
CASE COMMENT:

SUPRIYO SUPRIYA CHAKRABORTY & ANR.

V.

UNION OF INDIA

BY NAVNEET PAL¹

ABSTRACT.

We all have constitutional guarantees and protected fundamental rights which can be enjoyed by each Indian citizen through any established procedure. Doors of the Supreme Court were knocked by a group of courageous same-sex couples not only to legalize their union but also to seek societal acceptance. Their love demands protection under constitutional values like equality, dignity and freedom and legal recognition under the Special Marriage Act, 1954², in modified form. The historic decision was divided into a ratio of 3:2 split verdicts. The larger bench held that the right to have a partner of your choice is constitutionally guaranteed and protected fundamental right, but the right to marry is not. Its Judicial acceptance must be recognized through legislative primacy, not by Judicial encroachments. The minority, led by CJI D.Y. Chandrachud and Kaul,³ acknowledged civil Unions and their rights. This analysis aims to identify gaps within the legal and existing framework, thereby illuminating essential requirements of sustained advocacy and strategic legal interventions.

Keywords: LGBTQ++ Rights, Special Marriage Act, 1954, Fundamental Right, Same-Sex marriages.

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² Indian code, https://www.indiacode.nic.in/bitstream/123456789/15480/1/special_marriage_act.pdf (13 July 2025, 10:19 am)

³ Dharmastra National Law University on 2025-05-29.

INTRODUCTION:

Same-sex marriages have sparked debate and ignited intense discussion in many countries, including India. This open topic has several unanswered questions and continues to demand urgent attention. Progressive and systematic discrimination need not be tolerated within the bounds of civil society, specifically concerning the lack of a moral and legal framework. Homosexuality and its Judicial recognition have advanced to a series of landmark rulings, not merely illuminating the concepts of sexual orientation but also culminating in the decriminalization of mutual same sex relationships under section 377 of the Indian Penal Code 1860⁴.

The first ever significant leading case which shed light and discourse on the decriminalization of homosexuality was delivered in **NAZ FONDATION V. GOVERNMENT OF NCT DELHI (2009)**⁵ Decided by the Delhi High Court. The court held that consensual sexual ⁶relationships among two adult homosexuals belonging to the LGBTQ community comply with the nature and contravene constitutional guarantees of rights such as equality, right to privacy, and personal liberty, which is incompatible with principles of a democratic and inclusive society.

In 2013, Judgement of **Suresh Kumar Kaushal v. Naz Foundation**⁷, the Supreme Court annulled the progressive holding of the *NAZ FOUNDATION CASE*. The court highlighted that the Power to make special laws for this “minuscule fraction” has been exclusively vested in the legislature’s domain and not with the Judiciary. Sexual orientation has long been a subject of societal criticism, lacked legal recognition and societal acceptance, particularly for the transgender community. This community-based upbringing and deep-rooted issues only recognize male and female and overlook the existence and rights of the third gender.

NATIONAL LEGAL SERVICES AUTHORITY V. UNION OF INDIA⁸ The court decisively articulated the distinction between biological sex and psychological gender identity; thereby, legal recognition of queer identity is commonly referred to as a third gender. The court further acknowledged the third gender as “socially and educationally backwards class of citizens”, warranting constitutional protection and drew upon foundational human rights convention and the

⁴ Indian Penal Code, 1860, section 377, 45, law of commission of India, 1860 (India)

⁵ Naz Foundation v. Government of NCT Delhi, 160 (2009) DLT 277

⁶ Delhi metropolitan education on 2023-06-16.

⁷ Suresh Kumar Kaushal v. Naz Foundation, AIR (2014) SUPREME COURT 563

⁸ Nalsa v. Union of India, AIR 2014 SC 1863

Yogyakarta principle.⁹ To recognize transgender person. In the Judgement of **JUSTICE K.S. PUTTASWAMY V. UNION OF INDIA**¹⁰, widely referred to as the ¹¹Privacy judgement, an authoritative decision was taken by the nine-judge bench and holding that the right to privacy is enshrined within the constitutional framework of India. The court ruled right to privacy is an intrinsic and essential attribute of the right to life and personal liberty, and underscored minority rights, particularly to those of the LGBTQ+ community¹². Subsequently, In **NAVTEJ SINGH JOHAR V. UNION OF INDIA**¹³ Unanimous verdict of the Supreme Court of India set aside section 377 of the Indian Penal Code to the extent that it criminalized voluntary sexual relations acts between two adult homosexuals, contravening multiple fundamental rights such as **Article 14, 19(1)(a) and 21** of the Indian Constitution of India.¹⁴

FACTS OF THE CASE.

In January 2020, Nikesh and Sonu, a same-sex couple, solemnized their marriage and approached the Kerala High Court subsequently seeking legal recognition of their union. Justice Anu Sivaraman duly admitted the writ petition was filed in this regard on 27 January 2020. Similar petitions were filed by a group of four individuals belonging to sexual and gender minority communities seeking similar legal recognition. This separate petition was entertained by the Delhi High Court on 14 September 2020 and was jointly heard by Chief Justice D.N. Patel and Justice Prateek Jalan¹⁵. The same analogous relief was sought by Supriyo Chakraborty and Abhay Dang in November 2022 as in earlier petitions, particularly those filed by Nikesh and Sonu.

Due to Substantial similarity in legal questions raised and confronted with multiple petitions across various Jurisdictions, the Supreme Court of India exercised its power to transfer and consolidate

⁹ Michael O'Flaherty, The Yogyakarta Principles at Ten, Taylor & Francis (10th July 2025, 1:54 PM), <https://www.tandfonline.com/doi/full/10.1080/18918131.2015.1127009>

¹⁰ Justice K.S. Puttaswamy v. Union of India, AIR (2017) SC 4161

¹¹ Puttaswamy v. Union of India, Global Freedom of Expression Columbia University (10th July 2025, 2:00 PM) <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/>

¹² 'Naz Foundation v. Govt. of NCT of Delhi, Wikipedia (10th July 2025, 2:00 PM) https://en.wikipedia.org/wiki/Naz_Foundation_v._Govt._of_NCT_of_Delhi

¹³ Navtej Singh Johar v. Union of India AIR (2018) SUPREME COURT 4321

¹⁴ Indian const. art. 14, 15 and 21.

¹⁵ Vivasvan Gautam, The Indian Journal of Constitutional Law, Volume 11 & 12 IJCL 183 (2024).

all nine petitions to ensure a uniform adjudication in this significant legal matter. The essence of petitions solely revolved around the recognition of their union within a secular legal framework.

Notably, certain petitioners, identifying as practicing Hindus, submitted that Hinduism never denounce same-sex unions, and the inactive legal framework violates their fundamental rights preserved in the constitution. The Constitutional bench of five Hon'ble Judges of the Supreme Court reserved its Judgement on the matter on 11 May 2023.¹⁶

ISSUED RAISED:

- 1) Is there any Fundamental Right to marry guaranteed under the Constitution?
- 2) At what extent do queer individuals have constitutional guaranteed legal rights to enter matrimonial alliance under Indian personal and secular laws?
- 3) Can a transgender person in a conventionally heterosexual relationship afford legal rights under the existing framework?
- 4) Can adoption be possible in non- married and queer partnerships in prevailing legal regime?
- 5) Does barring the same-sex couples from the Special Marriage Act, 1954, amount to oppression under Article 14 while allowing the heterosexual couples the same rights?

CONTENTION OF THE PETITIONER:

The learned counsel for the petitioners invoked Articles 14, 15, 19 and 21 of the Indian Constitution of India, asserting a conjoint reading of these fundamental rights establishes the right to marry is constitutionally protected and a natural part of an individual's personal liberty, equality, and dignity. It was argued that these are the sacred unions of two individuals and go beyond the barriers of caste, creed, religion, and sexual orientation. Exclusion of the community from accessing the institution not only violates the principle of equality and non-discrimination but also sustains social marginalization and a regime of legal invisibility. The existing legal framework remains silent and non-inclusive regarding same-sex couples, which shows its legal inadequacy and constitutionally infirm nature, thereby amounting to systematic exclusion. Further, it was argued that marriage is undoubtedly a sacred and personal commitment of two individuals then any distinctions drawn

¹⁶ Supriyo @ Supriya Chakraborty vs Union of India, Indian kanoon (10th July 2025, 2: 00 pm) <
<https://indiankanoon.org/doc/129202312/>>

between heterosexual and homosexual relationships are devoid of intelligible differentia and lack of rational nexus, thus rendering it arbitrary and violative of the Constitution. This structural mechanism of inequality deprives individuals of the attendant benefits such as social security, societal legitimacy and protection from discrimination. Restrictive interpretation of gendered terminology, such as “*husband*” and “*wife*”, was challenged and urged to be purposively interpreted as “*Any Person*”, which enables same-sex couples to solemnize their marriage within the secular framework. Lastly, the counsel underscored that the right of parenthood should not be based on presumptions, prejudiced notions and moralistic biases regarding sexual orientations; rather, any restriction in this regard must be based on objective and substantiated justification.

CONTENTION OF RESPONDENT:

The learned counsel for the respondents argued that under Article 21 of the Constitution, indeed, the right to consensual union is a basic right, yet the right to marry does not enjoy the same constitutional validity. The ambit of freedom of speech and expression under Article 19(1)(a)¹⁷ protects the sexual identity of individuals and orientation; this shield does not extend implicitly to form unions between homosexual couples. Counsel further submitted that for the natural continuance of humanity and the smooth functioning of society, keeping the distinction between heterosexual and homosexual relationships is necessary. While certain rights and obligations may be offered to the LGBTQ+ community, even so right to marry is not exclusive to them. The purpose of the Special Marriage Act 1954 is to support interfaith or inter-religious marriages between heterosexual couples, and its expansion could affect more than 160 existing laws, leading to confusion and legal challenges. According to the respondents, only parliament has the authority to make laws for the community, and the interference of the court in the policy-making process is not reasonable. Finally, argued that a suitable family structure for the welfare of the child is best ensured with a mother and father, and should not be modified based on sexual orientation alone.

RATIONALE:

Freedom of marital choice is a constitutionally guaranteed essential right protected under Article 21, though the right to marry is not. petitioner’s plea on the interpretation of the statutory terms like ‘*husband*’ and ‘*wife*’ as ‘*spouse*’ to enable same sex marriage under the existing framework

¹⁷ Indian const. ar19(1)(a).

was rejected, as per the court, this is the exclusive sphere of the lawmaker, not the judiciary. The views of the bench on adoption rights were divided, while the majority emphasized legislative primacy and put forward restrictions based on marital or sexual orientation, but conversely minority endorsed legal recognition to safeguard dignity and autonomy.

JUDGEMENT:

On 17th October 2023, a five-Judge Constitution Bench of the Hon'ble Supreme Court, headed by CJI D.Y. Chandrachud, passed a split verdict (3:2) in the landmark case of *Supriyo v. Union of India*. The court declined legal acknowledgement of same sex marriages under the extant statutory framework, stating the right to have a partner of your choice is constitutionally guaranteed and protected fundamental right, though the right to matrimonial union does not constitute a fundamental right within the contours of the Indian constitution. Petitioners had sought reinterpretation of the Special Marriage Act in such capacity, which allows similar unions under the existing framework. The court refrained from re-exegesis of the legislative text and declined Judicial intervention in extensive modifications to such legislative reforms, which lie squarely within the sphere of parliament. Nevertheless, the court emphasized legal protection for non-heterosexual couples under Articles 14, 15, and 21, and issued directions to the functional institutes aimed at safeguarding the community from any form of discrimination. While minority opinion, Justices Chandrachud and Kaul supported the union of similar individuals, rights associated with such unions to freedom of expression and personal liberty and advocating for legal protection under the same ambit without bringing alterations. Notwithstanding, all members of the constitutional bench focused on the dignity, equality and societal values of the LGBTQ+ community, affirming their indispensable place in India's constitutional fabric and cultural plurality.
