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SUPRIYO V. UNION OF INDIA

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ABSTRACT

Despite the ruling of landmark cases such as Navtej Singh Johar and Ors vs Union of India¹ which declared the criminalization of Section 377 of the Indian Penal Code of 1860² as unconstitutional due to its nature of violation of Article 14, 15, 19 and 21 of the Indian Constitution³; in Deepika Singh v. Central Administrative Tribunal⁴ which had made the definition of family broader for the inclusion of same sex couple stating that these families also require equal protection of law and benefits of social welfare' there still prevails non recognition towards these communities as the law and society still looks down upon them and don't consider them as a part of their society. Due to these reasons they are not given respect, support and acceptance by the people around them. They are humans and should be treated as one especially when it comes to talking about their relationship with person of same gender. In the light to this, a landmark case on same sex marriage and the right to establish a family for same sex couple was decided by the Supreme Court in Supriyo v. Union of India⁵. In this article we shall be discussing about this case and the legal impact that it has on today's society.

INTRODUCTION

Supriyo v. Union of India is a landmark case of the Supreme Court of India emerging through a writ petition filed to provide right to marry and build a family for the LGBTQIA+ community in India. The case was discussed before a bench of 5 judges, who also heard 20 related cases filed by 52 petitioners. The petitioners, consisting of couples and individuals belonging to the LGBTQIA+ community have requested for the recognition of their rights towards marriage within their community and to establish families based on protection from discrimination and the right to personal liberty, equality, dignity, freedom of speech and expression, and personal autonomy. This case was one of the latest controversies for the LGBTQIA+ community and the entire nation as the society and the law still doesn't recognize them in the way it recognizes the rights and existence of male, female, couple of opposite sex and marital relationship between two people of opposite

¹ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

² Indian Penal Code, §377, No. 45 of 1860, Acts of Parliament, 1860 (India)

³ INDIA CONST, art 14, art 15, art 19, art 21

⁴ Deepika Singh v. Central Administrative Tribunal, 2022 SC 1088

⁵ Supriyo v. Union of India, 2023 INSC 920

sex (meaning husband and wife or relationship of boyfriend and girlfriend). Right to form association and to live in peace and harmony was upheld by the Supreme Court but the right to marriage was not granted and the subject matter was left on the lawmakers to decide the same. The decision was strongly based upon complex and specific issues on grounds of constitutional rights, separation of powers and social change. This case also justified how this minority community is looked upon in India and whether their demands of fundamental rights are to be treated in the similar way as that of the people of all other communities.

FACTS OF THE CASE

The case basically originated from a series of petition filed before the Supreme Court. The petitioners consisting of same sex couples, advocates promoting their rights came to a conclusion and demanded for their rights to marry. The main point to argue upon was that these legislations provided in connection to same sex marriage or same sex relationships were causing discrimination in the society and ultimately violating the Fundamental Rights ⁶(Part III of the Indian Constitution). To be more specific Article 14 (Everyone is equal before the law)⁷, Article 15(Prohibition of discrimination on the basis of religion, race caste, sex, and place of birth)⁸, Article 19(Right to freedom of speech and expression)⁹ and Article 21(Right to life and personal liberty)¹⁰ were challenged in this case on the grounds of the violation of these rights as they have rejected marital equality due to the involvement of persons belonging to same sex. The petitioner had argued and requested the Court that the Special Marriage Act, 1954¹¹ should be more neutral towards gender in case of same sex marriages. However the Union of India was against this plea of the petitioner as it firmly emphasized on the union of a male and female which had always been the tradition and culture of the country.

ISSUES RAISED IN THIS CASE

The following issues were raised during the course of this case:

- 1) Whether the Constitution identifies same sex marriage as a fundamental right?
- 2) Whether the Special Marriage Act is unconstitutional
- 3) Whether the Supreme Court should interpret the provision of the Special Marriage Act or other marriage statutes for same sex marriage?
- 4) Do the Union and State governments have a positive obligation under the Constitution to recognize and provide a legal framework for the rights and entitlements of same-sex couples in relationships, even if formal marriage is not recognized?

JUDGEMENT OF THE CASE

⁶ INDIA CONST, art 14 to art.32

⁷ INDIA CONST, art 14

⁸ INDIA CONST, art 15

⁹ INDIA CONST, art 19

¹⁰ INDIA CONST, art 21

¹¹ Special Marriage Act, 1954, No. 43 of 1954, Acts of Parliament, 1954 (India)

The verdict delivered by the 5 judge bench of the Supreme Court was highly complex and a split verdict. The Court had agreed to affirm the fundamental rights of LGBTQIA+ community treating them with dignity, identity and freedom from discrimination. The right to cohabitation has been provided to them under Article 21 of the Indian Constitution providing recognition to same sex couple not within marriage but the right to marriage is not treated as a fundamental right for same sex couple as it wouldn't force the government to create separate legislation for same sex couple. Special Marriage Act was not considered illegal by the judge because its validity should be assessed on the grounds of competence and situation at the time of its enactment. It also did not provide the same sex couple the right to adopt children.

CRITICAL ANALYSIS OF THE CASE

All though the case considered to provide the LGBTQIA+ communities with fundamental rights but this doesn't solve the issue of not providing them with equal status of marriage as in the case of marriage between opposite sex. The court rules in such a critical matter that it wouldn't be questioning the government to create laws for them. This does not sit with the protection or respect of human rights as it does not treat their certain rights as similar to that granted to opposite sex couples. This case also highlights how the Court was not able to provide equal rights and fight for this minority community leaving the decision in the hand.

Apart from marriage the Supreme Court also came to a conclusion that the rights of adoption couldn't be granted to same sex couple though it was argued on the statement that it bars same sex couple to practice parenting and does not entertain the best interest of the child.

CONCLUSION

Through this case we come to a conclusion that our society and its legal system still does not treat the LGBTQIA+ community the way other communities are treated. It becomes difficulty for it to digest this concept of human behavior and their choice of liking people of their own sex. This concludes on the note that India still needs to grow and come to terms of accepting this community in order to be considered diverse and respectable of Human Rights.