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Case Comment: From Discrimination to Recognition - Supriyo Chakraborty & Ors v Union of India: A Commentary on Same-Sex Marriage Jurisprudence

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INTRODUCTION

Indian society has been influenced by traditional and religious norms where marriage is considered a sacred institution. Various family laws and human rights have been codified to protect the beliefs of people and provide a legal framework for marriage. Under personal laws, marriage is a culturally and legally recognized union of a male and a female. The legal recognition of same-sex marriages is a pivotal issue in contemporary India. The societal norms have often marginalized the LGBTQIA+ community. In 2001, the Naz Foundation¹ filed a petition challenging Section 377². This set the stage for the battle of LGBTQIA+ rights. In 2009, the Delhi High Court ruled out Section 377 as violative of fundamental rights³ thus decriminalizing homosexual acts. However, in 2013, the Supreme Court reversed⁴ the decision

¹ *Naz Foundation v Govt. of NCTD* (2009) 160 DLT 277

² Indian Penal Code 1860, s 377

³ Constitution of India 1950, art 21

⁴ *Suresh Kumar Koushal v Naz Foundation* (2014) 1 SCC 1

of the Delhi High Court. In the landmark judgment of *NALSA v UOI*,⁵ the Apex Court directed the state to grant legal recognition to self-identified gender of transgender category. The Court in the case of *Justice KS Puttuswamy v UOI*⁶ held that the Constitution⁷ protects the right of a person to exercise their sexual orientation and that a person can't remain in a constant state of fear while exercising their rights. The Supreme Court through the judgment of *Navtej Singh Johar v UOI*⁸ struck down Section 377⁹. This judgment was a significant victory for the LGBTQIA+ community to live without fear of social persecution. However, same-sex marriages have not yet received legal and social recognition. *Supriyo Chakraborty & Ors. v UOI*¹⁰ stands as a landmark case in the ongoing battle of this community for their rights relating to marriage, adoption, and inheritance. The case highlights the struggle of the LGBTQIA+ community for legal equality and acceptance. The judgment resulted in a split opinion of majority 3:2 acknowledging the right to form a union but not to marry. It challenged the constitutional validity of various provisions acting as a specific parameter for multiple paradoxes.

FACTS OF THE CASE

Supriyo Chakraborty and Abhay Dhang on Nov 14, 2022, filed a petition before the Hon'ble Apex Court seeking legal recognition of marriage between queer couples under the Special Marriage Act, 1954. The petition challenged the constitutional validity of the SMA¹¹. The petitioners faced persecution and were denied legal rights despite being married. The Supreme Court on Nov 25, 2022, directed the State to respond to the petition and brought similar cases pending in Delhi and Kerala High Courts within its jurisdiction. A five-judge bench of the Supreme Court was appointed to decide the matter. The bench on Oct 17, 2023, pronounced the verdict and unanimously held that queer couples do not possess the fundamental right to marry. The legal recognition of same-sex marriages cannot be granted based on the existing legal framework and societal considerations.

⁵ *NALSA v Union Of India* (2014) 5 SCC 438

⁶ *Justice KS Puttuswamy v Union Of India* (2017) 10 SCC 1

⁷ Constitution of India 1950, art 21

⁸ *Navtej Singh Johar v Union of India* (2018) 9 SCC 791

⁹ Indian Penal Code 1860, s 377

¹⁰ *Supriyo Chakraborty & Ors v Union of India* (2023) INSC 920

¹¹ Special Marriage Act 1954

KEY ISSUES

1. Whether the Supreme Court has the authority to hear the case.
2. Whether there is a fundamental right to marry.
3. Whether queer couples have the right to marry.
4. Whether the Special Marriage Act, of 1954 is unconstitutional concerning non-heterosexual marriages.
5. Whether queer couples have the right to adoption.
6. Whether heterosexual transgender couples have the right to marry.

PETITIONER'S ARGUMENTS

The Court's existing jurisprudence encompasses the LGBTQIA+ individuals the fundamental right to marry. Section 4(c)¹² discriminates queer persons based on their sexual orientation and violates their right to dignity and decisional autonomy and is therefore contrary to Articles 14¹³, 15¹⁴, 19(1)a¹⁵, 19(1)c,¹⁶ and 21¹⁷. Denial of this right doesn't promote or safeguard the legitimate state of interest but is a deprivation of the right to intimacy and entitlement to full citizenship. The SMA¹⁸ and other statutes ought to be read in a gender-neutral manner to include the solemnization of marriage between non-heterosexual couples. Relegating non-heterosexual relationships to civil union isn't an equal alternative to marriage and would reflect their relationship as inferior to those accepted by the heteronormative social order. International Conventions to which India is a signatory also confer the duty upon the state to protect familial rights without discrimination based on sexuality. The exclusion of LGBTQIA+ from

¹² Special Marriage Act 1954, s 4(c)

¹³ Constitution of India 1950, art 14

¹⁴ Constitution of India 1950, art 15

¹⁵ Constitution of India 1950 , art 19(1)(a)

¹⁶ Constitution of India 1950 , art 19(1)(c)

¹⁷ Constitution of India 1950, art 21

¹⁸ Special Marriage Act 1954

matrimonial statutes fails the reasonable classification test¹⁹. As per the reasonable classification test, there must be an intelligible differentia i.e. a clear and distinct reason for classification. Moreover, the reason must have relation to the objective sought to be achieved by the statute. The exclusion is an arbitrary distinction solely based on sexual orientation that lacks a clear, logical, and distinct basis. The gender-based interpretation of the Hindu Succession Act, of 1956 would prevent a transgender individual from inheriting property even being a sole heir. CARA guidelines²⁰ are unconstitutional to the extent of denial of the right of adoption to queer couples. Moreover, queer marriages don't fall within the ambit of degrees of prohibited relationships.

RESPONDENT'S ARGUMENTS

The Court in *Navtej S. Johar v UOI*²¹ has already made constitutional decisions on the right to marry and form a family. The omission of non-heterosexual marriages from the purview of enactment doesn't render the Act void. The gender-neutral interpretation of SMA²² will make implementation of Section 19-21A²³ difficult and redesigning several statutes. The declarations of the Court in this regard would be anathema to the separation of powers. The right to marry cannot be traced within the ambit of Article 19(1)a²⁴ and 19(1)c²⁵. The definition of marriage varies in different personal laws. Under the Hindu Marriage Act, 1955 marriage is a sacred sacrament between a man and a woman. As per the Muslim law marriage (nikah) is a contract between the men and women. The State only recognizes relationships when a legitimate state interest exists. The decriminalization of Section 377²⁶ doesn't cast an obligation on the State to grant legal recognition to non-heterosexual marriages. The gender-neutral interpretation of SMA would impact the laws of inheritance and adoption. Registration of non-heterosexual marriages would be a violation of codified marriage laws, especially the provisions related to the prohibited degree of relationships, ceremonial requirements, and conditions of marriage.

¹⁹ Constitution of India 1950, art 14

²⁰ 'Office Memorandum' (Central Adoption Resource Authority, 16 June 2022)

<<https://cara.wcd.gov.in/PDF/Registration-of-cases-of-single-PAPs-having-a-live-in-partner-in-a-long-time-relationship-and-not-married160622.pdf>> accessed 06 June 2024

²¹ *Navtej Singh Johar v Union of India* (2018) 9 SCC 791

²² Special Marriage Act 1954

²³ *Ibid*

²⁴ Constitution of India 1950, art 19(1)(a)

²⁵ Constitution of India 1950, art 19(1)(c)

²⁶ Indian Penal Code 1860, s 377

The right to choose a partner is protected under Article 21, however, the legislature doesn't recognize it as a fundamental right. The grant of parental rights to queer couples would affect the right of children. The CARA guidelines²⁷ and Section 57(3)²⁸ mandate the consent of both spouses for adoption to ensure that the future of a child is not at stake if one parent abandons, the other is there to look after the child. The classification of union between heterosexual and non-heterosexual is an intelligible differentia based on the condition that heterosexual couples sustain through procreation. The opinion of the majority in Navtej (supra) to grant the right to union to homosexuals doesn't mean marriage. The judgment granted queer couples the right to choose a partner, engage in consensual sexual acts, and enjoy various aspects of partnership without fear of criminal prosecution. The right to union generally involves an informal relationship that does not require formal legal process and recognition. However, this right granted by the Apex Court must not be confused with the right to marry. The right to marry grants legal status and protection to an individual's right to enter into a formal marriage contract and the social recognition, legal benefits, and responsibilities under different laws.

DECISION

CJI while opining upon the question of encroaching on the legislative domain held that the Court holds the power to conduct a judicial review of the legislation. The bench unanimously held that the Constitution doesn't recognize the fundamental right to marry in the case of queer couples and the denial of such a right can't be challenged under Article 19²⁹. They upheld the constitutional validity of Section 4³⁰ and the Foreign Marriage Act. The bench noted that striking down the section would undermine the purpose for which it is enacted.

The bench unanimously held that transgender heterosexual couples possess the right to marry under personal laws. The personal marriage laws permit marital relationships between 'man' and 'woman'. A heterosexual union of transgender individuals³¹ is permitted after a harmonious interpretation of the marriage laws. The restriction of such a union would violate

²⁷ Office Memorandum (n 20)

²⁸ Juvenile Justice (Care and Protection of Children) Act 2015, s 57

²⁹ Constitution of India 1950

³⁰ Special Marriage Act 1954

³¹ *NALSA v Union of India* (2014) 5 SCC 438

the provisions of the Transgender Persons (Protection of Rights) Act, 2019. The bench reasoned that a person is transgender by their gender and not sexual orientation.

By a majority of 3:2, the bench held that queer couples don't possess the right to enter into civil unions. Hon'ble CJI and J. SK Kaul held that they have the right to civil union and the state is obliged to give legal recognition to such relationships. Making a contradictory contention the majority of J. Ravindra Bhatt, J. Hima Kohli, and J. PS Narasimha argued that the right to a civil union doesn't come under the ambit of fundamental rights. J. Narasimha contended that passing directions to the legislature to recognize civil unions would contradict the separation of powers.

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The majority decision also held that queer couples don't possess the right to adopt. J. Bhatt emphasises Section 57(2)³³ which mandates adoption only to married couples for the best interests of the child.

Hon'ble CJI also issued directions to the legislature to address the social persecution faced by queer persons. He sought directions to the police department to refrain from harassing queer couples. The court urged the legislature to consider the issue of de facto families.

ANALYSIS

The case of *Supriyo Chakraborty v UOI*³⁴ highlights the ongoing struggle of LGBTQIA+ for their right to marry and adopt. The Court's decision pointed towards the necessity of social acceptance and legislative reforms to address discrimination and ensure that the community receives equal treatment as their heterosexual counterparts. The Court's acknowledgement of the struggles of queer couples is a step forward toward a progressive society. It emphasized the pervasive social stigma such as ostracization, marginalization, and economic disparities faced by LGBTQIA+. This discrimination poses numerous challenges in terms of mental health, financial instability, adoption, and inheritance. This set the stage for future social and legal advancements on the issue of the rights of the LGBTQIA+ community. Though the judgment

³² *Shafin Jahan v Ashoka K.M* (2016) 16 SCC 368

³³ Juvenile Justice (Care and Protection of Children) Act 2015, s 57

³⁴ *Supriyo Chakraborty v Union of India* (2023) INSC 920

did not provide any interim relief to protect the rights of these individuals it has set the issue into the mainstream for public debate and awareness of these rights. This may pave the way for changes in societal attitudes towards queer marriages and LGBTQIA+ individuals.

The judgment reaffirmed the rights of LGBTQIA+ to dignity, privacy, and equality as guaranteed by the Constitution of India, 1950. The court also acknowledged the importance of recognizing queer relationships and gender-neutral approaches in matters of marriage and family that should not dictate the rights of individuals. The bench urged the legislature to take a proactive stance to ensure the inclusion of LGBTQIA+ in all aspects. Despite the progressive elements in the judgments, it failed to deliver justice to the petitioners. The failure on the part of the Court to recognize the marriage of queer couples and defer the matter to the legislature perpetuates the marginalization of this community from legal and social benefits. There was a lack of a specific timeline for the legislative act on the issue raises concerns about prolonged inaction and inadequate legislation and the over-reliance of the judiciary on legislature might prolong the hardships of this community. The judgment sparked a debate between social morality and constitutional rights. The judiciary should not be shy in challenging regressive societal norms and cultural values. The judgment depicts a compromise of constitutional morality that ensures the right to equality and non-discrimination.

CONCLUSION

The recognition of same-sex marriages is a significant milestone in the battle of LGBTQIA+ for their rights. Despite the decriminalization of homosexual acts in 2018, queer marriages have failed to acquire legal and social recognition. The legal recognition would affirm the constitutional value of non-discrimination, equality, and dignity. However, this move LGBTQIA+ has faced substantial opposition from political, social, and religious groups. The judgment underscores the need for well-codified legislation and societal sensitization about queer couples. The recognition will not only prove beneficial for LGBTQIA+ individuals but also signify India's commitment to human rights and the principles of the Constitution³⁵. The judgment is an indication that social morality prevails over constitutional morality.

³⁵ Constitution of India 1950