



# The Indian Journal for Research in Law and Management

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## CASE COMMENTARY ON SUPRIYO V. UNION OF INDIA

- *Esakkipandi B*

**NAME OF THE CASE:** SUPRIYO V. UNION OF INDIA

**CITATION:** WRIT PETITION (CIVIL) No. 1011 of 2022

**DECIDED DATE:** 17<sup>th</sup> OCTOBER 2023

**PETITIONER:** SUPRIYA CHAKRABORTY AND ANR.

**RESPONDENT:** UNION OF INDIA

**BENCH/JUDGES:** CJI D.Y. CHANDRACHUD, JUSTICE SANJAY KISHAN KAUL, JUSTICE S. RAVINDRA BHAT, JUSTICE HIMA KOHLI, JUSTICE PAMIDIGHANTAM SRI NARASIMHA

**LEGAL PROVISION:** Article 14, Article 15 Article 21, Article 19, Sec. 4 of Special Marriage Act of 1954, Hindu Marriage Act of 1955, Foreign Marriage Act of 1969

### INTRODUCTION

In India's judicial system, the Supriya Chakraborty and Others v. Union of India case represents a turning point. Beyond its direct effects on individual autonomy and reproductive rights. This case changed legal paradigms and larger cultural narratives, especially with regard to marital customs and the rights of the LGBTQ+ community. Its importance has far-reaching effects outside of the courtroom, igniting a legal and cultural revolution that has started to reshape the traditional conception of marriage.

### BACKGROUND

In India, LGBTQ+ individuals and couples seeking recognition for their partnerships have launched a few respectable initiatives. Nikesh and Sonu filed a motion with the Kerala High Court in January 2020, and Justice Anu Sivaraman eventually granted it. Chief Justice of the

Delhi High Court D.N. Patel and Justice Prateek Jalan granted a similar motion made by Abhijit Iyer Mitra, Gopi Shankar M, Giti Thadani, and G. Oorvas in September 2020. As a result, in November 2022, Supriya Chakraborty, Abhay Darn, Parth Phiroze Mehrotra, and Uday Raj Anand filed a plea in the High Court, which Chief Justice of India D.Y. Chandrachud and Justice Hima Kohli granted. Nine comparable petitions from other high courts were exchanged by the High Court so they could be considered collectively. The High Court granted 20 related applications on Walk 15, 2023, from 52 members of sexual and orientation minorities, including 17 couples. In order to test the defendability of notice and complaint processes, the attorneys essentially sought acceptance under standard marriage standards. Some argued that the Hindu Marriage Act's ban on rehearsing Hindus violated their strict opportunity. The High Court appointed Advocate Arundhati Katju and Kanu Agrawal as Nodal counsel for the petitioners and respondents, respectively, in a legitimate representation that included a number of supporters. The respondents were addressed by Solicitor General Tushar Mehta and Head Legal Officer R. Venkataramani.

## **FACTS**

The two same-sex couples filed a writ petition at the High Court on November 14, 2022; Supriyo Chakraborty and Abhay Darn were the principal solicitors for the case; Parth Phiroze Merhotra and Uday Raj Anand documented the subsequent appeal. The applicants challenged the validity of Section 4(c) of the Special Marriage Act, 1954 on the grounds that the arrangement oppresses same-sex couples by denying them advantages like reception, surrogacy, and retirement benefits. The High Court moved comparative petitions that were pending. These many petitions put the Hindu Marriage Act of 1955 and the Foreign Marriage Act of 1969 to the test. After ten days of proceedings, the five-judge Seat reserved decision on May 11, 2023. The 5-Judge Seat announced its ruling on petitions seeking marriage equality for LGBTQIA+ individuals on October 17, 2023.

## **ISSUES RAISED**

1. Does a fundamental right to marry exist?
2. Do queer couples have the right to marry?
3. Is the Special Marriage Act, 1954 unconstitutional?
4. Can the right to marry by queer be read into the provisions of the Special Marriage Act, 1954 by purposive interpretation?
5. Can unmarried and queer couples adopt?

6. Can transgender persons in heterosexual relationships marry under existing laws?

**CONTENTION BY PETITIONER**

The petitioners argued that any ban or segregation, as summarized in section 4(c) and various arrangements of the SMA, is ultra-vires the Constitution and that the basic right to marry the person of one's own choosing falls under Articles 14, 15, 19, 21, and 25 of the Constitution. It is against Articles 14, 15, 19, 21, and 25 to deny them the right to marry. The right to joy, which includes a fulfilling relationship with a person of one's choosing, is covered under Article 21.

Everyone has the right to wed anyone they want. People who identify as queer have an equal right to exercise this freedom. It is important to read the SMA without regard to gender. It is OK to interpret gendered phrases like "husband" and "wife" as "spouse."

The legal definitions of "family" and "household" are not restricted to a "biological" couple and their offspring. LGBTQ couples are denied the opportunity to start a family since surrogacy and adoption are exclusive to married couples;

LGBTQIA+ people are denied equal protection under the law; same-sex and gender non-conforming marriages are not recognized, which prejudices LGBTQIA+ people and denies them rights under social welfare and beneficial legislation; excluding LGBTQIA+ people from the SMA is blatantly arbitrary; and there is no justification for excluding LGBTQIA+ couples from the institution of marriage.

There is no discernible, legally legitimate distinction between LGBTQIA+ and non-LGBTQIA+ individuals. In this instance, the categorization is based only on the gender identification and sexual orientation of the married parties, which is unconstitutional. Furthermore, there is no logical connection to the goal that the SMA seeks to accomplish. The SMA's goal is to give couples who are unable or unable to be married under their own laws a civil marriage option. There is no logical connection between this object and the SMA's rejection of LGBTQ couples.

**CONTENTION BY RESPONDENT**

Only when the declared goal of the legislation is not fulfilled may courts employ the interpretive technique of reading-in. This Court cannot read language into the SMA to broaden its scope beyond what was first intended since its goal is to regulate heterosexual marriages.

The right to marry is not recognized by the Constitution. Article 19(1)(a) of the Constitution provides protection for an individual's sexual expression. However, under Article 19(1)(c), neither the freedom of expression nor the right to establish unions can be linked to marriage;

The State is not required to give legal recognition to all kinds of relationships. Relationships are only acknowledged by the state when there is a valid governmental interest. For the sake of societal survival, the State has a right to officially recognize heterosexual partnerships.

Courts have no authority to determine whether a non-heterosexual couple may get legal recognition. As the elected representatives of the people, the legislature must unavoidably make this decision.

## **RATIONALE**

In the cases of Justice KS Puttaswamy, Shafin Jahan, and Shakti Vahini, the Hon'ble Supreme Court did not consider whether the Constitution protects the freedom to marry. The rulings in Navtej and Justice KS Puttaswamy acknowledge LGBT couples' freedom to choose whether or not to be married. There are no outside risks to this relationship. Article 15 will be violated by discrimination on the basis of sexual orientation.

According to the ruling in Common Cause v. Union of India, as amended by Common Cause v. Union of India, if terminally ill individuals have not signed an Advance Directive, medical professionals must contact their family, next of kin, or next friend.

Because of its institutional constraints, the Hon'ble Supreme Court was unable to either invalidate the SMA's constitutionality or add words to it. Because doing so would amount to judicial legislation, this Court is not permitted to insert words into the SMA's provisions or those of other related statutes like the ISA and the HSA. When using its judicial review authority, the Court must avoid issues that belong in the legislative branch, especially those that have an impact on policy.

## **JUDGMENT**

The judges all agreed that same-sex couples cannot claim marriage as a basic right and that there is no absolute right to marriage. The challenge to the Special Marriage Act's provisions was likewise unanimously dismissed by the Honourable Supreme Court.

The five-judge panel in this case determined that the freedom to marry is not a fundamental right in and of itself nor is it protected by any of the other fundamental rights. The court stressed that the state alone has the authority to enact legislation granting the right to marry.

The court also stressed how crucial it is to remember that LGBTQIA+ individuals are still able to exercise their rights to privacy, autonomy, and choice even if they are not granted the right to marry.

As a result, LGBTQIA+ persons were denied the right to marry under the conditions of the ruling that resolved the petitions in this case.

## **CONCLUSION**

One important social institution that society understands is marriage. As a result, the ruling that establishes its legal enforceability has certain normative significance. The ruling emphasizes the necessity for the judiciary to interpret basic rights more consistently and progressively, in line with the Indian constitution's tenets of equality, non-discrimination, and human rights.