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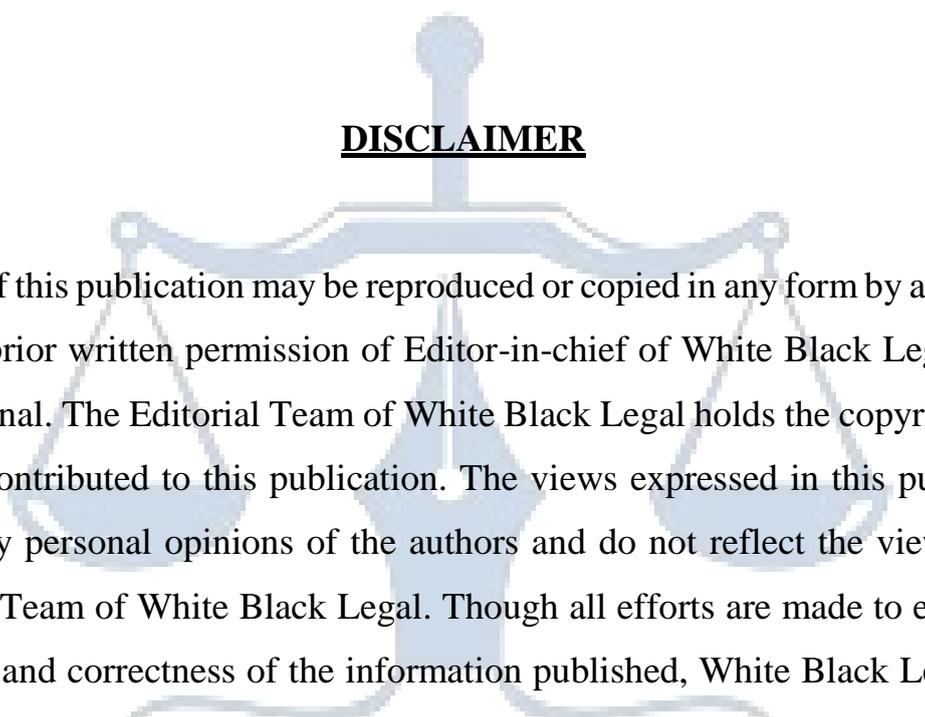
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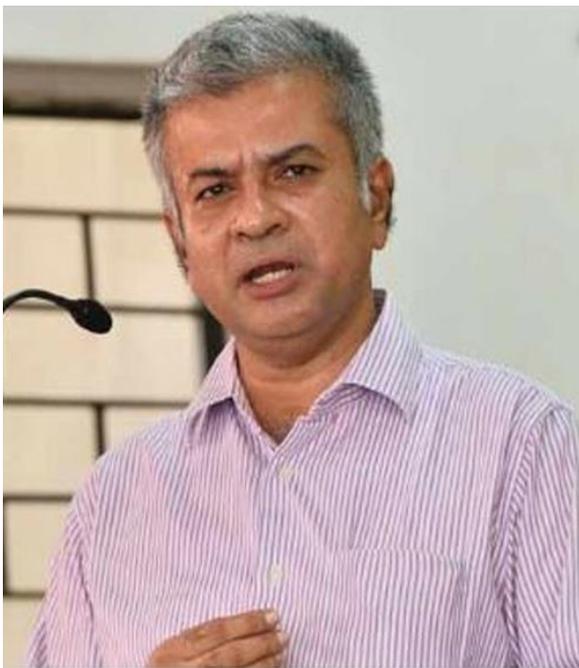
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## *ABOUT US*



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



## **SUPRIYO VS UNION OF INDIA**

AUTHORED BY - DR. ASHWINI. P<sup>1</sup> & MS. SHRAVYA RAO<sup>2</sup>

### **Abstract:**

A significant turning point in Indian legal history was the *Supriyo vs Union of India*<sup>3</sup> case, which sparked a constitutional discussion on equality, individual rights and changing structure of social recognition. Fundamentally, the case challenged the constitutional interpretative authority of judiciary and also challenged India's traditional legal system by addressing the issue of same sex marriage legalization.

Petitioners stated fundamental rights under Articles 14, 19 and 21 of Indian Constitution<sup>4</sup>, which emphasises autonomy, dignity and the freedom to love, in order to seek recognition of same sex marriages. The government, in opposition argued that marriage is such a concept which is having legislative domain and that any expansion of its definition should emerge from Parliament and not from judicial intervention. While upholding LGBTQ+ rights, Supreme court declined to extend marriage equality by citing institutional constraints, striking complex constitutional balance.

This case demonstrated the delicate role of judiciary in socio-legal transformations by deciding whether to support legislative wisdom or act as an incentive for change. Although the ruling did not entirely support marital equality, it did reinforce the idea that laws must change to reflect the advancements in society. The ruling ensured that the discussion of equal rights would continue in India's democratic environment by providing path for future legislative actions.

As a result of Supriyo case, which is a legal paradox, progressive but constrained, affirming yet withholding, signifying the changing conflicts between tradition, the law and the unstoppable drive towards equality. This case analysis examines the judgement of the Supreme Court, and what are the pros and cons if same sex marriage is legalised?

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<sup>3</sup> *Supriyo vs Union of India*, W.P.(C) 1011/2022

<sup>4</sup> The Constitution of India Act, 1950 Articles 14, 19, 21

**Keywords:** Same sex marriage, interpretation, special marriage act, cultural constraints, paradox, judicial intervention.

### **Introduction:**

As earlier mentioned, the *Supriyo vs Union of India*<sup>5</sup>, is one the landmark constitutional matter case heard by the Supreme Court of India, with regard to the issue of same sex marriage legalization. Petitioners Supriyo Chakraborty, Abhay Dang and Parth Mehrotra, Uday Raj Anand, who sought for legal recognition of Same Sex Marriage under the existing laws of India such as Special Marriage Act, Fundamental Rights recognised under the Constitution of India. They argued that denial of legal recognition of such marriage would affect their fundamental rights provided under the Constitution. The petitioners also contended that the non-recognition of same sex marriages amounted to discrimination and violation of the principles established in the case of *Navtej Singh Johar vs Union of India*<sup>6</sup> which decriminalised the same sex marriage.

The union of India on the other hand, rejected the argument, claiming that as marriage is a socio-legal institution that has historically been accepted between a man and a woman. The legislature should make the modifications to this framework, not the judiciary. Concerns also raised by the government regarding possible effects on personal laws, inheritance and adoption. The Five-judge bench of the Supreme Court, D Y Chandrachud as the Chief Justice, declined to provide legal recognition to same sex marriages<sup>7</sup>, embracing that the issue falls within the purview of the legislature, and suggested government to take necessary steps to protect their rights, which also included the legal protection of same sex unions. In the judgement there were two views on the important questions raised in this case, one view was by Justices S Ravindra Bhat, Hima Kohli and P S Narasimha which formed majority, second view by CJI Chandrachud and Justice Sanjay Kishan Kaul which formed minority.

This case particularly revolves around the legal rights of LGBTQ+ and also highlights the balance between judicial intervention and legislative actions in the matter of social reforms.

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<sup>5</sup> See supra note 1

<sup>6</sup> Navtej Singh Johar vs Union of India, AIR 2018 SC 4321

<sup>7</sup> <https://forumias.com/blog/upsc-current-affairs-news/same-sex-marriage-verdict-implications-explained-pointwise/#Introduction> last visited on 11th Feb

### **Background Information:**

In the *Supriyo vs Union of India* case, two same sex couples Supriyo Chakraborty and Abhay Dang, Parth Mehrotra and Uday Raj Anand, filed writ petition under Article 32 of the Constitution of India<sup>8</sup>, on November 14<sup>th</sup>, 2022 challenging the constitutionality of Section 4(c) of the Special Marriage Act, 1954<sup>9</sup>. The petitioners argued that this clause restricts marriage to heterosexual relationships, thereby violating their fundamental rights to equality, non-discrimination, privacy and dignity. This clause discriminates against the same sex couple by denying them their matrimonial benefits such as adoption, surrogacy, employment and retirement benefits. This petition challenged other personal laws on similar grounds.

The transfer of similar cases from other High Courts, which jointly contested the exclusion of same sex couples from the application of marriage statutes such as the Hindu Marriage Act, 1955 and Foreign Marriage Act, 1969 strengthened the case. The intersection of legal issues highlighted the increasing need and impetus to address the long-standing call for same sex marriage to be legalised in India. This particular case also relied on two important cases, *Navtej Singh Johar vs Union of India*<sup>10</sup> and *NALSA vs Union of India*<sup>11</sup>, which gave homosexual people their rights and welcomed non-binary gender identities.

### **Case Evaluation:**

The decision of Supreme Court in Supriyo case was a mixed result, indicating court's efforts to reconcile the LGBTQ+ communities rights and with the constraints of their own institutional rights. In this case there were four key questions framed, two views of the judges, one was conservative view (majority view) and the other was progressive view (minority view). First question was with regard to declare marriage as a fundamental right, as privacy was declared as fundamental right in the year 2017<sup>12</sup>. From the both views of judges, rejected this question of declaring fundamental right to marriage, as marriage is individual right and it has attained socio-legal significance<sup>13</sup>.

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<sup>8</sup> Article 32 of The Constitution of India Act, 1950 provides for the citizens to approach the Supreme Court to enforce their Fundamental Rights. (Writ Petition)

<sup>9</sup> Section 4 (c) of the Special Marriage Act, 1954

<sup>10</sup> See supra note 4

<sup>11</sup> *NALSA vs Union of India*, Writ Petition (Civil) No. 400/2012

<sup>12</sup> Justice K.S. Puttaswamy (Retd.) and Anr vs Union of India and Ors, Writ Petition (Civil) No. 494/2012

<sup>13</sup> See supra note 5

Second question was with regard to re-interpretation of the Special Marriage Act, 1954. Petitioners wanted marriage to be described between Spouses, instead between the man and women, as it is gender restrictive. The re-interpretation of the SMA 1954 was rejected by both views of judges. If any re-interpretation would amount to stepping into the realm of legislature, as it is the parliament which can make modifications on the framework.

Further, the petitioners argued with regard to the guidelines of the Central Adoption Resource Authority (CARA)<sup>14</sup>, which does not allow unmarried couples to jointly adopt children, as they cannot legally marry, it is discriminatory on the part of queer couples. In this regard, both the views were in the way as to struck down the discriminatory provisions of CARA regulations, but majority view was in the rationale not to struck down the provisions of CARA regulations by the pen of judiciary, but by the legislature and the executive<sup>15</sup>.

According to US Supreme Court, civil unions should be recognised before full marriage privileges are granted. This was regarded as intermediate step before complete marriage rights. Nevertheless, the petitioners contended that the civil relationships are not a substitute for marriage, which is socio-legal institution. With regard to non-heterosexual relationships to civil unions, would convey to the LGBTQ+ community that their relationships are less valuable than those of heterosexual couples. In connection to this five-judge bench, favoured the civil unions and prescribed it as a choice for the LGBTQ+ community. According to majority view it should not be prescribe civil union as a choice to civil union by the judiciary.

To sum up, ruling of Supreme Court in this case represents delicate balancing act by respecting the boundaries of judicial authority and acknowledging the rights of LGBTQ+ community. Although the ruling recognised the necessity of legislative actions to combat the discriminatory legislation, it ultimately left substantive reforms to the legislative and executive branches.

### **Analysis of Alternatives:**

In India, same sex marriage is a debatable issue with both advantages and disadvantages. Positively, legalising same sex marriage will advance human rights, equality and inclusivity by guaranteeing that LGBTQ+ community enjoy the same legal protections and advantages as the

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<sup>14</sup> Central Adoption Resource Authority Guidelines and Adoption Regulations, 2017 by Ministry of Women & Child Development, Government of India

<sup>15</sup> See supra note 11

heterosexual couples including the ability to inherit, make medical decision and get tax benefits. Additionally, it dispels long-standing societal biases and promote a more liberal and accepting society. Recognizing same sex marriage may also improve mental health and relationships among LGBTQ+ community, lowering marginalisation and prejudice. However, critics contend that same sex marriage goes against cultural norms and traditional values, which causes conservative societies to oppose it. Some fear that it would upend the traditional family unit, which has traditionally been predicted on heterosexual relationships. On moral and theological grounds, some groups within society and religious institutions may also be against it. Additionally, in order to accommodate same sex couples, the legal system would need to make considerable adjustments to the rules governing marriage, adoption and inheritance. This may be difficult and lengthy process. Same sex marriage is a significant topic in the changing legal and social landscape in India, because, in spite of these obstacles, the demand for equality and legal recognition is rising.

### **Recommendation:**

In the historic case of *Supriyo vs Union of India*, the Supreme Court addressed the rights same sex couples in India, specifically in relation to the legal recognition of same sex marriage. The court recognised the discrimination LGBTQ+ union confront and highlighted their constitutional rights under Article 14, 15, 19, 21 even though it unanimously rejected the same sex marriage. The different views of Judges demonstrated the difficulties in striking a balance between legislative involvement and constitutional morality.

In accordance with equality, non-discrimination and human rights inherent in the Indian Constitution and international agreements, the ruling of Supriyo case emphasises the need for a more uniform and progressive interpretation of basic rights by the judiciary. As in this instance, the court's selective application of international principles comprises the judiciary's function as a protector of fundamental freedoms<sup>16</sup>. The protection of marginalised communities and the advancement of social justice would be strengthened by more comprehensive approach in which the court continuously incorporates international human rights instruments into its reading of the constitution.

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<sup>16</sup> [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](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) last visited on 12th Feb

The *Supriyo vs Union of India* ruling highlighted the need for legislative action, urging parliament to recognise the civil unions or provide same sex couples with comparable legal protections, such as inheritance rights, medical decision making, pension benefits and adoption rights, even though it did not grant marriage equality. Eliminating discrimination also requires policy level changes, with suggested high powered committee's recommendations being quickly implemented through required changes to employment, adoption and family legislation. To encourage societal acceptance, it is also important to support to gender sensitisation initiatives, workplace inclusion policies and public awareness campaigns.

Through advocacy and litigation, judicial activism must continue to advance more expansive constitutional interpretations and uphold LGBTQ+ rights. India can get closer to more equality and inclusivity by pursuing legal challenges, policy improvements, public awareness campaigns and legislative reforms.

### **Conclusion:**

A pivotal moment in Indian legal history is the *Supriyo vs Union of India*, which illustrates the changing relationship between legislative power, judicial interpretation and constitutional morality. The decision of Supreme Court upheld the rights of the LGBTQ+ community and its decision to leave marriage equality to the legislature highlights the institutional limitations of judicial intervention in socio-legal reforms. Nevertheless, the decision paved the way for further legislative developments and reaffirmed the necessity of same sex unions being recognised by the law. To close the gap between constitutional ideals and social reality, ongoing legal and policy initiatives must be made as Indian society develops. A more inclusive legal system that respects equality and dignity can be achieved in India by combining legislative action, judicial activism and public awareness.