

28th ALL INDIA MOOT COURT COMPETITION 2019
FOR THE KERALA LAW ACADEMY TROPHY

MOOT PROPOSITION

Friends of LGBT and Another v. Union of India

Rangasthan is a State in Indian Union. Anershi and Bherni are Final year LL.B. girl students of Mangala Law College in the capital city of Shakhipur of Rangasthan. In August 2017, Anershi and Bherni through social media declared that they are the supporters of same sex marriage and for past six months they are living as spouses. Though they faced with harassment on the part of fellow students and certain other sections of the society, the non-governmental organization of LGBT activists known as Friends of LGBT provided strong support to them.

On 3-10-2018, Anershi and Bherni submitted notice under Section 5 of the Special Marriage Act before the Marriage Officer, Shakhipur North, for solemnization of marriage between them. When the notice was published, one Fr. Samuel representing to be the vicar of a Catholic church filed an objection stating that same sex marriage is not permissible under the Special Marriage Act and it is against contemporary social morality. He pointed out Section 4(c) of the Act in support of his contention. Fr. Samuel submitted seven reasons for supporting his contention that same sex marriage is against contemporary social morality in this regard.

1. Homosexual couples using 'in vitro fertilization' (IVF) or surrogate mothers for procreation of children and deliberately create a class of children who will live apart from their mother or father.
2. If same-sex civil marriage becomes common, most same-sex couples with children would be lesbian couples. This would mean that we would have yet more children being raised apart from fathers. Among other things, we know that fathers excel in reducing anti-social behaviour and delinquency in boys and sexual activity in girls.
3. If homosexual civil marriage is legalized, households deny children their mother. Among other things, mothers excel in providing children with emotional security and in reading the physical and emotional cues of infants. Obviously, they also give their daughters unique counsel as they confront the physical, emotional, and social challenges associated with puberty.

4. Judith Stacey-- a sociologist and an advocate for same-sex civil marriage--reviewed the literature on child outcomes and found the following: "lesbian parenting may free daughters and sons from a broad but uneven range of traditional gender prescriptions." Her conclusions based on studies show that sons of lesbians are less masculine and that daughters of lesbians are more masculine.
5. One of the biggest threats that same-sex "marriage" poses to marriage is that it would probably undercut the norm of sexual fidelity in marriage. In the first edition of his book in defence of same-sex marriage, *Virtually Normal*, homosexual commentator Andrew Sullivan wrote: "There is more likely to be greater understanding of the need for extramarital outlets between two men than between a man and a woman." Of course, this line of thinking--were it incorporated into marriage and telegraphed to the public in sitcoms, magazines, and other mass media--would do enormous harm to the norm of sexual fidelity in marriage.
6. Same-sex "marriage" would further isolate marriage from its procreative purpose. Traditionally, marriage and procreation have been tightly connected to one another. Indeed, from a sociological perspective, the primary purpose that marriage serves is to secure a mother and father for each child who is born into a society. Now, however, many Westerners see marriage in primarily emotional terms. Among other things, the danger with this mentality is that it fosters an anti-natalist mindset that fuels population decline, which in turn puts tremendous social, political, and economic strains on the larger society. Same-sex marriage would only further undercut the procreative norm long associated with marriage.
7. Same-sex "marriage" would further diminish the expectation of paternal commitment. Marriages thrive when spouses specialize in gender-typical roles. If same-sex civil marriage is institutionalized, our society would take yet another step down the road of de-gendering marriage. There would be more use of gender-neutral language like "partners" and--more importantly--more social and cultural pressures to neuter our thinking and our behaviours in marriage.

On the basis of the objection, the Marriage Officer refused to solemnize marriage and the decision has been communicated to Anershi and Bherni on 4-12-2018.

On 11-12 -2018, Anershi and Bherni filed petition before the Supreme Court under Art 32 of the Constitution challenging the validity of the decision of the Marriage Officer. The prayer of the petitioners was to issue the writ of mandamus or any appropriate direction to solemnize their marriage.

On 14-12-2018, Friends of LBGT filed public interest litigation before the Supreme Court under Art 32 of the Constitution seeking the intervention of the Court for preventing the discrimination on the basis of sex. The petitioners submitted the following prayers before the Court.

1. A declaration may be made to the effect that any discrimination based on sexual orientation is the violation of Art 21 and 14 of the Constitution.
2. Direction may be issued to the Union Government to introduce necessary amendments to the Special Marriage Act for the solemnisation of the Marriage of transgender people and same sex marriages.
3. Direction may be issued to all Marriage Officers appointed under Special Marriages Act preventing the refusal of the solemnisation of any marriage on the ground that it is a same sex marriage or transgender marriage.

The Court has decided to hear both the writ petitions together and issued notice to Union of India and State of Rangasthan. Both Union of India and State of Rangasthan submitted that both the petitions may be dismissed.

