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Case Comment: Analysing the Legal Implications: *Supriyo v Union of India*

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INTRODUCTION

In India, same-sex marriage has generated a lot of legal and social discussion, which reflects how equality and individual rights are developing. Article 21, which protects the fundamental rights to life and personal liberty, provides the legal basis for resolving this matter. Furthermore, Article 14¹ guarantees the right to equality before the law, and Article 15² forbids discrimination based on a person's sex. With the increasing global significance of the legal framework surrounding same-sex relationships, it is critical to consider its ramifications in the Indian context. The Supreme Court's significant ruling in *Navtej Singh Johar v Union of India*³ was a major factor in the decriminalization of consenting same-sex relationships. This case comment explores the intersectionality of fundamental rights, sheds light on relevant sections and articles of the Indian Constitution, and explores the constitutional dimensions of same-sex marriage.

¹ Constitution of India 1950, art 14

² Constitution of India 1950, art 15

³ *Navtej Singh Johar v Union of India* (2018) 1 SCC 791

FACTS OF THE CASE

The current batch of writ petitions pertains to the Indian constitution and the rights of LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, and intersex) individuals. It is crucial to comprehend the factual context of these petitions' filing at the outset. Examining the records demonstrates that the LGBTQIA+ population in India has long been subjected to prejudice and persecution. Any sexual activity that was 'against the order of nature' was illegal for more than a century under *section 377 of the Indian Penal Code*⁴ The government violated the fundamental autonomy and dignity of LGBTQIA+ people by using this colonial provision. Many faced legal action, social exclusion, and public mockery simply for being in consenting same-sex relationships. Their mental health suffered greatly as a result, and they were unable to live as equal citizens in freedom.

Several petitions contesting *section 377's* constitutionality were submitted to the Delhi High Court in 2009. There was a claim that making private homosexual behaviour between consenting people illegal went against fundamental freedoms, including privacy, life, and liberty. In the historic *Navtej Singh Johar* ruling of 2018⁵, a five-judge Supreme Court bench unanimously overturned *section 377*⁶ following a ten-year legal struggle. Same-sex partnerships were no longer illegal as a result, but oppression and prejudice persisted in other ways. Same-sex alliances were no longer criminal as a result, but oppression and prejudice persisted in different ways. Members of the LGBTQIA+ community who continue to experience economic, social, and political marginalisation due to their gender identity and sexual orientation are the petitioners in this case. The petitioners have contested this exclusion from the provisions of the *Foreign Marriage Act 1969* and the *Special Marriage Act 1954*, which regulate civil marriages for people who cannot access religious ceremonies. They claim this is against their fundamental rights to freedom of expression, equality, life, liberty, and dignity. As a result, they lose out on social welfare benefits linked to marital status. Under these statutes, the petitioners seek recognition of their relationships and a declaration of their right to marry. This succinct

⁴ Indian Penal Code 1860, s 377

⁵ *Navtej Singh Johar v Union of India* (2018) 1 SCC 791

⁶ Indian Penal Code 1860, s 377

historical history gives the context needed to comprehend the types of claims and reliefs requested in the current batch of petitions.

ISSUE RAISED

1. Whether LGBTQIA+ individuals have a fundamental right to select a mate, even one who is of the same sex or gender.
2. Whether LGBTQIA+ people are entitled to form a union with the partner of their choice and have that union recognised by law.
3. Are the sections of the Special Marriage Act that do not acknowledge same-sex weddings unconstitutional?

DECISION

The case's judgment section offers a comprehensive and in-depth examination of the arguments put out by each party. The Chief Justice led the Supreme Court bench in assessing the comments from more than thirty attorneys representing respondents, interveners, and petitioners. The court acknowledged the fundamental rights of LGBTQIA+ people to establish unions of their choosing and to pursue equal treatment under the law in a historic decision. The judges balanced several legal and social considerations while acknowledging the stigma and discrimination the minority experienced. First of all, the Court accepted the variety of the Indian Queer community. It was mentioned that LGBTQIA+ identities have long existed in our nation and are not a recent phenomenon. Texts from antiquity and history relate to 'third-gender' individuals and same-sex partnerships. However, colonial laws imposed a foreign morality and criminalised such partnerships, like Section 377⁷. The ruling also made clear that queerness is not exclusive to cities and that it transcends class, religion, and geography. It provided examples of people from all

⁷ Indian Penal Code 1860, s 377

walks of life – from rural villages to metropolitan areas—who identified as community members by drawing on earlier research and news articles.⁸

This contributed to refuting the myth that it is a ‘Western import’ or phenomenon exclusive to wealthy metropolitan elites. The Court explored the meaning of critical constitutional notions such as life, liberty, dignity, equality, freedom of speech and expression, and right to residency while considering the ability to establish ‘unions’. It held that these fundamental rights are violated when same-sex relationships are denied legal status. The bench also concurred with the petitioners that the right to select a partner and pursue fulfilment via a close relationship is essential to the ‘right to life’. The judges next turned their attention to marriage as an institution. They arrived at the thorough conclusion that marriage is a notion that is constantly evolving and is defined variously in personal, religious, and legal contexts. The consenting partners determine what defines a marriage; there is no uniform definition. The law acknowledges it as a legitimate union if the requirements are satisfied. The choice of material and goal is personal. The Court further observed that over the years, laws had outlawed some customs that were once seen as ‘normal’ in marriages, such as dowries, child marriages, and Sati. This demonstrated how the institution of marriage adjusts to societal shifts. It must adapt to changing ideas of equality and dignity and cannot stagnate. The bench underlined that it is prejudice to prevent LGBTQIA+ individuals from getting married. The Court rejected the idea that same-sex marriage would weaken the institution of heterosexual marriage or pave the way for other ‘unnatural’ relationships while considering arguments against it. It claimed that there had been no adverse effects from the legalisation of homosexual activity and the granting of rights in Navtej Singh Johar.

Furthermore, the justices did not believe these unions would make other statutes unworkable. The bench agreed that there were difficulties in reaching a practical solution, but it felt these obstacles could not be used as an excuse to deny fundamental rights. It stated that the authority

⁸ Prachi Bhardwaj, ‘Supreme Court Verdict on Same-Sex Marriage: Breakdown of the Agreements and Disagreements’ *SCC Times* (18 October 2023) <<https://www.sconline.com/blog/post/2023/10/18/supreme-court-verdict-on-same-sex-marriage-breakdown-of-the-agreements-and-disagreements-legal-news-lgbtqia/>> accessed 26 January 2024

of judicial review included overturning legislation and providing orders to address infringement of rights. The Court need not wait for legislation to be passed, particularly when the rights of marginalised groups are involved.⁹

In summary, the courts expanded the definition of marriage equality and struck down discriminatory measures using progressive interpretation principles. They released comprehensive guidelines on protecting both parties' rights while granting marriage and related privileges to LGBTQIA+ people. The well-reasoned decision balanced institutional, legal, and civil liberties issues; it is a veritable monument to the judiciary's transformational power. This historic decision establishes the long-needed precedent for an inclusive society founded on equality under the Constitution.¹⁰

It will significantly contribute to the queer community's rights being upheld and increased social acceptance. Even though there is still a long way to go before there is no discrimination, the ruling has planted the seeds for a just future in which everyone can live and love with dignity. With this ground-breaking decision, the Court has protected the spirit of fairness.

ANALYSIS

On the one hand, the Major Party's decision to reject legal recognition for same-sex marriage is regrettable. The majority's reasoning needs to be more questionable in several respects. First, India's Constitution does not support the majority's contention that marriage is not a fundamental right. Second, the majority's assertion that same-sex couples have other legal options is deceptive. Live-in relationships and civil partnerships do not grant same-sex couples the same legal rights and protections as marriage. On the other hand, Justices Chandrachud and Kohli's dissenting opinion presents a compelling and well-reasoned case favouring same-sex marriage. The dissenting judges properly acknowledge that marriage is a fundamental right and that same-sex couples have the same right to marry as heterosexual couples. Overall, the

⁹ 'Same-sex marriage judgment' *Bar and Bench* (17 October 2023) <<https://www.barandbench.com/news/same-sex-marriage-judgment-live-updates-supreme-court>> accessed 26 January 2024

¹⁰ Debayan Roy, 'Judgment in same-sex marriage a vote of conscience; I stand by my judgment: CJI DY Chandrachud' *Bar and Bench* (23 October 2023) <<https://www.barandbench.com/news/judgment-same-sex-marriage-vote-conscience-i-stand-by-my-judgment-cji-dy-chandrachud>> accessed 26 January 2024

Supreme Court's verdict in *Supriyo v Union of India*¹¹ was mixed. It is a setback for India's LGBTQ+ population, but the dissenting opinion provides optimism that the Supreme Court will one day legalise same-sex marriage in India.¹²

The Indian people's fundamental rights are enshrined in Part III of the Constitution. According to Article 13¹³ of the Constitution, the State is not allowed to enact laws that restrict or eliminate the rights granted in Part III, and any laws that do so would be declared invalid to the degree that they violate this provision. In addition to providing the right to a constitutional remedy for the enforcement of rights granted by Part III, Article 32¹⁴ supplements Article 13:

Article 32 outlines the remedies available to enforce the rights granted by this part.

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Consequently, the way that Article 32¹⁵ has been worded does not restrict the authority that this Court has. On the contrary, it gives this Court the explicit authority to carry out judicial review and uphold the fundamental rights listed in Part III.

While the position of the national government gave the conversation another facet. Concerning the possible ramifications of legalizing same-sex unions, Solicitor General Tushar Mehta stated that such a step would eventually pave the way for challenges to laws prohibiting incestuous unions. This viewpoint alluded to the government's anticipated wider societal and legal ramifications. The difference between judicial orders and policy-making was one of the main

¹¹ *Supriyo v Union of India* WP (Civ) No 1011/2022

¹² *Plea for Marriage Equality - Supreme Court Observer*. (n.d.). Supreme Court Observer.

¹³ Constitution of India 1950, art 13

¹⁴ Constitution of India 1950, art 32

¹⁵ *Ibid*

points of contention that surfaced during the proceedings. The bench emphasized the division of powers in the Indian democratic system by acknowledging that, while it may advise and interpret the law, it cannot lead the formulation of policy or enact legislation.

CONCLUSION

The Supreme Court's decision in *Supriyo v Union of India*¹⁶ is clearly a big defeat for the LGBTQ+ community in India. Advocates for LGBTQ+ rights were disappointed and frustrated by the decision, which declined to grant legal recognition to same-sex marriage and instead referred the matter to Parliament. Despite this defeat, Justices Chandrachud and Kohli's dissenting opinion provides a light of optimism. Their minority opinion, which passionately argued that the freedom to marry is a fundamental right and that Section 4(c) of the Special Marriage Act violates the rights of same-sex couples, offers a ray of hope. Their point of view raises the prospect that the Supreme Court may alter its opinion and take steps to legalize same-sex marriage in India. Despite the prevailing discouraging verdict, the dissenting perspectives articulated by Justices Chandrachud and Kohli act as a poignant reminder that the battle for LGBTQ+ rights and equality in India persists. Their dissent suggests a potential avenue for a more inclusive and progressive stance on same-sex marriage in the country.

¹⁶ *Supriyo v Union of India* WP (Civ) No 1011/2022