same. In accordance with *Articles 245 and 246 of the Constitution*, the Parliament and State legislatures have the authority to create laws and regulations pertaining to an array of subjects, including marriage, divorce, and adoption.⁶ The court however did not affirm to correctness oriented approach⁷ and followed the primary rule of interpretation by literally interpreting the text and not taking a pragmatic approach.

Analysis.

The Supreme Court rendered a multifaceted ruling that reflected the court's effort to reconcile the LGBTQIA+ community's rights with the constraints of its own institutional function. Using the fundamental rights to privacy, autonomy, and choice, the court recognized queer couples' rights to develop emotional, mental, or sexual relationships. This however stood in divergence when the courts vetoed to "read words" into the Special Marriage Act (SMA) to recognize same-sex marriages. According to the majority, interpreting the SMA broadly to cover same-sex weddings would go beyond the institutional bounds of the court and constitute judicial legislation.⁸ The case at hand is a perfect standpoint to analyse the attempt of the judiciary to widen the word of the law but failing to do so due to their textualist approach.

⁵ *Section 4 (c) of Special Marriage Act - Conditions relating to solemnization of special marriages*

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

⁶ Singh A, "CASE COMMENT: Supriyo v. Union of India - the Amikus Qriac" (*The Amikus Qriac*, March 4, 2024) <https://theamikusqriac.com/case-comment-supriyo-v-union-of-india/>

⁷ Rosen, Arie. "Statutory Interpretation and the Many Virtues of Legislation." *Oxford Journal of Legal Studies*, vol. 37, no. 1, 2017, pp. 134–62. JSTOR, <http://www.jstor.org/stable/26363248>. Accessed 14 Apr. 2025.

⁸ Rawat, "NAVIGATING THE PATH TO EQUALITY: THE LANDMARK CASE OF SUPRIYO v. UNION OF INDIA AND THE FUTURE OF LGBTQIA+ RIGHTS" (*Manupatra Articles*, July 2, 2024) <https://articles.manupatra.com/article-details/NAVIGATING-THE-PATH-TO-EQUALITY-THE-LANDMARK-CASE-OF-SUPRIYO-V-UNION-OF-INDIA-AND-THE-FUTURE-OF-LGBTQIA-Plus-RIGHTS>

Eskridge as a legal realist critiques the prevalence of this interpretation and throw light on how the judiciary is most heavily influenced by textualism and ignores the sources of judicial flexibility and giving precedence to the legislature's words, which appeals to the principles of legislative primacy and judicial restraint.⁹

Borrowing the same maxim to the case at hand, the courts took a textualist approach rather than a pragmatic one and applied the literal rule of interpretation. The courts failure to not look beyond the words of the statue, made the social life of the law a biased and a disoriented one. The prevalence of same-sex relationships in society challenges traditional notions of gender roles, love, sexuality, and family values, sparking a wider discussion over what constitutes "normal."¹⁰

"The interpretative tool of "reading-in" means reading into the text of the statute and not altering it,"¹¹ a phrase from the judgement itself explicitly shows the intention of the court to not be persuaded by the principle of intentionalism as proposed by Arie Rosen¹² but to work in the parallel and stick to the word of the law. The ruling in *Supriyo v. Union of India* emphasizes the necessity for the judiciary to interpret fundamental rights in a more consistent and proactive manner that is in line with the equality, nondiscrimination, and human rights principles guaranteed by the Indian Constitution and international agreements. As seen in this instance, the court's selective application of international principles compromises the judiciary's function as a protector of fundamental liberties. The protection of marginalized communities and the advancement of social justice would be strengthened by a more comprehensive approach in which the court continuously incorporates international human rights instruments into its reading of the Constitution.¹³ The judges while interpreting the statute seem to be in the dilemma of deciding what the law aims to do, whether it means to deliver justice or stick to its interpretation.

⁹ Eskridge, William N. "Gadamer/Statutory Interpretation." *Columbia Law Review*, vol. 90, no. 3, 1990, pp. 609–81. *JSTOR*, <https://doi.org/10.2307/1122910> . Accessed 14 Apr. 2025.

¹⁰ SINGH BHUTYAL and ARYA, "'Legal Progression & Social Implications Case Comment on *Supriyo Chakraborty & ANR v. Union of India*'" (*Manupatra*, May 6, 2024) <https://articles.manupatra.com/article-details/Legal-Progression-Social-Implications-Case-Comment-on-Supriyo-Chakraborty-Anr-v-Union-Of-India>

¹¹ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348

¹² Rosen, Arie. "Statutory Interpretation and the Many Virtues of Legislation." *Oxford Journal of Legal Studies*, vol. 37, no. 1, 2017, pp. 134–62. *JSTOR*, <http://www.jstor.org/stable/26363248>. Accessed 14 Apr. 2025.

¹³ Rawat, "NAVIGATING THE PATH TO EQUALITY: THE LANDMARK CASE OF SUPRIYO v. UNION OF INDIA AND THE FUTURE OF LGBTQIA+ RIGHTS" (*Manupatra Articles*, July 2, 2024) <https://articles.manupatra.com/article-details/NAVIGATING-THE-PATH-TO-EQUALITY-THE-LANDMARK-CASE-OF-SUPRIYO-V-UNION-OF-INDIA-AND-THE-FUTURE-OF-LGBTQIA-Plus-RIGHTS>

Conclusion.

My opinion stand in dissent to the ratio of the court as the judgment curtails the faith that the marginalized communities have in the judiciary. This Court while interpreting provisions of a statute can "iron out the creases but not alter the fabric". The exercise of reading up can only be undertaken by the Courts when it would be consistent with legislative intention, and when the new state of affairs would be of the same kind as the earlier state of affairs to which the enactment applies.¹⁴ This reasoning of the court complicates the idea of constitutional morality and trembles the principles that the Constitution uphold. The courts should adopt a correctness oriented approach and apply the golden rule in interpreting the statutes to give the legislature and the word of the law a genderless texture and make it more inclusive. To the end, I would like to conclude the analysis by borrowing Ronald Dworkin's remark of the interpretation acting as a tyranny or a statecraft and applying it to the case at hand and concluding that the law should act as an anvil to produce statecraft rather than using it as a tyranny to exercise restrictions and control.

¹⁴ Supriyo v. Union of India, 2023 SCC OnLine SC 1348