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## Case Comment: Navigating the Landmark Judgment of Supriyo v Union of India - The Gay Marriage Case

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### INTRODUCTION

Societies have always interpreted and acknowledged the subject of nuptials, sexuality, copulation, and procreation in manifold actions. The diversity in the responses regarding the administration perquisites, morality, divinity, and intimacy has created a lot of socio-political conflicts between supporters and opponents ranging from honouring to interdiction.<sup>1</sup> However, in the contemporary world, while different cultures have openly accepted homosexuality generally in its nonmarital form, an increasing number of countries have also begun liberalizing and permitting the legal marriage of same-sex couples through their respective customs, religions, and traditions. Same-sex marriage (SSM) seems to be a recent phenomenon, but many scholars have argued that such marriages were recognized in medieval times also.<sup>2</sup>

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<sup>1</sup> Mohd Sahil Khan, 'Case Study: Supriya Chakraborty v. Union of India' (*Legal Wires*, 27 July 2024) <<https://legal-wires.com/case-study/case-study-supriya-chakraborty-v-union-of-india/>> accessed 15 November 2024

<sup>2</sup> 'Same-Sex Marriage' (*Britannica*) <<https://www.britannica.com/topic/same-sex-marriage>> accessed 15 November 2024

The Indian judiciary has also witnessed the ongoing deliberations for the rights of the LGBTQIA+ community. Many milestone pronouncements have created a path for their fundamental freedoms, protection and recognition. An attestation to this conspicuous journey is the landmark case of *Supriyo v. Union of India*<sup>3</sup>.

This commentary analyses the subtlety of the judgment of the said case by shedding light on its future implications, comprehending the court's reasoning, and counting the significance it holds.

## FACTS AND THE PROCEDURAL HISTORY

In November 2022, when a queer couple namely, Supriyo Chakraborty and Abhay Dang, filed a writ petition on behalf of 21 same-sex couples, the case of *Supriyo v Union of India* case took its origin. The same-sex couple approached the Apex Court seeking the recognition of same-sex marriages<sup>4</sup> under the ambit of three important Acts- i.e. Special Marriage Act 1954,<sup>5</sup> Foreign Marriage Act, 1969<sup>6</sup> and Hindu Marriage Act, 1955<sup>7</sup>. The case sparked further when the transfer of similar petitions from various High Courts collectively challenged the debarment of same-sex couples from the realm of marriage laws.<sup>8</sup> This confluence of legal objections reinforced the growing impetus and gravity for addressing the persistent demand for the legalization of gay marriage in India.

The previous year, on March 13th, 2023, a 3-judge Supreme Court bench led by Chief Justice D.Y. Chandrachud debated on the subject matter of same-sex unions and referred the case to a 5-judge Constitution Bench for a detailed assessment. After 10 days of substantial hearings, on May 11th, 2023, the 5-judge bench concluded its split 3:2 verdict, which was finally pronounced on October 17th, 2023.

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<sup>3</sup> *Supriyo @ Supriya Chakraborty & Anr v Union of India* WP (C) No 1011/2022

<sup>4</sup> 'Plea for Marriage Equality' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/plea-for-marriage-equality/>> accessed 15 November 2024

<sup>5</sup> The Special Marriage Act 1954

<sup>6</sup> Foreign Marriage Act 1969

<sup>7</sup> Hindu Marriage Act 1955

<sup>8</sup> Ashish Rawat, 'NAVIGATING THE PATH TO EQUALITY: THE LANDMARK CASE OF SUPRIYO V. UNION OF INDIA AND THE FUTURE OF LGBTQIA+ RIGHTS' (*Manupatra*, 02 July 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>> accessed 15 November 2024

## ISSUES INVOLVED

1. Is the limited scope of marriage to heterosexual relations violative of fundamental rights to equality, privacy, non-discrimination and dignity?
2. Should same-sex marriage be allowed by making individuals legally competent to choose their partner?
3. Do same-sex couples have the same rights as other couples related to marriage, property ownership, adoption, etc?

## PETITIONERS CONTENTIONS

1. The petitioners contended that the limitation of the scope of marriage to heterosexual relationships and non-recognition of same-sex marriage amounts to the violation of their fundamental rights under Articles 14, 15, 19(1)(a), and 21, which deals with their rights to equality, non-discrimination, privacy, and dignity.
2. Special Marriage Act 1954 must be reworded and amended to make it a gender-neutral legislation holding Section 4(c) of the Special Marriage Act as ultra vires.
3. Regulations 5(2) and 5(3) of the Adoption Regulations 2022<sup>9</sup> are ultra vires the Juvenile Justice (Care and Protection of Children) Act of 2015<sup>10</sup>.
4. Under the Foreign Marriage Act of 1969, the marriage of a non-heterosexual Indo-American couple is to be recognised if it is registered in the USA.
5. India is a signatory to International Covenants where the state should interfere with the right of a person to marry and have a family of their choice.<sup>11</sup>

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<sup>9</sup> 'Notification' (*Ministry of Women and Child Development*, 23 September 2022)  
<[https://carings.wcd.gov.in/Login/pdf/Regulation\\_english.pdf](https://carings.wcd.gov.in/Login/pdf/Regulation_english.pdf)> accessed 15 November 2024

<sup>10</sup> The Juvenile Justice (Care and Protection of Children) Act 2015

<sup>11</sup> Prashanth Shivadass and Sumonto Chakravarty, 'Marriage – an LGBTQIA+ perspective | Decoding the Supriyo Judgment on Right to Marry between same–Sex partners' (*Bar and Bench*, 08 July 2024)  
<<https://www.barandbench.com/law-firms/view-point/marriage-lgbtqia-perspective-decoding-supriyo-judgement-right-to-marry-samesex-couples>> accessed 15 November 2024

## RESPONDENTS CONTENTIONS

1. Only Parliament can grant a new socio-legal marriage status to LGBTQIA+ people.
2. The progressive legislation purpose of the Special Marriage Act would be lost as it is solely for heterosexuals. Moreover, two people differing in their belief, caste, and faith would be barred from marriage if the said Act is held void.
3. Over 160 legislations and laws would need to be changed to accommodate marriage equality.<sup>12</sup> Legalisation of queer marriages would create an alteration in social relations, thus, creating an imbalance in the prevalent family systems leading to severe consequences.
4. The homosexual couple's marriage falls under the intimate zone of privacy; therefore, the regulation of marriage can't even be done by the State.

## APEX COURT'S DECISION AND THE RATIONALE

The judgment of the Supriyo case itself is a contrasting, unanimous, and miscellaneous event.

The whole bench recognized the relationship rights of the LGBTQIA+ community under Article 21, as the court ensured that the queer community is not discriminated or harassed against because of their gender identity or sexual orientation and that effective steps be taken to sensitize the public about the concept of queer identity, that it is a natural phenomenon and not a mental disorder.<sup>13</sup>

However, in the ratio, since the court ruled against the petitioners, and held that the Constitution does not explicitly recognize a fundamental right to marry for anyone- keeping the queer and non-queer alike on the same footings, therefore, the community only has the freedom to choose partner, right to privacy, autonomy, dignity, cohabit and enjoy physical intimacy, but no right is there for them to enter into civil unions or the sacred knot of marriage which would further

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<sup>12</sup> Rajeev Pratap Singh Bhutyal and Swasti Arya, 'Legal Progression & Social Implications Case Comment on Supriyo Chakraborty & Anr v. Union Of India' (*Manupatra*, 27 May 2024) <<https://articles.manupatra.com/article-details?id=undefined&ifile=undefined>> accessed 15 November 2024

<sup>13</sup> *Supriyo @ Supriya Chakraborty & Anr v Union of India* WP (C) No 1011/2022

accord to them a specific legal estimation and matrimonial benefits such as surrogacy, succession, adoption, or any other right emanating from that social status.

Since an institution cannot be upraised to the realm of a fundamental right based on the essence bestowed on it by law. Therefore, the majority's reasoning acknowledged the institutional limitations of the court, as the expansion of SMA would amount to judicial legislation. Furthermore, as per the majority, the Court cannot direct the legislature to recognise the marital right. The court in their clarification held that the State itself is constrained to ensure that no obstruction for queer couples to enjoy the rights emerging from all previous enactments, ratios as well as the right to have a mutual association as expounded in this judgment.<sup>14</sup>

### **CRITICAL ANALYSIS OF THE VERDICT**

This approach of the highest appellate court was highly criticized for being repugnant with the preceding cumulative rulings, such as *Shafin Jahan v K.M. Asokan*, *Lata Singh v Union of India*, *Shakti Vahini v Union of India*, *Justice KS Puttaswamy (Retd) v Union of India* and *Navtej Singh Johar v Union of India*<sup>15</sup>, where the fundamental rights from an extensive view were taken into consideration and the said judgements are a reflection of the several facets of the marital relationship, therefore, the court's denial to recognize the same-sex marriage and striking down of the Special Marriage Act (SMA), defined a contradictory vision.

Beyond these precedents, the court's reasoning on the right to marry was a peculiar controversy, as it contradicts the basics of international human rights law. Article 23(2) of the International Covenant on Civil and Political Rights<sup>16</sup> (ICCPR) recognizes and affirms the right to marry as a fundamental human right unambiguously. Moreover, India is a signatory to the Universal Declaration of Human Rights (UDHR), 1948, which recognizes the right to marry as a fundamental right under Article 16(1). It stipulates that “*Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.*”<sup>17</sup> However, the explicit denial of marriage as a fundamental right gives an obvious

<sup>14</sup> Sughosh Joshi, ‘Marriage Equality Case: What did the SC say?’ (*Law and Other Things*, 27 October 2023) <<https://lawandotherthings.com/marriage-equality-case-what-did-the-sc-say/>> accessed 15 November 2024

<sup>15</sup> Harshvi Chaumal, ‘Navtej Singh Johar v. Union of India’ (2019) 1(2) *International Journal of Legal Science and Innovation* <<https://ijlsi.com/navtej-singh-johar-v-union-of-india/>> accessed 15 November 2024

<sup>16</sup> International Covenant on Civil and Political Rights 1976

<sup>17</sup> ‘Universal Declaration of Human Rights’ (*United Nations*, 2015)

<[https://www.un.org/en/udhrbook/pdf/udhr\\_booklet\\_en\\_web.pdf](https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf)> accessed 15 November 2024

portrayal of the constitutional authority of the state to restrict the marriage between the citizen and any foreign national by virtue of national security concerns.<sup>18</sup>

### **THE LACK OF JUDGEMENT**

The central government was asked by the honourable Supreme Court to form a panel for the discussion of the rights and legalities of same-sex unions. The government could have been asked by the judiciary firstly to frame the laws and then pronounce the judgment of the case. The courts have also enacted laws through their decisions in certain cases. The verdict seemed to be orthodoxically conform and inclined towards popular opinion, as it was disadvantageously beneficial for the conventional society. We have laws for all possible minorities in India, but the majoritarian desires prevail when it comes to legalising gay marriage. Is not it hypocrisy or an irony, to say the least?<sup>19</sup>

### **IMPACT OF THE DECISION**

This verdict represented the need for a collaborative approach between the two organs of the government to ensure a robust and coherent legal framework that addresses the dynamic concerns, individual autonomy, regulation of alternative family structures and non-traditional relationships of the society.

Alongside the institutional tensions, the judgment also prompted discussions on the evolving nature of societal norms, individual autonomy, and the role of the state in regulating personal relationships. The case extended beyond the specific issue of same-sex marriage and questions about the social recognition and regulation of alternative family structures and non-traditional relationships. Since in Indian societies, marriage is a knot of social recognition and dignity, therefore, denying the right to marry would leave a negative impression and may impact the mental and emotional health of queer couples.

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<sup>18</sup> Kanav N Sahgal, 'The Marriage Dilemma: The Supreme Court's Questionable Interpretation of Autonomy and Dignity in the Marriage Equality Case' (*RGNUL Student Research Review*, 24 January 2024)

<<https://www.rsrr.in/post/marriage-equality-supreme-court-supriyo>> accessed 15 November 2024

<sup>19</sup> Arunima Bali, 'Case Commentary on Supriya Chakraborty and Anr V. Union Of India' *International Journal of Advanced Legal Research* <<https://ijalr.in/volume-4-issue-2/case-commentary-on-supriya-chakraborty-and-anr-v-union-of-india-arunima-bali/>> accessed 15 November 2024

## **CONCLUSION**

While India has taken a remarkable approach to recognizing the rights of its LGBTQIA+ citizens, the institution of same-sex marriage remains an unresolved issue.

The Indian courts are popular in fulfilling international commitments and evoking the public international norms openly to interpret statutory provisions. Though the above-mentioned cases and international conventions specify the fundamental right to marry, this specific question was never answered by the court. It made a narrow distinction between the right to choose a partner and the right to marry and held that the precedents dealt with the former, not the latter.

In terms of recognition and consequential benefits, homosexual marriage and heterosexual unions ought to be considered as two sides of the same coin. At present, lacuna is the absence of suitable regulatory frameworks for such unions.