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# CASE COMMENTARY ON SUPRIYO V. UNION OF INDIA 2023

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## ABSTRACT

*Validity of marriages in one's own sex has always been a controversial issue and has been subjected to judicial interpretation in various cases like the case of Navtej Singh Johar in 2018 . One such case highlighting the same issue of same sex marriages is Supriyo V. Union of India 2023, which openly questions the validity of Sec . 4 (c) of the Special Marriage Act 1954 which allows marriages only between people of opposite genders and does not allows for same sex marriages as to be unconstitutional , infringing upon the fundamental rights of the citizens [ especially Article 14 , 15 and 21 ] . Through this case comment I have tried to present a detailed analysis of the above mentioned case its facts , background , arguments presented by both the parties , rationale applied by the court and most importantly its final outcome and its significance on our Indian Judicial System .*

**Keywords:** Special Marriage Act 1954, Articles 14, 15, 21, Issues, Contentions, Rationale, Judgement

## I. INTRODUCTION

The case of Supriyo v. Union of India 2023 is one of the most important landmark cases of Indian judicial system where the Apex court upheld the unconstitutionality of marriages within one's own gender . The case questions the constitutionality of the Sec . 4 (c) of the Special Marriage Act 1954 which restricts the ambit of marriages to marriages between people of opposites sexes and strongly criticizes it to be a serious infringement of Right to Equality [ Article 14 ] , Right To Protection Against Any Kind Of Discrimination [ Article 15 ] and Right to Life and Personal Liberty and Privacy [ Article 21 ] of the Indian Constitution.

Court: Supreme Court Of India

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Year: 2023

Bench: Chief Justice Of India D.Y. Chandrachud , Justice S.K. Kaul, Justice S.R Bhat , Justice Hima Kohli , and Justice P.S Narasimha

Citation: Supriyo V. Union Of India 2023 16 SCR 1209

## II. FACTS OF THE CASE

In this case the petitioners Supriyo Chakraborty and Abhay Dang were a same sex couple submitted a writ petition before the Apex Court questioning the constitutional validity of Sec . 4 (c) of the Special Marriage Act 1954 , which restricts the ambit of marriage to marriages between people of the opposite sexes . The petitioners urged the official sanctioning of marriages among individuals of the same sex . The Indian personal laws does not permits marriages within one's own gender and hence the petitioners pleaded the Apex Court to upheld the provision of the above mentioned act to be violative of the Indian Constitution [as it infringes Articles 14 , 15 and 21] . The Apex Court considered the writ petition and after a 10 days deliberation transferred it to a constitutional bench for further judgement.

## III. ISSUES INVOLVED IN THIS CASE

The key issues involved in this case are :-

- 1) Does the members of the LGBTQIA+ community are entitled to the right to marry ?
- 2) Does by not including LGBTQIA+ community within the Special Marriage Act 1954 it infringes their fundamental right to equality ?
- 3) If LGBTQIA+ community has such right , can the Supreme Court make any official enactment on it ?
- 4) If same marriages are socially recognized then what will be its impact on other important factors relating to marriage such as property , inheritance and succession ?

#### IV. CONTENTIONS FROM THE RESPONDENTS SIDE

The contentions from the respondent's side are listed as below :-

- a) The Respondent argued that discrimination on the basis of sex alone cannot be upheld . The "sexual orientation" has been interpreted into "sex", The respondent equated marriage to mean between one man and one woman , it is – ipso facto – discrimination on grounds solely of sexual orientation . Control of same-sex marriages shall go against all other legislations existing on marriages . The Indian Constitution does not specifically enshrine the right to marry as a fundamental right , Article 21 only mentions the right to marry a person of choice .
- b) The Respondent had also argued that the Special Marriage Act was a heterosexual couple-oriented Act , and legalizing same-sex marriage would entail radical legislative changes , which would impact many laws, while arguing that the judiciary should not intervene to give a new "socio-legal status of marriage" for LGBTQIA+ individuals and leave such decisions for Parliament .
- c) The Respondents' main objection to these proceedings , is that Parliament alone has not just legislative competence but also the responsibility of regulating marriage and that this Hon'ble Court should not engage in an exercise which would amount to "legislating".

#### V. CONTENTIONS FROM THE PETITIONER'S SIDE

The key contentions from the petitioners side are listed below :-

- a) The petitioner made the submission that the "right to marry" had to be construed as a constitutional right in the Indian Constitution . The petitioner further argues that they do not seek only a declaration of their right to marry , but an interpretation of the Special Marriage Act that allows solemnization and / or registration of non-heterosexual marriages . The reason is that marriage is not an abstract concept but a concrete social institution that is valuable both in itself and as a gateway to other rights . What the petitioner is asking for is an equality-based right of access to this social institution .The petitioner argued that certain provisions of the Special Marriage

Act 1954 , as implemented so far , bar solemnization and / or registration of non-heterosexual marriages .

- b) This is not considered to be a matter of 'under-inclusive' classification but one where the exclusion / non-membership criteria for the Special Marriage Act 1954 are ascriptive attributes that fall in the category of markers prohibited by Article 15 . Hence , the issue in such cases is not of discrimination but rather non-discrimination (just as was the exclusion of women from suffrage but so too were women excluded from employment in industries / factories) . But the Special Marriage Act 1954 confesses a constitutionally legitimate interpretation , under which the Act may be construed as empowering the solemnization and/or registration of non-heterosexual marriages .
- c) Petitioner further contended that denial to same-sex couples of access to the Special Marriage Act 1954 , amounts to direct discrimination against them under Article 15(1) of the Indian Constitution on the basis of sexual orientation and is thus ex-facie unconstitutional . It violates the right to freedom of speech under Article 19(1) and the right to privacy and dignity under Article 21 of the Constitution .
- d) The petitioner contended that the Special Marriage Act 1954 , violated the right to equality (Article 14 of the Indian Constitution ) as it failed to recognize the non - heteronormative marriages . It was prayed by the Petitioners that if the Court finds that a provision is violative of Part III of the Constitution , (1) it should declare it to be void , or (2) read it down (strike out words) or read words in (insert or substitute words) to rescue it from being held void.

## VI. LEGAL REASONING / RATIONALE APPLIED BY THE APEX COURT

**Doctrine Of Ratio Decidendi :-** The Court understood the rights of homosexual and heterosexual couples to privacy and dignity and to life and awarded a set of guidelines in order to safeguard LGBTQIA+ individuals from discrimination and harassment . Creation of a modern category of civil union constitutes judicial legislation that defies the doctrine of separation of powers ingrained in the constitution . The court held that the legislation of

same-sex marriage is Parliament's business , not the judiciary's , and emphasized the institutional restraints and separation of powers .

**Doctrine Of Obiter Dicta :-** The Apex Court observed that LGBTQ+ and queer couples have a right to form unions under Article 21 but not the right to claim entitlement to any legal status for such union or relationship . Justices S.K. Kaul and D.Y. Chandrachud sustained the appeal to provide legal cover without amending existing marriage laws while others felt it was out of the ambit of the judiciary.

## VII. JUDGEMENT DELIVERED BY THE COURT

In this case , it was considered by the five-judge bench that , the right to marry is not a fundamental right in itself and nor does it come within the ambit of protection of any other basic rights . The court maintained that , as far as the right to marry is concerned , it is the exclusive discretion of the state to introduce a law legitimizing it . The court also stated that it should be kept in mind that even though the right to marry is not provided to LGBTQIA+ persons , it doesn't mean that they are not being provided with the liberty of exercising their right of privacy , choice , and autonomy . The conditions of the order rejecting the petitions in this case , and the right to marry for LGBTQIA+ persons were therefore not granted.

## VIII. CONCLUSION

The balance between one's right to autonomy and the interest of the state in controlling marriage was the central point of this case . The majority ruling confirmed the validity of the measures . Nevertheless , I discover that I concur with the minority ruling . Anybody's right of objection imposes an excessive burden on personal freedom and can violate Article 21's prohibition on marriage . Furthermore , the expression "any term" "person" is so general that it invites unfounded criticism rather than valid concerns . Their focus on the choice of making individual decisions and the right to privacy in deciding on a life partner while deciding on a spouse is consistent with the doctrine of substantive equality and Indian evolving marital culture .

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