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SUPRIYO @ SUPRIYO CHAKRABORTY & ANR. v. UNION OF INDIA

~Roshani Chaudhary

INTRODUCTION:

Supriyo Chakraborty case is the landmark judgment for the issues regarding recognition of same-sex marriage. Section 377 was decriminalized in the case of Navtej Singh Johar case, which allowed same-sex relationships and abolished the punishment criteria. This case revolves around the demand for equal rights in terms of marriage and certain provisions of the Special Marriage Act, 1954, adoption rights, maintenance rights, and guardianship rights. This judgment was quite controversial among the queer community as the judgment didn't support same-sex marriage and denies to give the the right to marry. In this case, the judiciary gives up on this issue and concludes that it is the responsibility of legislation to look upon this matter.

FACT OF THE CASE:

The case of Navtej Singh v. Union of India declared that section 377 violated article 14, 15, and 19 and held it unconstitutional. After this case, various petitions were filed to get legal recognition of same-sex marriage. In November 2022, a petition was filed by Supriyo Chakraborty and Abhay Dang. They both were in a long-term relationship and during the pandemic, they realized more than love and desired to get more protection under the law. And then second petition was filed by Phiroze Merhotra and Uday raj Anand. This case was adjudged by CJI D.Y Chandrachud and Justice Hima Kohli, and then it was directed to the high court to transfer all the similar 9 petitions along with the original one.

ISSUES:

1. Do members of the LGBTQIA+ community have a right to marry?

2. Does the non-inclusion of LGBTQIA+ marriages under the Special Marriage Act, 1954, amount to discrimination under Article 14 and can the SMA, 1954 be declared unconstitutional?

IS SMA UNCONSTITUTIONAL?

Learned counsel Mr. Mukul Rastogi argued that the court had protected the rights of the LGBTQIA+ community and declared that they are entitled to dignity, equality, and privacy. This encompasses the fundamental right to marry a person. Articles 19 and 21 of the constitution guarantee all persons, including LGBTQIA+, the right to marry. The Special Marriage Act does violate the right to dignity and, therefore, violates Article 21. The SMA, 1954 is violative of the constitution because it denies the LGBTQIA+ community equal protection of laws. The non-recognition of same-sex marriage prevents them from enjoying the benefits. This act excludes the LGBTQIA+ community and there is no justifiable reason for that. The object of SMA, 1954 is to provide a civil form of marriage to the ones who cannot or choose not to marry under their personal laws. And this object is not being fulfilled when it comes to the LGBTQIA+ community. The exclusion of LGBTQ couples from the SMA has no rational nexus with this object. Everyone is entitled to marry anyone of their choice. If any statute appears to violate the constitution then it is the duty of the court to declare it unconstitutional or read it expansively to save its constitutionality. Matrimonial statutes should be read in gender gender-neutral manner to include the LGBTQIA+ community.

*“The SMA ought to be read in a gender-neutral manner. Gendered terms such as “husband” and “wife” ought to be read as “spouse.” The language used in the SMA facilitates a gender neutral interpretation. Section 4 of the SMA is with reference to “any two persons,” Section 4(1)(a) refers to a “spouse” and Section 4(1)(b) refers to a “party””.*¹

Mr. R. Venkataramani, learned Attorney General of India appearing for the Union of India argued that *“when the SMA was enacted, an alternative conception of a union of persons (other than heterosexuals) did not exist. The SMA is intended to regulate marriage between heterosexuals irrespective of caste and religion. Thus, the omission of non-heterosexual unions from the purview of the enactment would not render the enactment unconstitutional because of*

¹ Supriyo @ Supriyo Chakraborty & Anr. v. Union of India W.P.(C) No. 1011/2022, page no. 21-22

under-inclusiveness. The SMA will be underinclusive only when a class of heterosexuals is excluded by the statute”²

Interpretation of SMA in gender neutral manner would render the implementation of article 19-21A which link to the SMA with other personal or non-personal laws difficult. And it is up to Parliament to enact a special code regulating homosexual couples and other unions as well. Courts cannot issue directions granting legal recognition to non-heterosexual marriages because it would require the redesigning of several enactments and rules. Marriage rights must be given only through the parliamentary process after wide consultation.

IS RIGHT TO MARRY A FUNDAMENTAL RIGHT?

Mr. K.V Swaminathan, learned counsel argued in front of court that under Article 21, everyone has right to choose a life partner.

*“International covenants to which India is a signatory including the Universal Declaration of Human Rights³⁸ and the International Covenant on Economic, Social and Cultural Rights³⁹ enjoin a duty upon the state to not interfere with the right of a person to marry and have a family in terms of their own choice as well as to protect the familial rights of all persons without discrimination on the basis of inter alia sexuality, race, and religion”.*³

The freedom to choose a partner in marriage would be covered under Article 19(1)(a) as an expression, under Article 19(1)(c) as an association or union and Article 19(1)(e), as an exercise of the right to reside and settle in any part of the territory of India.⁴

Mr. Tushar Mehta, learned Solicitor General of India argues on the behalf of Union of India and argued that marriage serves the purpose of sustaining one’s gene pool. The constitution of India doesn’t recognize right to marry as sexuality of one is protected under article 19(1)(a) of the constitution. The marriage cannot be traced to the right to expression or right to union under Article 19(1)(c).

“After the decriminalization of homosexuality in Navtej (supra), members of the LGBTQIA+ community have the freedom and autonomy to choose their partners without restraints on gender and sexuality. However, the decriminalization of sexual offense does not cast an obligation on the State to grant legal recognition to such relationships or unions. Marriage is

² Supriyo @ Supriyo Chakraborty & Anr. v. Union of India W.P.(C) No. 1011/2022, page no. 45

³ Supriyo @ Supriyo Chakraborty & Anr. v. Union of India W.P.(C) No. 1011/2022, para 23, page no.28-29

⁴ Saroj Rani v. Sudarshan Kumar Chadha (1984) 4 SCC 90

a legal privilege. It is conditional upon statutory or societal conditions. The right to choose a partner does not necessarily imply that there is a right to marry a partner of choice. The Courts do not have the power to decide if legal recognition can be granted to a union of non-heterosexual individuals. This is an issue which must necessarily be decided by the legislature, being the elected representatives of the citizens”⁵

SMA would be unworkable if converted into gender-neutral terms as it will amount to court re-drafting a large number of provisions:

- a). SMA such as Sections 27, 31, 36, and 37 cater to the needs and requirements of a woman in a heterosexual marriage. A reading of the SMA in a gender-neutral manner would impact the interpretation of these provisions.
- b). Section 21A of the rules of succession under HMA explains about solemnizing marriage between male and female professing the Hindu, Buddhist, Sikhs, Jains. And gender neutral terms will render HMA unworkable
- c). According to Section 4(c), the male must have completed twentyone years of age and the female must have completed eighteen years of age at the time of marriage. Reading the phrase ‘spouse’ in place of ‘male’ and ‘female’ would render the distinctive minimum age requirement for marriage based on gender otiose.

JUDGEMENT

In this case, a five-judge bench held that the right to marry is not a fundamental right, and there is the distinction between the right to choose a partner and the right to marry. The bench as a whole discussed queer couples' right to enter into a union, but the majority bench held that there was no obligation on the State to legally recognize such civil unions. Thus, there is no universal conception of the institution of marriage. Under Articles 245 and 246 of the Constitution, read with Entry 5 of List III to the Seventh Schedule, it lies within the domain of Parliament and the state legislatures to enact laws recognizing and regulating queer marriage. This Court cannot either strike down the constitutional validity of SMA or read words into the SMA because of its institutional limitations.

⁵ Supriyo @ Supriyo Chakraborty & Anr. v. Union of India W.P.(C) No. 1011/2022, page no.48