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# REIMAGINING THE FAMILY: MADRAS HIGH COURT AND THE CONSTITUTIONAL RECOGNITION OF QUEER 'CHOSEN FAMILIES'

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CASE COMMENTARY ON: *M.A V. SUPERINTENDENT OF POLICE & ORS.* (MAY, 2025)

## ABSTRACT

This commentary discusses the Madras High Court's historic acknowledgment of queer "chosen families" under the purview of Article 21 of the Indian Constitution. The case was about queer persons demanding protection for their right to live and be maintained by their chosen family, as opposed to their biological or legally established families. In its decision, the Court reiterated that the right to life and personal liberty encompasses the freedom to create emotionally meaningful and non-conventional family relationships—particularly for LGBTQ+ individuals who tend to be rejected or abandoned by their families of origin. In this manner, the Court transcended static, heteronormative conceptions of family based on marriage or blood ties, attuning itself to a more expansive constitutional morality. This piece examines the implications of this ruling for Indian family law, queer rights jurisprudence, and the State's responsibility to protect diverse familial forms. It also underscores the necessity of legislative reforms that capture lived realities and changing social mores.

**Keywords:** Queer Rights, Chosen Families, Article 21, Constitutional Morality, Familial Autonomy, LGBTQ+, Post-Navtej Jurisprudence

## INTRODUCTION

In May 2025, the Madras High Court gave a landmark ruling acknowledging the queers' right to construct and cohabit with their "chosen families." The case was that of a young lesbian woman who had been kidnapped and held captive by her natal family for resisting her same-sex relationship. Her partner presented a habeas corpus petition so that she could be released and

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protected. The Court decreed in favor of the couple and declared that family is not confined to marriage or blood relations and that same-sex couple are entitled to live together under Article 21 of the Constitution. This ruling is a significant step in upholding the dignity, autonomy, and personal liberty of LGBTQIA+ individuals in India.

## **CASE BACKGROUND**

### **1. PARTIES INVOLVED**

The case was instituted before the Madras High Court by a young woman who was in a same-sex relationship. She came to the Court via a habeas corpus petition after her partner — a 25-year-old woman — had allegedly been forcibly detained by her natal family as a measure to "correct" her sexuality.

Petitioner: The live-in partner of the detained woman.

Respondents: The family members of the woman and the local police authorities, who are charged with inaction over the petitioner's complaint.

The case was presided over by a division bench led by **Justice G. R. Swaminathan** and **Justice V. Lakshminarayanan**.

### **2. FACTS OF THE CASE**

The two women had been in an agreement of same-sex relationship and were cohabiting. But the family of one of the women did not accept the relationship. Their family acting against her will brought her back home, refused to let her see her partner, and imposed coercive "corrective" practices — a harrowing but not uncommon practice in most queer cases in India.

- a. The petitioner (partner) could not contact her and apprehended unlawful custody.
- b. The police upon being notified were reportedly unresponsive or unwilling to act without explicit guidance from the Court.
- c. This resulted in filing a habeas corpus petition under Article 226 of the Constitution seeking her release and protection.

### **3. LEGAL PETITION (HABEAS CORPUS)**

The legal recourse employed was a writ of habeas corpus, literally "produce the body." It is called for when someone is suspected to be unlawfully detained or restrained. Here, the writ was employed:

- a. To question the illegal detention of the woman by her family.

- b. To obtain judicial guidance for her release.
- c. To establish her right to reside with her partner free of interference from family or society.
- d. The petitioner also demanded protection from police and State officials to avoid future harassment.

## **4. PROCEEDINGS IN COURT**

The High Court moved with urgency:

- It called up the detained woman to come before Court and took her statement on confidential terms.
- When she presented herself, she reiterated her willingness to cohabit with her partner and any claims of coercion or mental illness.
- The Court noted her age (25 years), capacity for consent, and her right to personal liberty.

The court chastised the police for doing nothing and made some significant points:

- a. "Marriage is not the only way to build a family."
- b. Emotional connections and care-based relationships — even beyond legal or biological ones — form a constitutionally valid 'chosen family.'
- c. The State has a positive obligation to shield such people from familial or societal violence.
- d. The Court ordered police protection for the couple and instructed sensitization of local authorities.

## **LEGAL ISSUES RAISED**

### **1. WHETHER THE RIGHT TO PERSONAL LIBERTY UNDER ARTICLE 21 COMPRISES THE FREEDOM TO SELECT ONE'S FAMILY AND LIVING CONDITIONS**

The central issue of the case was this: Can a person lawfully select where they wish to live, even in a same-sex relationship, over the objections of their family?

The Court needed to decide whether the constitutional right to personal liberty under Article 21 includes:

- a. Selecting one's partner.
- b. Creating a family independent of the conventional models of marriage or blood ties.
- c. Living autonomously from natal family or societal intrusion.

- d. This issue put squarely to the test the boundaries of autonomy in intimate relationships.

## **2. WHETHER SAME-SEX RELATIONSHIPS CAN BE THE FOUNDATION FOR A LEGALLY PROTECTED "CHOSEN FAMILY"**

The case queried whether queer individuals in non-marital relationships can be regarded as making up a "family" under the law. This led to more general questions regarding:

The Indian constitutional and family law definition of the term "family."

- a. Whether non-heteronormative, non-marital relations have an equal claim to protection under the Constitution.
- b. The Court needed to decide whether emotional and care giving ties—albeit not formally validated by marriage law—deserve respect and protection under the law.

## **3. WHETHER POLICE AND STATE AGENCIES HAVE A POSITIVE OBLIGATION TO SAVE QUEER PERSONS FROM FAMILY HARASSMENT**

Another question that was raised was whether the State, including the police, has a positive duty to step in when queer persons are subjected to violence, coercion, or restraint by their own families.

- a. The petitioner stated that the police did not respond until a court directive was issued.
- b. The Court had to examine whether such inaction is a violation of the State's obligation under Article 21 of protecting liberty and dignity.

This also posed the issue of accountability and sensitivity of the police when queer persons come to seek assistance.

## **4. WHETHER FAMILIAL DETENTION CAN AMOUNT TO ILLEGAL CUSTODY WARRANTING HABEAS CORPUS RELIEF**

Last but not least, the Court was compelled to determine whether restriction by one's own relatives, even in the guise of "protection" of the person or "curing" of their homosexuality, can constitute unlawful detention.

- a. Would habeas corpus apply where the restriction is by family rather than police or State?
- b. Is detention within the home domain subject to equal constitutional scrutiny?

The case reiterated that individual freedom is absolute and no one—parent or relative—can circumvent it in the name of family authority.

## **COURT'S REASONING AND HOLDING**

### **1. ARTICLE 21 AND THE RIGHT TO CHOOSE ONE'S FAMILY**

The Court firmly held that Article 21 of the Constitution, that confers a right to life and personal liberty, encompasses within it the right to choose companions and cohabit with them free from interference. The bench underscored that personal freedom—particularly in the context of intimate relations—is a fundamental constitutional value.

- a. It reiterated that freedom is not subject to the sanction of family or society.
- b. Quoting *Navtej Singh Johar v. Union of India* (2018) and *Puttaswamy v. Union of India* (2017), the Court asserted again that dignity, privacy, and autonomy are not values in the abstract but actual, enforceable rights.

### **2. CONSTITUTIONALLY PROTECTED CHOSEN FAMILIES**

In a liberal and forward-looking interpretation, the Court held that "marriage is not the sole mode to found a family." It acknowledged that queer individuals frequently create care networks and care giving units that are emotionally and functionally equal to conventional families, even without official legal status.

- a. The Court drew upon constitutional morality—a standard enunciated in *Navtej Singh Johar*—to emphasize rights over social norms.
- b. It recognized that queer chosen families, and other non-biological, non-marital family forms, are entitled to equal dignity and protection of the Constitution.

This is a historic judicial recognition of chosen families in India.

### **3. POLICE LETHARGY AND STATE RESPONSIBILITY**

The Court vociferously condemned the lack of initiative on the part of the police, pointing out that even when apprised of potential illegal confinement and coercion, they made no effort to intervene. It declared that:

- a. The State has a positive obligation to safeguard individuals from harm to their liberty—even when the harm is caused by families.
- b. The police have to be trained and sensitized to act with alacrity to the complaints of queer individuals, particularly where there is violence or detention caused by or between families.

The Court hence granted a continued mandamus to the police to ensure the safety of the couple.

#### 4. VALIDITY OF HABEAS CORPUS AGAINST FAMILIAL DETENTION

The Court held that habeas corpus applies in its entirety even when illegal detention is done by family members. The bench ruled that:

- a. Detention, even in the guise of care or protection, becomes illegal if contrary to a competent adult's will.
- b. The Court found the partner's testimony and the detained woman's word credible and held that she had indeed been detained against her will and therefore deserved judicial intervention.

The writ of habeas corpus was issued, and the woman was permitted to go freely and live with her partner.

#### FINAL HOLDING

- a. The petition was granted.
- b. The Court upheld the couple's right to cohabit as a constitutionally protected expression of liberty and dignity.
- c. It issued police protection orders and instructed local officials to respect and enforce the rights of the couple.

#### JURISPRUDENTIAL RELEVANCE

- a. **Expands Article 21:** Interprets the right to life and liberty to manifest as queer chosen families, and not just through marriage or blood relations.
- b. **Goes beyond identity:** Recognizes not just queer identities, but also queer relationships, as building on Navtej and NALSA.
- c. **Constitutional morality upheld:** Dignity and autonomy matter more than familial disapproval or societal norms.
- d. **Closed the *Supriyo* case gap:** Provided birth certificate protections for non-marital queer unions in the absence of marriage rights.
- e. **Enables family law to develop:** Foundational principles for queer family rights to be eventually recognized in family law related to inheritance issues, housing, and protection.

# COMPARATIVE AND INTERNATIONAL PERSPECTIVE

The Madras High Court’s 2025 ruling reflects worldwide legal patterns that recognize queer relationships and chosen families.

Here's a comparative analysis in a clear table format.

## COMPARATIVE PERSPECTIVE TABLE: RECOGNITION OF QUEER CHOSEN FAMILIES

Jurisdiction / Case	Key Holding / Principle	Comparison with Madras HC (2025)
India – Madras High Court (2025)	Recognized queer “chosen families” under Article 21; held that marriage is not the only way to found a family.	Groundbreaking domestic precedent; moves beyond <i>Navej</i> and <i>Supriyo</i> .
India – <i>Supriyo v. Union of India</i> (2023)	Denied legal recognition of same-sex marriage; urged legislative action.	<i>Madras HC</i> fills the gap by recognizing non-marital queer cohabitation.
South Africa – <i>Minister of Home Affairs v. Fourie</i> (2005)	Denial of same-sex marriage held unconstitutional; affirmed equality and dignity.	Both judgments emphasize South Africa went further with marriage rights.
Inter-American Court – OC-24/17 (2017)	States must recognize same-sex relationships and grant family-related rights.	<i>Madras HC</i> aligns with this by recognizing familial autonomy and care-based bonds.
United States – <i>Obergefell v. Hodges</i> (2015)	Legalized same-sex marriage nationwide; emphasized autonomy, values, but within a non-marital dignity, and family formation.	<i>Madras HC</i> reflects similar cohabitation context.



Jurisdiction / Case	Key Holding / Principle	Comparison with Madras HC (2025)
Nepal – Supreme Court (2007 & 2023 updates)	Directed government to legally recognize same-sex relationships and civil unions.	Similar in spirit; Nepal is legislatively ahead, India is judicially advancing.

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## IMPLICATIONS AND NEXT STEPS

### I. Affirms Constitutional Protection for Queer Relationships

This decision represents an important step toward recognizing that queer people are not just entitled to exist, but enter into substantial, emotionally anchored relationships that deserve at least the same consideration as a legal, constitutional issue. It recognizes that dignity and liberty are not solely about identity; they relate to how humans choose to live and love.

### II. Fills a Void Created by *Supriyo*

After the loss of marriage equality in the Supreme Court's ruling in *Supriyo* (2023), this matter provides an avenue for queer couples to seek legal recognition, not by pursuing fervent empty rhetoric around marriage, but because the Court allows it as a facet of personal liberty and chosen family on a constitutional basis, which is a much broader legal basis than claiming a marriage right. It opens a door to allowing courts to create roles and protections for queer partnerships without legislative activity.

### III. Contributes to broader family law re-definition

Importantly, the Court's comment deeming "marriage is not the only way to have a family" sets a great precedent for legislative and judiciary reform in the family law context. It encourages some measure of legal activity to abandon rigid heteronormative understandings of outcome-based family structure, moving toward care-based understandings of families.

### IV. Provokes a Question to Institutional Apathy

The decision expresses disapproval of the police being inactive and sanctions the police to offer protection, thereby evidencing that the court accepts the implausibility of argument that queer life

has systemic barriers within which to claim their identities in a meaningful way. It reinforces the State's responsibility to actively protect their all citizens constitutional freedom - particularly within private spaces.

## **V. Potential Precedent for Queer Jurisprudence**

This ruling may not replace the law immediately, but it is part of an emerging body of progressive jurisprudence upon which future courts, activists, and policymakers can draw on to advocate for inclusive queer family rights.

# **HOW MADRAS HIGH COURT'S RECOGNITION OF QUEER “CHOSEN FAMILIES” EXTENDS THE JURISPRUDENTIAL ARC OF *NAVTEJ SINGH JOHAR* CASE AND *SUPRIYO* CASE IN CRITICAL WAYS?**

## **1. EXTENSION OF *NAVTEJ SINGH JOHAR* (2018): FROM DECRIMINALIZATION TO DIGNIFIED RELATIONALITY**

The Navtej decision decriminalized consensual same-sex relationships and most importantly, highlighted constitutional morality, dignity, privacy, and the right to identity. On the surface, it removed the criminal stigma attached from laws prohibiting same-sex sexual relations, but it does not mandate that positive legal entitlements are created for queer individuals.

The Madras HC judgment advances the margin further.

This also reframes the former Article 21, not only as a liberty clause protecting an individual but as a basis for relational or communal autonomy, expanding Navtej in the direction of protecting familial unit legitimacy instead of sexual privacy.

## **2. EXTENSION OF *SUPRIYO V. UNION OF INDIA* (2023): FROM COHABITATION TO FAMILIAL LEGITIMACY**

Supriyo called the state to respect the fundamental right of same-sex couples to live together, but it declined to give such couples the legal classification of marriage. The Court found it important to call the state to “intended to create enabling frameworks” for such couples to enter into some form of framework without providing substantive guidance.

The Madras HC judgment articulates the relation that *Supriyo* left abstract, it clarifies that.

### 3. MOVING FROM PRIVACY TO STRUCTURAL INCLUSION

Although *Navtej* and *Supriyo* were both clear about individual dignity and privacy, neither were prescriptive about structural change in law.

➡ For the Madras HC to initiate possible policy and legal reform - it states that queer familial relations are entitled to institutional protection and public legitimacy - and calls on the state to act. The judgment, while powerful, is not self-executing. Substantive rights require legislative and policy implementation across the legal system. Here's a breakdown of needed reforms:

#### 1. CREATION OF A "CHOSEN FAMILY RIGHTS ACT"

- a. Permit the voluntary registration of chosen families or other forms of cohabiting units.
- b. Facilitate the recording of agreements on mutual care, health-related choices, inheritance matters, and rights of nomination.
- c. Allow the formal documentation of mutual care arrangements, health consent, and inheritance and nomination rights.

#### 2. AMENDMENTS TO PERSONAL AND CIVIL LAWS

The important legislation should be defined in a relationship-neutral way as follows:

- a. The Hindu Succession Act & the Indian Succession Act - Define chosen family members as "legal heirs."
- b. The Guardians and Wards Act - Identify a legal basis for guardianship of chosen kin or cohabiting units.
- c. The Medical Consent Laws - Include a way for nominated chosen family members to make healthcare decisions.

#### 3. INSTITUTIONAL AND ADMINISTRATIVE REFORM

- a. Provide government directives to allow for the recognition of chosen families in official forms (hospital, student, bank, rent).
- b. Have NHRC and NCW produce advisory frameworks to help sensitize officials, police and providers.

## CONCLUSION

The recognition of queer “chosen families” by the Madras High Court in 2025 will soon mark a major change in Indian constitutional jurisprudence—from negative liberty to affirmative inclusion. Whereas *Navej* ruled to decriminalize queer existence and *Supriyo* related to cohabitation that did not offer marriage rights, this decision powerfully recognizes that queer relationality is worthy of significant legal status and protection by the state—regardless of marriage or blood ties. It reconfigures Article 21 as not only regarding personal autonomy in making choices, but is a constitutional right to create kinship bonds beyond normative structures, and it opens the door to revolutionary family law reform in India.

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