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W.M.P.No.31112 of 2023
in W.P.No.7284 of 2021

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N.ANAND VENKATESH, J.

This Petition has been filed by the impleaded 27th respondent for a direction to respondents 10 to 28 herein to issue suitable orders to recognize the "Deed of Familial Association", recognizing the civil union entered into between LGBTQAI+ partners in order to protect the fundamental rights of persons forming part of this community.

2. This Court heard Ms.B.S.Ajeetha, learned counsel appearing on behalf of the petitioner and also took the assistance of Mr.S.Manuraj, learned counsel appearing on behalf of the writ petitioners and Ms.Jayna Kothari, learned Senior Counsel, who was present at the time of hearing.

3. Before dealing with the contentions raised by the learned counsels, this Court must keep in mind the judgment of the Hon'ble Apex Court in **Supriyo @ Supriya Chakraborty and Another vs. Union of India** reported in **2023 SCC Online SC 1348**. The ratio of the majority judgment that can be deduced is



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extracted hereunder:-

(a) There is no unqualified fundamental right to marry under the Indian Constitution.

(b) There is no right to civil union available to unmarried couples.

(c) The marriage is a status, which can be created only by the Legislature and not by the Courts.

(d) The Special Marriage Act [SMA] is not violative of any fundamental rights.

(e) The SMA cannot be read in a gender-neutral manner, in a way that would allow queer couples to marry under the provisions of the SMA.

(f) The right to adoption has been denied to unmarried couples; and

(g) The Transgender and intersex persons may marry under the SMA, so long as such a marriage is heterosexual.

4. This Court has to necessarily keep in mind the ratio in the above judgment while dealing with this Petition, since no orders can be passed in this Petition, beyond the right that has been recognized by the Hon'ble Apex Court in the above judgment.



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5. The petitioner, in this direction petition, has stressed the need for familial recognition among LGBTQAI+ persons, their partners and others, who choose to form or retain families with such persons. For this purpose, the petitioner, in the direction petition, is proposing a "Deed of Familial Association". The purport of this Deed is to ensure that two persons will have the right to live in a relationship. While continuing with that relationship, they will also have the right to protection. According to the petitioner, harassment of persons falling within the community is a daily affair, which has to be countered through some means in the available legal framework. Therefore, according to the petitioner, if the parties enter into a contract in the name and style of a "Deed of Familial Association", whenever questions are asked or they are put to shame and harassment or their safety is in danger, this Deed will come to their aid and it can be shown to those who are questioning the relationship to make them understand that two persons have come together on their own choice and they have a right to be in such a relationship and that their relationship cannot be disturbed by anyone.

6. The right to choice of two persons to have and live in a relationship and their right to protection and also their right not to be harassed, has also been



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clearly recognized by the majority judgment of the Hon'ble Apex Court in **Supriyo's case** [cited supra]. In short, the Deed of Familial Association is proposed by the petitioner only to safeguard the rights that have been guaranteed under Article 21 of the Constitution of India.

7. The learned counsel, who assisted this Court, also made it clear that the Deed of Familial Association cannot go beyond its purpose and seek for any further status in the light of the majority judgment of the Hon'ble Apex Court in **Supriyo's case** [cited supra]. It is also brought to the notice of this Court that such a contract that is entered into between two individuals is not barred under the Indian Contract Law and hence, it was contended that this proposal that has been made by the petitioner can be taken into consideration by the Government and a stamp of approval can be given. According to the petitioner, the Deed of Familial Association will confine itself only to;

(a) harassment or violence or ill-treatment by Society or even the biological families, and

(b) discrimination that can impact gainful employment, housing and assimilation in Society.

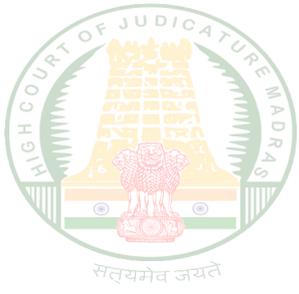


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8. In the considered view of this Court, the proposal that has been brought forth by the petitioner, *prima facie* sounds convincing. This is more so, since the Hon'ble Apex Court in the **Supriyo's case** [cited supra], has categorically recognized the right of choice of two persons to have relationship. In view of the same, such persons must have protection to live in the Society without being disturbed or harassed. For that purpose, the Deed of Familial Association will at least give some respect and status to such relationship.

9. The Social Welfare and Women Empowerment Department is already in the process of finalizing the Policy for LGBTQIA+ community. While undertaking this exercise, this suggestion/proposal given by the petitioner can be taken into consideration and the State can come up with a procedure for registration of such Deed of Familial Association and the scope of such a Deed. If that is done, the State will be able to give its stamp of approval to persons, who are in a relationship in the community and to a great extent, this will enhance the status of such persons in the Society. This suggestion given by this Court shall be kept in mind while finalizing the Policy for LGBTQAI+ community.



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10. This Writ Miscellaneous Petition is disposed of in the above terms.

The learned counsel appearing on behalf of the petitioner in this Writ Miscellaneous Petition can continue to assist this Court in this regard.

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