

SYNOPSIS

The Petitioners, Supriyo and Abhay met in Hyderabad in December 2012. At that time, Supriyo was 22 and Abhay was 25 years old. Supriyo is extroverted and creative, Abhay is calm and rational. They both knew immediately that they were life partners. Within a few months, Abhay took Supriyo to meet his parents, who accepted their son's partner with love and grace. Supriyo's mother came to Hyderabad and met Abhay later that year. During a painful, emotional conversation, Supriyo came out to his mother on that trip. Since then, she has been the couple's biggest supporter in the years thereafter.

The pandemic brought the frailty of life home to both partners and their families. They both got COVID during the second wave but Supriyo was much worse; Abhay had to look desperately for oxygen and rush Supriyo to the ER while taking care of himself. When they recovered, they decided to have a wedding-cum-commitment ceremony on their 9th anniversary to celebrate their relationship with all their loved ones.

The ceremony meant as much to their parents as it did to them. In true Bengali fashion, Supriyo's mother performed the *boron* ritual for Abhay and welcomed him into their family as she would her son's bride.

But at the end of the day, the ceremony was just that. Despite being a couple for over a decade, calling their parents mummy-papa and maa-baba and going on holidays with them, having bought a home and built a life together, Supriyo and Abhay's relationship is still legally as fragile as it was during the dark days of the pandemic.

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They do not enjoy any of the rights that married couples do, even though this Hon'ble Court has time and again declared that all adults have the right to marry a person of their choice.

This Hon'ble Court, in *Lata Singh v. State of UP*, (2006) 5 SCC 475 [DB], *Shafin Jahan v. Asokan K. M.*, (2018) 16 SCC 368 [FB] and *Laxmibai Chandaragi B. v. State of Karnataka*, (2021) SCC 3 SCC 360 [DB], has held that Article 21 guarantees that an adult person has the right to marry a person of their choice. The autonomy of individuals to enter into a relationship of marriage and family are crucial facets of the freedom of conscience and right to privacy. This Hon'ble Court has always protected inter-faith and inter-caste couples when they chose to marry, and has time and again stepped in to protect such couples where their relationships were otherwise threatened by societal and familial pressure.

In *K.S. Puttaswamy v. UOI*, (2017) 10 SCC 1, nine judges of this Hon'ble Court concurred that rights of LGBTQ+ persons -

“145. ...are not ‘so-called’, but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom.”

Thereafter, in *Navtej Singh Johar & Ors. v. UOI*, (2018) 10 SCC 1 [CB], this Hon'ble Court held that -

“618.2. Members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution;

618.3. The choice of whom to partner, the ability to find fulfilment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation;

618.4. Members of the LGBT community are entitled to the benefit of an equal citizenship, without discrimination, and to the equal protection of law; ...”

Post the decision in *Johar* (supra), constitutional courts across the country have protected LGBTQ+ couples who approach them for protection, on the same footing as they protect inter-faith and inter-caste couples.

In *Johar*, this Hon'ble Court observed that history owes an apology to the LGBTQ+ community for the decades of exclusion and discrimination meted out to them. It has placed a positive obligation on the State to "recognize rights which bring true fulfilment to same sex relationships." Petitioners submit that the non-recognition of same-sex marriage is an act of discrimination that strikes at the root of dignity and self-fulfilment of the LGBTQ+ couples.

Structural changes as well as attitudinal changes are essential for the members of the LGBTQ+ community and for their families. Equality is not achieved with the decriminalization of homosexuality alone but must extend to all spheres of life including the home, the workplace, and public places. At the heart of personal liberty lies the freedom to choose who we are, to love whom we will, and to live a life that is true to our conscience, not only without the fear of persecution but in full-hearted joy and as equal citizens of this country. Despite being free to love each other, Supriyo and Abhay still cannot have a happy marriage filled with joy and recognition.

Married couples enjoy a host of rights, privileges and obligations bestowed and protected by law. They can adopt children or have children by surrogacy or ART. They have automatic rights to

consortium, inheritance, maintenance and tax benefits. They are beneficiaries under a host of employment statutes. The State's protection to a spouse continues even after death as a widow or widower, or their children, can avail pension or compassionate appointments.

More importantly, though, marriage is one of the key ways in which society accepts, respects and validates a couple, and crucially, this is a social status which is bestowed by law. Marriage is a social institution that is created by and highly regulated by law. Any couple must work hard to have a successful marriage as they face life's challenges together. For couples who cannot marry due to social barriers of caste or faith, that work is that much harder. By excluding same-sex couples altogether from the realm of marriage, the law places a burden on same-sex couples that is constitutionally impermissible.

The Special Marriage Act, 1954, was introduced to provide a civil form of marriage for couples who cannot marry under their personal law. Petitioners submit that the Special Marriage Act is *ultra vires* the Constitution to the extent it discriminates between same sex couples and opposite sex couples, denying same-sex couples both legal rights as well as the social recognition and status that flow from marriage.

Petitioners are before this Hon'ble Court seeking enforcement of their own fundamental rights, as also in the public interest on behalf of crores of other LGBTQ+ citizens of India. As noted by the Hon'ble Supreme Court in *Navtej Singh Johar & Ors. v. Union*

of India, (2018) 10 SCC 1, LGBTQ+ citizens constitute 7-8% of the population of this country.

Petitioners are approaching this Hon'ble Court seeking exercise of this Court's powers of judicial review. Non-recognition of same-sex marriage violates their rights under Article 14, 15, 19 and 21 of the Constitution of India, and therefore, warrants interference of this Hon'ble Court. Reading the Special Marriage Act in a gender-neutral manner to include same sex couples and transgender persons presents no problems to the working of the statute, and upholds the constitutionality of the statute.

Hence this Petition.

LIST OF DATES

DATE	DESCRIPTION
1954	The Special Marriage Act 1954 was enacted by the Indian Parliament with the object of providing a special civil form of marriage available to any person in India, and Indian nationals living in other countries, irrespective of faith or citizenship.
	The Petitioners, Supriyo @ Supriya Chakraborty and Abhay Dang, are gay men and citizens of India. Both Petitioners, presently aged about 32 years and 35 years

	<p>respectively, and have been in a committed relationship for almost a decade.</p> <p>Supriyo holds a degree in hotel management, and presently runs his own event management company, Gulnar Events Pvt. Ltd. Supriyo hopes to specialize in wedding planning and dreams of organizing same-sex weddings in the future. Abhay has a dual degree (Bachelors and Masters) from IIT Roorkee, and is presently a Senior Software Development Manager at a multinational tech company. Both Petitioners live together in Hyderabad, Telangana.</p>
December 2012	<p>Petitioners connected and met each other through a dating website, when they were aged 22 years and 25 years respectively. They met in person the very next day. They spent the whole day together visiting Arts & Crafts Village, coffee shops, etc. and had lunch together. They realized very quickly</p>

	<p>that their core values aligned and both of them were looking for a lifelong relationship. They decided to enter into a relationship, and over the years they have grown together as a couple and as individuals. Petitioners' relationship has also helped Supriyo come out to his family about his sexuality and relationship. Since then, Supriyo's mother has been the couple's biggest supporter in the years thereafter.</p>
May-June 2013	<p>Being sure about each other's presence and importance in their lives, within five months of being in a relationship, around May-June, 2013, Petitioners decided to move in with each other. Petitioners initially were living in a rented accommodation. The next year, in 2014, Petitioners moved into their own home.</p> <p>Over these years, Petitioners have seen the highs and lows of their relationships and have achieved various relationship</p>

	<p>milestones together. Petitioners and their families have come together as a family unit over these years, with both sets of parents whole-heartedly accepting their son's partners. Petitioners have been living together for more than 8 years, and have been together for almost a decade. Petitioners' parents have also come to live with the Petitioners from time to time, and have also taken various holidays with the Petitioners.</p>
06.09.2018	<p>A Constitution Bench of this Hon'ble Court passed its historic decision in <i>Navtej Singh Johar & Ors. V. Union of India & Ors.</i>, 2018 10 SCC 1, decriminalizing consensual sexual conduct between adults of the same sex by reading down S. 377 of the Indian Penal Code, 1860. This Hon'ble Court held that the LGBT citizens have a right to not be discriminated against on the basis of their sexual orientation, full and equal protection</p>

of the Constitution and placed a positive obligation on the State to “recognize rights which bring true fulfilment to same sex relationships.”

The decision of the Hon’ble Court in *Navtej Singh Johar* has changed the course of the lives of the Petitioners and thousands of other LGBTQ+ individuals and couples in the country. In the Petitioners’ case, it has also helped their respective families become accepting of their relationship and enabled them to talk more freely and openly about their sons’ relationship.

Post the judgment in *Navtej Singh Johar*, High Courts all across the country have been dealing with cases involving LGBT/ same sex couples, and have been granting protections to such couples, on the same footing as they protect inter-faith and inter-caste couples.

2020-2021	<p>When the COVID-19 pandemic hit, Petitioners, like many others, were faced with the frailty of life. Both the Petitioners were infected with the virus during the deadly second wave in April 2021. Supriyo was seriously ill and even had to be rushed to the ER. Abhay, while taking care of Supriyo, also contracted the virus.</p> <p>Although they had always discussed getting married someday in the future, the pandemic accelerated this conversation. Petitioners felt that they needed a little more than love, and wished for the security that marriage brought along. As Petitioners could not get married under the eyes of the law, they thus decided to hold a wedding-cum-commitment ceremony. Petitioners' families viewed this a natural progression of Petitioners' relationship, and were happy and accepting of their decision.</p>
17- 18.12.2021	Since the Petitioners had first met each other

	<p>towards the end of December, 2012, they decided to have their commitment ceremony in the month of December, 2021. Petitioners settled on a two-day ceremony to be held on 17th-18th December, 2021, not only incorporating elements of both their cultures. The 2-days ceremony fully lived up to the standards of a "Big Fat Indian Wedding". Both families participated and contributed to the ceremony. As is the modern wedding trend, Petitioners even had a wedding hashtag #subhay. This ceremony was attended by family, friends and well-wishers on both sides, and attended by close to 150 people. Petitioners and their families celebrated in the same manner and fashion that weddings of opposite-sex couples are celebrated.</p>
February 2022	<p>Supriyo's parents thereafter organized a reception in Ashoknagar, West Bengal for the Petitioners, so that other relatives and</p>

	<p>neighbours who could not attend the ceremony in December could bless the couple. Surprisingly, the reception ceremony organized by Supriyo's parents had a bigger turnout than the commitment ceremony held in December, 2021. It was a matter of great pleasure and joy for the Petitioners and their families.</p> <p>Unfortunately, after the euphoria of the ceremony has worn off, Petitioners are faced with a cold reality of their lives. Despite a decade long committed relationship, which is also accepted by their families, friends and other people around them, the Petitioners are strangers in the eyes of the law as the legal regime around recognition and solemnization of marriages excludes a marriage between a same-sex couple.</p>
14.11.2022	Hence, the present Petition.

IN THE SUPREME COURT OF INDIA
(EXTRA-ORDINARY ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) No. _____ OF 2022 (P.I.L.)
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF: -

1. SUPRIYO @ SUPRIYA CHAKRABORTY

...PETITIONER NO.1

2. ABHAY DANG

...PETITIONER NO. 2

VERSUS

1. UNION OF INDIA
Through its Secretary,
Ministry of Law and Justice,
Government of India
Shastri Bhawan, New Delhi -110001

...RESPONDENT

PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA SEEKING ENFORCEMENT OF THE
FUNDAMENTAL RIGHT OF CHOICE OF PARTNER AND
DECLARING THAT THE SPECIAL MARRIAGE ACT, 1954
INCLUDE SOLEMNIZATION OF SAME SEX MARRIAGE

To,
**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
HON'BLE COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA**

The Humble Petition
of the Petitioners above-named

MOST RESPECTFULLY SHOWETH

1. The present Public Interest Litigation (PIL) petition by way of a Writ Petition has been preferred before this Hon'ble Court under Article 32 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ:

(a) Declaring that the Special Marriage Act, 1954 ought to apply to "*a marriage between any two persons*" regardless of their gender identity and sexual orientation; or in the alternative,

(b) Declaring that the Special Marriage Act, 1954, is unconstitutional and violative of Articles 14, 15, 19, and 21 of the Constitution of India, insofar as it does not provide for solemnization of marriage between a same sex couple.

ANTECEDENTS OF THE PETITIONERS

2. The Petitioners, Supriya Chakraborty and Abhay Dang, are gay men and citizens of India. Both Petitioners, presently aged about 32 and 35 years respectively, and have been in a committed relationship for almost a decade. On 17-18.12.2021, Petitioners held a commitment ceremony in Hyderabad, in the blessed

presence of their families, friends and colleagues, and committed to spending their lives with each other.

3. Despite a decade long committed relationship, the Petitioners are strangers in the eyes of the law as the legal regime around recognition and solemnization of marriages excludes marriage between a same-sex couple. The Petitioners are approaching this Hon'ble Court seeking recognition and solemnization of same-sex marriage under the Special Marriage Act, 1954 ("SMA") and enforcement of their fundamental rights under Articles 14, 15, 19 and 21 of the Constitution of India.
4. Petitioners do not have any personal interest or any personal gain or private motive or any other oblique reason in filing the present PIL petition. The cause being agitated by the Petitioners is purely *pro bono publico*.
5. The Petitioners have not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
6. Petitioners submit that they have not submitted any representation to any government authority.
7. The complete details of the Petitioners are as under:

PETITIONER NO.1

NAME: Supriyo @ Supriya Chakraborty

PETITIONER NO.2

NAME: Abhay Dang

**FACTS CONSTITUTING THE CAUSE OF ACTION AND
NATURE OF INJURY CAUSED TO THE PUBLIC**

Petitioner No.1 – Supriyo @ Supriya Chakraborty

3. Supriyo hails from a middle-class Bengali family from Ashoknagar, a town 30 kms away from Kolkata. His father owns a scrap metal recycling business, and his mother is a homemaker. He also has an elder sister.
4. Supriyo realized that he was gay when he was in class 6 at around the age of 13 years. While his friends were developing crushes towards persons of the opposite gender, Supriyo began to feel drawn towards the boyfriends and crushes of his female friends. Supriyo soon realized that he was gay, and since then has always been true to himself about his sexuality. However, coming from a tier-2 town and not having access to the internet and other material at the time, Supriyo did not even have the words to describe and express himself at that time. Growing up in a small traditional setting, Supriyo also did not know other people who were like him, and hence was unable to openly talk about his sexuality to his friends or family. Thus, Supriyo had to put off coming out to a later point in time.
5. As the Supriyo grew up, in 2008, he began his Bachelor's Degree (Hospitality Management), from International Institute of Hotel Management, Kolkata, affiliated to Edinburgh Napier University, Scotland, and spent an exchange-semester (6 months) in Scotland. For the first time, while Supriyo was in college, he became more open and comfortable with his sexuality. For the first time in his life, he met and bonded with

other LGBTQ+ persons. Being in college and interacting with other people like himself, Supriyo was finally able to feel comfortable in his own skin. Growing up, he lacked even the language to describe his feelings to himself. Now, he gradually found the vocabulary to acknowledge his sexuality. However, Supriyo did not come out to his friends and family until he met Abhay.

6. After completing his graduation, Supriyo went on to develop his career in the hospitality industry. Supriyo was Faculty at the International Institute of Hotel Management, Hyderabad. As a faculty member, Supriyo was a friend and guide to students from all over the country. To this date, his students over the years hold a special place in Supriyo's heart. Supriyo has now started a new endeavour, being the Director of Gulnar Events Pvt. Ltd., an event management company. Supriyo hopes to specialize in wedding planning and dreams of organizing same-sex weddings in the future. It is pertinent to mention that Petitioners' own commitment ceremony gave Supriyo the necessary push and support to start Gulnar Events.

Petitioner No.2 – Abhay Dang

7. Abhay hails from a Punjabi family based in Delhi.

8. Abhay also came to realize his sexuality at around the age of 13 years. Growing up in a protected environment, Abhay did not feel that he was any different from his peers at that point in time. Having access to the internet, he soon came to know about the taboo surrounding homosexuality and the applicability of S. 377 IPC at that time. This made Abhay hesitant to reveal his sexuality to anyone and he went into the closet.
9. In 2004, after completing his school education, Abhay got selected to IIT Roorkee, to pursue an integrated dual degree (B. Tech + M. Tech). Today, Abhay is a Senior Software Development Manager at a multinational tech company.
10. Over the years, Abhay's parents guessed his son was gay, even though the family never spoke about it. As the Abhay' family started preparing for his move to the IIT hostel, his parents equipped him with not only the daily necessities he would need for hostel life, but also tried to impart last minute advice to their son as he prepared to leave the nest. On one shopping trip for clothes and hostel bedding, the conversation turned to the freedom he might enjoy in college life. Do not become gay in college, his parents warned, painting a portrait of gay men based on the prejudices they held at the time.
11. The conversation made the Petitioner extremely uncomfortable. He felt conflicted by such words, and at that moment decided

that he must come out to change and challenge his parents' perception about being gay, and tell them the truth about who he was. During that car ride, about two-three weeks before leaving for college, Abhay came out to his parents as being gay.

12. Initially his parents were unable to accept their son's sexuality and refused to believe it. They told him this was a phase, and after some thought told him that he should give this a couple more years and then see if Abhay stills felt he was gay. Despite being doctors themselves, Abhay's parents thought homosexuality was unnatural, and were unable to understand and accept Abhay's sexuality. At that time, around 2004, even the medical fraternity in India had not yet developed the understanding of gender and sexuality.

13. It is pertinent to note that until recently, "conversion therapy" has been common in medical care and treatment. It was only during the course of proceedings in W.P. No. 7284 of 2021 pending before the Hon'ble High Court of Madras, that the National Medical Council has decided that "conversion therapy" will constitute a professional misconduct under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The Hon'ble High Court of Madras, *inter alia*, has also directed to revise the Post Graduate Psychiatry curriculum that would sufficiently prepare PG students to understand about sex and gender issued in psychiatry. The NMC is making efforts in that direction, at present. Vide Order dated 02.09.2022, the Hon'ble High Court of Madras was pleased to record the same.

14. In the beginning, Abhay's parents were in denial about their son's sexuality, and did not even like to talk about it. It took Abhay's parents many painful years to accept their son's sexuality, which Abhay describes as a phased gradual acceptance. Today, Abhay's parents have fully accepted their son's sexuality as well as his relationship with Supriyo.

Petitioners' Relationship

15. Petitioners met in Hyderabad, where they both live, in December 2012. They first met online, and decided to meet in person the very next day. Petitioners were about 22 and 25 years old at the time. Petitioners warmly reminisce that their first meeting that day lasted for almost 8 hours, and the two of them spent the whole day together, starting with having breakfast, visiting the Arts and Crafts Village, and coffee shops, having lunch, walking the streets, and even getting a haircut together on their first date.

16. Petitioners soon realized that their core values aligned and that both of them were looking for lifelong companionship. Keeping this in their hearts, Petitioners have been a couple since then.

Supriyo coming out

17. Getting into a relationship with Abhay, Supriyo finally found the strength to come to his family. Petitioners strongly feel about the importance of being out and open about their relationship. Every couple craves and enjoys the freedom to openly love their significant other and would not like to hide

their relationship. For same-sex couples, being out and open about their relationship, not only is an act of honesty and commitment towards their relationship, it also secures their relationship in society. It is common that many LGBTQ+ persons are pressurized by their families to enter into heterosexual/ opposite-sex marriages. Because of the stigma that surrounds being LGBTQ+, persons in same-sex relationships are unable to fight such familial pressures.

18. Petitioners met Abhay's parents first. Abhay brought his parents to meet Supriyo at a hotel in Hyderabad. Like anyone meeting their future in-laws for the first time, Supriyo was nervous about whether they would like him. However, soon after they met, Abhay's mother and Supriyo immediately bonded over their love for shopping, and they all spent the day shopping and getting to know each other. Supriyo candidly remembers that while he and Abhay's mother were enjoying shopping in the mall, Abhay and his father were waiting impatiently for them to finish.

19. Around one month into their relationship, around January-February 2013, Supriyo decided he would come out to his mother. Supriyo was clear that although he might not be able to be open about his relationship to the world at large, he would be true to himself and to the people in his life that mattered. The judgment in *Suresh Kumar Koushal v. Naz Foundation*, 2014 1 SCC 1, was reserved for orders by a division bench of this Hon'ble Court at that time. Supriyo invited his mother to come live with him for a few days in Hyderabad. Upon her visit,

Supriyo's mother spent time with both the Petitioners, and spent time exploring the city of Hyderabad. Supriyo's mother approved of Abhay and was very happy her son had made such a good friend.

20. Supriyo had thought about and prepared for the conversation with his mother. He had endlessly researched and read up on how to come out to one's parents. He had thought of all possible questions and reactions from his mother, and read up on possible answers and responses. He had kept all necessary information and replies ready on his end. Once he was confident that she liked Abhay, he had a long conversation with his mother about being gay and about being in a relationship with the Abhay. Supriyo's mother, being a traditional *Bengali* woman, did not immediately understand what her son meant and but was able to gather that Supriyo was talking about "*somogami*", as gay men are called in Bengali. However, she wasn't able to relate to her own son being gay at that moment.

21. Supriyo's mother took some time to think about what her son had told her. The next day she came back to the Supriyo with two questions. For Supriyo, his mother asking questions about his sexuality was a positive sign which meant that she had made an effort to at least understand what he told her.

22. Supriyo's mother first asked if being gay was something than can be cured. Secondly, she asked if there was any shortcoming in her upbringing that led her son to become gay. As they talked, both mother and son started crying. But at the end of the

conversation, Supriyo's mother whole-heartedly supported her son and his relationship with Abhay. As a loving mother, she found a new-found courage to protect and advocate for her son before other family members. Picture of the Petitioners clicked by Supriyo's mother is annexed hereto and marked as **Annexure P-3.** (71)

23. Over the next months that followed, Supriyo's mother made immense efforts to talk to other family members about her son's sexuality and his relationship. She cut ties with family members who did not accept her son's sexuality and his relationship.

24. Around the same time, Petitioners visited Supriyo's family back in Ashoknagar, West Bengal. They initially said they were friends and did not talk about being gay. But seeing the Petitioners' closeness and regard for each other, Supriyo's father had an inkling about their relationship. Consequently, when Supriyo's mother told him about their relationship, he said he had already understood and had accepted their relationship. Abhay soon became a part of Supriyo's big family. Over the years, Supriyo's sister has celebrated *Bhai Phota* with both Petitioners. Pictures of Petitioners with the Supriyo's family are hereto annexed and marked as **Annexure P-4** (72-75)

25. Being in a relationship with each other has helped the Petitioners be more comfortable and truer to themselves. Supriyo attended his first pride parade with Abhay. When the pictures from the pride parade got coverage in newspapers and

other media, the Petitioners decided to come out to their colleagues at work. Pictures of Petitioners attending pride parade together is hereto annexed and marked as **Annexure P-5**

(76-77)

26. Around May-June, 2013, being sure about each other's presence and importance in their lives, within five months of being in a relationship, Petitioners decided to move in with each other. Like any other couple, Petitioners took their time to adjust to each other's preferences and habits, such as food habits, difference in personalities, etc. However, their love and respect for each other has always been a constant factor which has helped them forge a strong and loving bond. Petitioners have been living together for over eight years now.

27. Over these years, Petitioners have seen the highs and lows of their relationships and have achieved various relationship milestones together. Petitioners have travelled across the country as well as foreign countries. In 2020, Petitioners bought their first car. In May 2021, Petitioners adopted their dog, Kaju. Pictures of the Petitioners' growing relationship of the years have been annexed hereto and marked as **Annexure P-6** (78-90)

28. Petitioners initially lived in a rented accommodation. Since they were a same-sex couple, Petitioners had to pass off as friends to hide their identity as a same sex couple. One of the imperatives for them to purchase their own accommodation and stop living in rented accommodation was the fear of being evicted by a landlord or harassed by their neighbours for being a same sex

couple whereas they had a stable home life living in a house they owned. Finally, in 2014, when the Petitioner were able to move into their own home, they were able to be more open about their relationship and live more freely.

29. Petitioners' parents often come to Hyderabad to stay with them.

They all take holidays as a family. Supriyo's mother travels to Hyderabad to spend time with the Petitioners around her birthday (4th August) every year. Supriyo knew that his mother had always wanted to take a vacation to see mountains. So, he and Abhay planned two trips for her - the first, in 2015, to Haridwar, and then in 2018 all three of them took a holiday to Sikkim. After his retirement, since his children were settled, Abhay's father wanted to take foreign holidays and the Petitioners planned an annual vacation with him to Mauritius, Singapore and Malaysia. Over the years, Petitioners and their respective families have developed into one family unit, with either set of parents genuinely accepting their son's partner into their families. Petitioners refer to Supriyo's parents as "maa - baba", and refer to Abhay's parents as "mummy - papa". Picture of Supriyo's mother celebrating her birthdays with the Petitioners is annexed hereto and marked as **Annexure P-7. (91)** Pictures of Petitioners' trips to Haridwar and Sikkim with Supriyo's mother are annexed hereto and marked as **Annexure P-8. (92-93)**

Navtej Singh Johar judgment

30. The *Johar* judgment was a turning point in the lives of the Petitioners and their families. In 2018, when this Hon'ble Court

gave its historic verdict in the case of *Navtej Singh Johar & Ors. V. Union of India & Ors.*, 2018 10 SCC 1, it gave the Petitioners' relationship a new found legitimacy.

31. On 06.09.2018, Supriyo woke up with an anxious knot in his stomach. Petitioners had been a couple for around six years at that time. Abhay took leave from work on that day so that he could follow the news. He kept messaging Supriyo with regular updates of what news channels were reporting. Around 11.30 AM, when the judgment was pronounced, he called Supriyo, but for the first time in the many years they had been together both of them were speechless.

32. *Johar* meant the world for the Petitioners and their families. A few days after the judgment of this Hon'ble Court, Supriyo's students had all come together to prepare a congratulatory card for him, and celebrated the judgment of this Hon'ble Court with the Supriyo. The judgment of this Hon'ble Court in *Navtej Singh Johar*, also helped their families talk more freely and openly about their sons' relationship. It changed the course of the lives of the Petitioners and crores of other LGBTQ+ individuals in the country.

COVID & plans to get married

33. Having lived together for almost eight years, Petitioners have always talked about getting married to each other. Like any other similarly placed opposite-sex couple, Petitioners were serious about their relationship and wanted to come together as a family. Supriyo candidly describes this feeling as "*bachpan se*

shaadi karna tha". They had even talked about this with their respective parents, who have been supportive of their choice and decision. Thus, post the judgment in *Navtej Singh Johar*, Petitioners began to have serious conversations about their wish to get married to each other. More importantly, Petitioners, like any other couple in a committed relationship, do not wish to live a life where they have to refer to each other as "friends".

34. When the COVID-19 pandemic hit, Petitioners, like many others, were faced with the fragility of life. Both the Petitioners contracted the virus during the deadly second wave in April 2021. Supriyo was seriously ill and had to be rushed to the ER. While taking care of Supriyo, Abhay also contracted the virus. Petitioners' friends and colleagues were instrumental in helping the Petitioners survive during this time.

35. Around this time, various companies also made extensive efforts to accept LGBTQ+ employees and bring out a sense of inclusivity and diversity in the workplace. Supriyo was already covered under the health insurance extended by Abhay's employer. During the pandemic, Abhay's employer also made arrangements for their employees, their spouses and families to get the COVID-19 vaccine. Under the scheme, Supriyo was able to avail the benefit and get the COVID-19 vaccines as Abhay's partner.

36. Although they had always discussed getting married someday in the future, the pandemic accelerated this conversation. Petitioners knew they needed a little more than love, and wished

for the security that marriage brought along. As Petitioners cannot have a legally binding marriage in India, they decided to hold a wedding-cum-commitment ceremony [hereinafter referred to as "**commitment ceremony**"]. As for their parents, who have seen the Petitioners' relationship grow over the years, this was the natural progression for their relationship, and were fully supportive of this decision.

37. It may be noted that along with being a same-sex couple, Petitioners are also an inter-state and inter-caste couple. Both Petitioners celebrate and respect each other's cultures. Both Petitioners celebrate Durga Puja every year, sometimes with each, and sometimes even joined by Supriyo's Bengali family. Marriages across caste or religion in India are uncommon. According to the India Human Development Survey (IHDS) conducted in 2014, only about 5% of Indian marriages are inter-caste. This Hon'ble Court has time and again recognized an individual's right of choice of partner and companionship, and has stepped in to protect couples whose marriages did not otherwise find social legitimacy.

Commitment ceremony

38. Petitioners and both their families whole-heartedly joined in the planning and preparation for the Petitioners' commitment ceremony. Having a flair for event management, Supriyo, as well as his mother, were particularly involved in the preparations.

39. The Petitioners had first met each other towards the end of December 2012. To commemorate this, they decided to have their commitment ceremony in December 2021. Petitioners decided on a two-day ceremony to be held on 17th-18th December, 2021, incorporating elements of both Punjabi and Bengali cultures. The 2-days ceremony fully lived up to the standards of a "Big Fat Indian Wedding". As is the modern wedding trend, Petitioners even had a wedding hashtag #subhay. True copy of the invitation card of Petitioners' wedding-cum-commitment ceremony is annexed hereto and marked as Annexure P-9. (94-96)

40. Over 100-150 guests, including the Petitioners' parents, siblings, other family members on both sides, friends, colleagues, and Supriyo's students attended the ceremony. Both families contributed to the Petitioners' commitment ceremony. As is customary, Supriyo's parents even arranged and sponsored the travel and stay of their extended family so that they may attend the Petitioners' commitment ceremony. Abhay's parents sponsored the clothes worn by the Petitioners for different functions over the 2-day ceremony. Petitioners and their families celebrated in the same manner and fashion that weddings of opposite-sex couples are celebrated.

41. On Day 1 of the commitment ceremony, Petitioners had a Punjabi-style *mehendi* ceremony, followed by a *sangeet*. Every guest got some *mehendi* done on their hands. Petitioners wore matching sherwanis made out of *jamdani* muslin silk which were designed in the Bangladeshi fashion. They wore stoles

which had *kantha* work in the colours of the pride flag. Pictures of Petitioners' *mehendi* ceremony are annexed hereto and marked as Annexure P-10 (97-98)

42. On Day 2, there was a *haldi* ceremony. Although both Bengali and Punjabi cultures have *haldi* ceremony at their weddings, Petitioners decided to conduct this ceremony in a Bengali fashion, which is known as *gai holud*. Supriyo's mother also performed the *boron* ritual for Abhay, which is generally performed to welcome the bride into the new family. Picture of Petitioners' *gai holud* ceremony, and Supriyo's mother performing the *boron* ritual for Abhay is hereto marked and annexed as Annexure P-11 (99-102)

43. At the end of Day 2, they had a sun-downer commitment ceremony. Petitioners borrowed from the tradition of "something borrowed, something blue, something old, something new". They wore pristine new white suits, with blue socks, and borrowed handkerchiefs from their friends. They wore their old watches to commemorate the time that they have spent with each other over the years, in the spirit that their time should always remain the same.

44. Both Petitioners had a best man, a grooms-man and a "grooms-maid". For Supriyo, his work friend was his best man, a student of his was his groomsman, and his niece was the grooms-maid. For Abhay, a work friend was his best man, Supriyo's nephew was his grooms-man, and an old friend of Supriyo's who had seen their relationship grow, was his grooms-maid.

45. Petitioners walked down the aisle, and exchanged vows with each other. The commitment ceremony was officiated by a close friend of the Petitioners, Ms. Sophia David, who is a transwoman. At the end of the ceremony, all the guests rang bells in an act of support and blessing for the couple. Thereafter, guests were served *anandonaru*, a traditional Bengali home-made sweet made from coconut. Traditionally, *anandonaru*, wherein "*anand*" means joy, is prepared at home and distributed among the friends and relatives in few specific joyful occasions like Durga Puja, weddings, *Annaprasan* (first-rice ceremony) of a new-born, or *Upanayan* (thread ceremony). Pictures of the Petitioners' final commitment ceremony are annexed hereto and marked as **Annexure P- 12** (---) 103-106)

46. Petitioners' commitment ceremony was also covered by the media. When word got out about their wedding, Petitioners were overwhelmed and overjoyed with the response they received from people all over the country. The positive response and support they received have made them more comfortable with, and vocal about their relationship. Following the news coverage of their wedding, Supriyo even posted a video of their wedding on his YouTube channel.

47. The commitment ceremony was organized and fully paid for largely by the Petitioners themselves, and partly by both families. In order to do something for their son and son-in-law, Supriyo's parents insisted on holding a reception for the Petitioners. A few months after the weddings, in February 2022,

Supriyo's parents organized a reception in Ashoknagar, West Bengal for the Petitioners, so that other relatives and neighbours, who could not attend the ceremony in December, could bless the couple. Everyone was introduced to Abhay as the new *damaad* of the family. Surprisingly, the reception ceremony organized by Supriyo's parents had a bigger turnout than the commitment ceremony held in December, 2021. It was a matter of great pleasure and joy for the Petitioners and their families. Pictures of Petitioners' reception ceremony organized by Supriyo's parents are annexed hereto and marked as **Annexure P- 13** (107-110)

48. But once the euphoria of their ceremony has worn off, Petitioners are confronted with the cold reality that even though they have been in a committed relationship for almost a decade, they do not enjoy simple rights and protections that opposite-sex married couples take for granted:

- (a) Petitioners have had to write their will and to inform their families that they have done so, to ensure that they inherit each other's assets when they die. Same-sex couples always fear that their wills may be challenged in probate proceedings if their legal heirs do not respect and acknowledge their relationship.
- (b) In 2014, Petitioners had moved into their own house. The flat was purchased by Abhay. Since Supriyo was neither the owner of the flat nor a tenant, it was difficult for him to procure address proof. Ultimately, Supriyo had to change his address with a private bank first, and then use the same to procure other documents such as AADHAR, etc.

- (c) Petitioners cannot take any medical decisions for each other if the other partner is unable to consent to a medical procedure or take end-of-life decisions.
- (d) Petitioners have been unable to secure health insurance which would cover their partner, as they do not fall within the ambit of 'blood relatives'. Thus, they have had to opt for separate individual policies, meaning which they incur more expense in payment of premium as compared to an opposite-sex couple. Abhay's employer provides for health insurance policy which covers a same-sex partner. However, the same is only till the term of the employment. Thus, Petitioners decided to also get policies individually.
- (e) Consequently, Petitioners cannot nominate each other for life insurance, mutual funds, PPF, pension scheme, or any other financial instruments.

49. In the absence of legal rights and recognition that married couples enjoy, Supriyo and Abhay rely on the good relationship they have with each other's family to hope that their in-laws will respect their relationship even if something happens to either of them. But legally, they have no right to inheritance, property, to take medical or end-of-life decisions; in truth they have no rights at all.

50. The institution of marriage is a legal and social recognition of the love, support, security and emotional bond a couple offer each other. The relationship of marriage is one of society's most precious relationships. Through marriage, couples affirm their commitment to each other before society. In Indian society,

marriage is not just a relationship between two individuals, it brings two families together. Through marriage, society nurtures a couple's relationship and couples find their place in the social fabric.

51. In addition to social and cultural sanctity, married couples enjoy a complete framework of legal rights and recognition bestowed by the Respondent Union. However, the Petitioners' relationship is deprived of these rights, recognitions, and protection of the law, solely on the ground of them being a same-sex couple. Despite being together for almost a decade, despite their love and commitment to each other and their families, the Petitioner's remain strangers in law.

52. The Petitioners wish to have the protection of the bundle of rights that a marriage provides, so that they are not burdened with the task of getting authorities to acknowledge their relationship for every entitlement or right that married couples would automatically get. Inasmuch as it is a social institution that brings two families together, marriage is also a bundle of rights that protects a married couple. The Petitioners want to enjoy this protection, and it is their submission that they are constitutionally entitled to do so. Instead, they have to re-assert and explain what they mean to each other every time they meet a new authority, have access to a new service, just to have to introduce each other at a social gathering.

53. Exclusion of recognition of same-sex marriage under the Special Marriage Act not only discriminates against the

Petitioners, it also causes repeated instances of trauma that members of the LGBTQ+ and other marginalized communities face due to lack of legal recognition. The decriminalization of homosexuality has been unable to take away this trauma, as long as same-sex couples are prohibited from entering into matrimonial relationships.

SPECIAL MARRIAGE ACT, 1954

54. The Special Marriage Act was enacted in 1954 to provide a mode of solemnization of marriage outside the fold of personal law. It was introduced with the object of providing a special form of marriage available to any person in India, and Indian nationals living in other countries, irrespective of faith or citizenship.

55. The SMA assumed that the parties to the marriage are an opposite-sex couple. For example, the conditions of solemnization of marriage under Section 4 of the SMA includes the condition that "the male has completed the age of twenty-one years and the female the age of eighteen years." Further, Schedule I of the SMA lays out the degrees of prohibited relationship which again assume that the spouses are an opposite sex couple. The Act and the Schedules refer to 'widow', 'widower', 'bride' and 'bridegroom'.

56. Therefore, while seeking to legislate on solemnization of all marriages outside the sphere of personal law, the SMA violates the principles of equality before the law and anti-discrimination

in failing to ensure that the option to solemnize same sex marriages is a part of the scheme of the Act.

57. The Petitioners are both above the age of 21 years, are not married to any other person, and are not within the degrees of prohibited relationships mentioned in Schedule I of the SMA. The Petitioners satisfy all the requirements of being eligible to marry under the SMA, and are only being prevented from getting married to each other because they are not an opposite sex couple.

58. In every aspect of their lives, the Petitioners are just like a married couple. They live together, they have shared finances. They care for each other's families, and are in fact part of each other's families in spirit. But the law fails to recognize their relationship.

59. In light of the above facts and circumstances, Petitioners are challenging the SMA to the extent that it does not provide for solemnization of same sex marriage, on the *inter alia* following grounds:

GROUND

Article 32

A. BECAUSE the right to approach this Hon'ble Court seeking redress for violation of fundamental rights is in itself a fundamental right protected by the Constitution of India.

- B. BECAUSE the interpretation of the Constitution of India can only be determined by this Hon'ble Court.
- C. BECAUSE Articles 14, 15, 19 and 21 of the Constitution recognize the right to marry of same-sex couples at par with opposite-sex couples.
- D. BECAUSE the Special Marriage Act, 1954 being a Central Act applying to the whole of India holds the sphere for the solemnization of marriage between any two persons.
- E. BECAUSE Section 4 read with Schedules I, II, III, IV of the SMA violate the fundamental rights of the Petitioner under Articles 14, 15, 16, 19 and 21 of the Constitution.
- F. BECAUSE the right to move this Hon'ble Court for the rights conferred by Part III of the Constitution is guaranteed under Article 32 thereof.

Choice of Marital Partner is guaranteed to all citizens under Article 19 and 21 of the Constitution

- G. BECAUSE at the heart of personal liberty lies the freedom to choose who we are, to love whom we will, and to live a life that is true to our most authentic selves, not only without the fear of persecution but in full hearted joy and as equal citizens of this country.

- H. BECAUSE freedom of personal choice in matters of marriage and family life is protected by the liberty guaranteed by the Constitution under Article 21.
- I. BECAUSE choice of marital partner is integral to personal autonomy guaranteed under Article 21 of the Constitution.
- J. BECAUSE the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution.
- K. BECAUSE this Hon'ble Court has held that an adult citizen has the right to make their own choice as to whom to marry.
- L. BECAUSE the right to choose a marital partner as protected under Articles 21 of the Constitution of India extends with equal force to same-sex couples.
- M. BECAUSE sexual autonomy and freedom to choose one's partner is an intrinsic part of the sense of selfhood of any human being. It is an intimate and fundamental life decision which can determine a person's self-worth and self-respect.
- N. BECAUSE the decision to marry or not to marry is one of life's momentous acts of self-definition.
- O. BECAUSE the liberty to choose one's marital partner is intrinsic to the right to a dignified life, liberty and freedoms guaranteed by the Constitution. The dignity of an individual, the

equality between human beings, and the quest for liberty are the foundational pillars of the Indian Constitution.

- P. BECAUSE this Hon'ble Court has recognised that autonomy of the individual is the ability to make decisions on vital matters of concern to life is an inviolable aspect of the human personality. In the ability to make decisions on matters close to one's life, this Hon'ble Court has held that "family, marriage, procreation and sexual orientation are all integral to the dignity of the individual."
- Q. BECAUSE sexual orientation is an essential component of identity and dignity which are embedded in the right to life.
- R. BECAUSE each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.
- S. BECAUSE this Hon'ble Court has recognised that sex and gender are primarily psychological rather than biological phenomena or attributes; sexual orientation is integral to an individual's personality and is the most basic aspect of self-determination, dignity and freedom.
- T. BECAUSE this Hon'ble Court has time and again upheld the right to dignity of an individual as a facet of liberty under Article 21 of the Constitution of India. This facet of liberty encompasses the freedom of choice in matters ranging from family, marriage, procreation and sexual orientation. An

exercise of this fundamental right of choice of the Petitioners cannot be extinguished by non-inclusion.

- U. BECAUSE a statute which inhibits LGBTQ+ persons from entering and nurturing enduring relationships with a partner of their choice violates Article 21.
- V. BECAUSE this Hon'ble Court has held that India is a free and democratic country, and once a person becomes a major, he or she can marry whosoever he/she likes.
- W. BECAUSE this Hon'ble Court has held that "intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness."
- X. BECAUSE while law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled, it has no role to play in determining the choice of a partner.
- Y. BECAUSE matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity which are constitutionally protected under Article 21.
- Z. BECAUSE the law protects and recognises companionship through the institution of marriage. Companionship provides the

understanding and assurance of care for the other and is one of the cornerstones of life.

- AA. BECAUSE this Hon'ble Court held that right to union, to choose a partner to love, not only by marriage, but by companionship in every sense, sexual, mental, and emotional even between same sex are protected by Article 21.
- BB. BECAUSE this Hon'ble Court held that the LGBTQ+ community is seeking realisation of its basic right to companionship, so long as such a companionship is consensual, free from the vice of deceit, force, coercion and does not result in violation of the fundamental rights of others.
- CC. BECAUSE dignity is an acknowledgment of the value of all human beings as members of society and the recognition of personhood. At the root of dignity is a person's freedom of choice and action.
- DD. BECAUSE this Hon'ble Court has held that choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice.
- EE. BECAUSE this Hon'ble Court has held that when two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated

that they have the right and any infringement of the said right is a constitutional violation.

FF.BECAUSE the Constitution recognizes the liberty and autonomy which are inherent in each individual, including the ability to take decisions on aspects which define one's personhood and identity.

GG. BECAUSE the choice of a partner lies within the exclusive domain of each individual. The choice of a partner forms the essence of personal liberty and dignity under the Constitution.

HH. BECAUSE there is no difference between persons who defy social conventions to enter into inter-religious and inter-caste marriages and those who choose a same-sex partner in the sense that society may disapprove of inter-caste and inter-religious marriages but the Courts have a constitutional mandate for enforcing constitutional rights.

Excluding same-sex marriage from the SMA violates Article 14 and 15 of the Constitution.

II. BECAUSE the law must remain cognizant of the fact that changes in society have ushered in significant changes in family structure.

JJ. BECAUSE this Hon'ble Court has held that the familial relationships that must be protected by law include queer relationships.

KK. BECAUSE equality is not achieved with the decriminalization of homosexuality alone but must extend to all spheres of life, including the home, marriage and other social institutions, the workplace, public places, etc.

LL. BECAUSE unconventional families, which include same-sex couples, must be able to enjoy all legal and societal benefits that their more traditional counterparts do.

MM. BECAUSE atypical and unconventional manifestations of love and family by same-sex couples are equally deserving not only of protection under law but also of the benefits available under various legislations. The black letter of the law must not be relied upon to disadvantage couples and families who are different from traditional ones.

NN. BECAUSE the exclusion of same-sex couples from the ambit of the Special Marriage Act, 1954 violates Articles 14 and 15 of the Constitution of India.

OO. BECAUSE Article 14 of the Constitution enjoins the State not only to protect against inequality but also entails a positive obligation to create a just, fair and equal society that ensures equality of status and opportunity to all citizens who can all enjoy fundamental rights guaranteed under Part III of the Constitution.

PP.BECAUSE SMA discriminates between persons solely on the basis of sexual orientation and is a prohibited ground of discrimination under Article 15 of the Constitution.

QQ. BECAUSE this Hon'ble Court has recognised that sexual orientation and gender identity are protected under Article 15 because they are immutable aspects of personhood. Much like religion, sex, caste and place of birth, discrimination on the basis of aspects intrinsic to a person's identity and existence is constitutionally prohibited.

RR. BECAUSE excluding same sex couples from the SMA gives legal sanction to historical and social stigma faced by LGBTQ+ and same sex couples.

SS.BECAUSE right to family, love, companionship and commitment is available to all persons and excluding same sex couples from this bundle of rights discriminates against them.

TT. BECAUSE the exclusion of LGBTQ+ couples from being able to marry renders them strangers in law, even when they have been in a committed long-term relationship for years that is identical to the long-term relationships of opposite sex married couples that the SMA recognizes.

UU. BECAUSE social norms on the choice of conjugal partner have evolved over time and the law is not only expected to follow such societal changes but also ought to be an agent for social change.

VV. BECAUSE the impermissibility of same sex marriage is as unconstitutional as a law that made inter-caste or inter-faith marriages illegal would be.

WW. BECAUSE this Hon'ble Court held that decriminalisation of Section 377 IPC is of course necessary to bury the ghosts of morality which flourished in a radically different age and time. But decriminalisation is a first step. The constitutional principles on which it is based have application to a broader range of entitlements.

XX. BECAUSE the SMA discriminates against LGBTQ+ couples by only permitting opposite sex couples to marry.

YY. BECAUSE this Hon'ble Court held while assessing whether a law infringes a fundamental right, it is not the intention of the lawmaker that is determinative, but whether the effect or operation of the law infringes fundamental rights.

ZZ. BECAUSE the SMA discriminates against same sex couples on the ground of their choice of marital partner, which is discrimination on the basis of sexual orientation which is impermissible under Article 15.

AAA. BECAUSE the SMA limits the choice of partner by prohibiting otherwise eligible persons from marrying a person

of the same sex, which amounts to discrimination on grounds of sex and sexual orientation.

BBB. BECAUSE sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination.

CCC. BECAUSE this Hon'ble Court has held that sexual orientation places a positive and negative obligation on the State. The negative obligation includes non-discrimination under Article 15 of the Constitution while positive obligations call for the State to recognise rights which bring true fulfilment to same sex relationships. The right to choose a marital partner or, simply put the right to recognition of marriage for a same sex relationship is a positive obligation of the State to be fulfilled through its existing marriage laws.

DDD. BECAUSE same sex couples are subject to disparate treatment under the SMA without any rational basis for the discrimination. The object of the legislation is to provide an avenue for marriage to anyone desiring a civil form of marriage to exercise the choice to enter into a matrimonial alliance with a legalized process of solemnization and recognition. Excluding same sex couples has no rational nexus with the object of the legislation.

EEE. BECAUSE excluding same-sex couples while including opposite sex couples violates Article 14 as it discriminates on

the basis of sexual orientation without any rational basis to the object of the legislation.

FFF. BECAUSE a classification that violates Article 14 ipso facto violates Article 15 in as much as Article 14, 15 and 16 form the equality Code, wherein Article 14 is the genus and Article 15 the species.

GGG. BECAUSE the object sought to be achieved by the Act, i.e., to provide a law of marriage to persons who cannot marry under their personal law, fails to have any rational or reasonable nexus with the differentia adopted on the basis of which only opposite-sex couples can marry as they are "bride" and "groom."

HHH. BECAUSE there is no reasonable, much less an intelligible differentia in the classification of same-sex and opposite-sex marriages in the context of a secular legislation governing solemnization of marriage.

III. BECAUSE LGBTQ+ persons are entitled to equal opportunity to advance and develop their human potential and social, economic and legal interests.

JJJ. BECAUSE the exclusion of LGBTQ+ persons from the SMA treats them as an unequal class for the purposes of Article 14 of the Constitution of India. the classification of marriages on the sexual orientation and gender identity of the parties

amounts to treating equals as unequals and violates Article 14 of the Constitution of India.

KKK. BECAUSE this Hon'ble Court has held that the constitutional principles which have led to decriminalisation must continuously engage in a rights discourse to ensure that same sex relationships find true fulfilment in every facet of life. The law cannot discriminate against same sex relationships. It must also take positive steps to achieve equal protection.

LLL. BECAUSE both opposite sex couples and same sex couples enter marry for the same reasons, that are not found in any other relationship - love, companionship, belongingness, emotional support, financial security and a common set of values.

MMM. BECAUSE this Hon'ble Court has recognized that with the passage of time and evolution of the society, procreation is not the only reason for which people choose to come together for marriage. Rather, a marriage furnishes emotional satisfaction to be found in no other relationships.

NNN. BECAUSE other couples who are unable to bear children, such as older couples or infertile couples, are not excluded from the institution of marriage.

OOO. BECAUSE the Constitution is a living document and its ongoing interpretation accounts for the social changes in the national polity, and should not be restricted to the state of law at

the time of commencement of the Constitution or a particular statute.

PPP. BECAUSE constitutional courts must keep in mind their own experience, international treaties and covenants, and the doctrine of flexibility.

QQQ. BECAUSE the institution of marriage has changed with time and been reformed by law and through constitutional courts' intervention, and equally may be opened to include sexual minorities.

RRR. BECAUSE the institution of marriage has been strengthened by legal, social and cultural evolution over time.

SSS. BECAUSE the Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and therefore a purposive approach should be adopted in its interpretation.

TTT. BECAUSE a constitutional provision must be construed in a wide and liberal manner so as to take account of changing conditions and purposes so that it does not get fossilized but rather endures.

UUU. BECAUSE over time the judicial branch has struck down aspects of family law that violated the Constitution. Reliance is placed on the decisions of this Hon'ble Court in *Mary Roy v.*

State of Kerala [(1986) 2 SCC 209], *Githa Hariharan v. RBI* [(1999) 2 SCC 228], and more recently, *Shayara Bano v. Union of India*, [(2017) 9 SCC 1] (abolishing triple talaq). Thus, in the progressive march towards securing equality, equal protection of the law, and dignity of women, the Courts have not shied away from even reforming personal and criminal law governing marriage and succession.

VVV. BECAUSE this Hon'ble Court held that the constitutional values of liberty, dignity, equality, and non-discrimination extend to the institution of marriage. The Supreme Court held that when a law falls foul of constitutional guarantees, it is the Supreme Court's solemn duty not to wait for legislation even when laws governing marriage are unconstitutional.

WWW. BECAUSE High Courts have recognised that a transwoman is a woman and has the right to marry even under personal laws such as the Hindu Marriage Act.

XXX. BECAUSE the SMA ought to be interpreted through the constitutional lens of non-discrimination, dignity, autonomy, freedom of choice of partner and the choice of union to recognize same-sex marriages within India's only legislation governing solemnization of civil marriages of choice.

Same-sex Couples are denied rights that flow from marriage

YYY. BECAUSE marriage is a profound relationship that is adorned with legal and social recognition, rewarded with privileges and secured by obligations. The institution of

marriage is a bundle of rights that married couples enjoy. These rights include rights around succession, maintenance, joint ownership of assets and those around health decisions.

ZZZ. BECAUSE the institution of marriage protects family life and consequently protects the right to reside in a shared household irrespective of ownership, the right to maintenance and alimony, amongst other things.

AAAA. BECAUSE this Hon'ble Court has held that there is a need to legally recognize non-traditional manifestations of familial relationships. Such legal recognition is necessary to enable individuals in non-traditional family structures to avail of the benefits under various beneficial legislations.

BBBB. BECAUSE consortium, defined as "the right to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate" is a recognized monetary compensation that is to be given due weightage in claims including claims for injury and death in Motor Vehicle Act cases. The consortium is recognised as 'spousal consortium' available only to married couples and hence denied to the Petitioners.

CCCC. BECAUSE this Hon'ble Court has held that in case of loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately.

DDDD. BECAUSE the Transplantation of Human Organs Act, 1994 ["TOHA"] only permits "near relatives", defined as spouse, son, daughter, father, mother, brother or sister, to object to the use of a deceased person's body for therapeutic purposes. Similarly, the declaration to donate organs ought to be made in presence of at least one near relative. Therefore, same sex couples are excluded by law from making these vital decisions about their partners.

EEEE. BECAUSE even to donate organs to each other, same sex couples need prior approval of the Authorisation Committee under the TOHA where their proof of "affection" or "attachment" to the proposed recipient of the organ is evaluated before permitting organ donation. Married couples do not need prior approval because they are "near relatives" as per TOHA.

FFFF. BECAUSE married couples enjoy a host of legal benefits and the exclusion of LGBTQ+ persons from the legal regime of marriage, and therefore the legal regime protecting families, amounts to discrimination against them only on the grounds of sexual orientation. These include:

- Section 80C of the Income Tax Act, 1961 provides for deductions of certain sums for computing the total income of the assessee when such sums are paid on behalf of a spouse, specifically:
 - Payments or deposits made towards life insurance for a wife or a husband [Section 80C(2)(i)]

- Payments or deposits made to effect or keep in force a contract for a deferred annuity on the life of a wife or a husband [Section 80C(2)(ii)]
- A contribution to any provident fund set up by the Central Government, where such contribution is to an account standing in the name of a wife or a husband [Section 80C(2)(v)].
- A contribution in the name of a wife or a husband for participation in the Unit-Linked Insurance Plan [Section 80C(2)(x)].
- Section 6 of the Payment of Gratuity Act, 1972 requires that as long as a family member is alive, they have to be nominated by every employee who has completed one year of service. Thus, a person cannot extend the statutory benefits of gratuity to their same sex partner, as long as their family members, including their parents, are living.
- Rule 3(2) of the Payment of Wages (Nomination) Rules, 2009 under the Payment of Wages Act, 1936 also provides that if that as long as a family member is alive, they have to be nominated by every employee.
- Clause 61 of the Employee's Provident Fund Scheme, 1952 framed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952] requires the employee to make a nomination only in favour of a family member conferring the right to receive the amount that may stand to his credit in the fund in the event of his death.

- Under Section 10A(4) of the Employees' Compensation Act, 1923, provides compensation to "dependants" which are only defined as spouses, children or parents. A same-sex partner is not entitled to the benefit of the said provision.
- Under the Pradhan Mantri Shram Yogi Maan-dhan Yojana, passed under the Unorganized Workers' Social Security Act, 2008, a subscriber will receive a minimum assured pension after attaining the age of 60 years and in the event of the death of the subscriber, the spouse shall be entitled to receive half of the pension as family pension; which benefit is also not available to same-sex partners.
- Section 122 of the Indian Evidence Act, 1872 provides for spousal privilege, i.e., immunity from being compelled to disclose any communication made to them during marriage by their partner. They shall also not be permitted to disclose any such communication, unless their partner, or their representative in interest consents. Same-sex couples do not enjoy this crucial protection privilege under Indian evidentiary law.

GGGG. BECAUSE only married couples can adopt children under the Juvenile Justice (Care and Protection of Children) Act 2015, and Rules thereunder, inasmuch as unmarried couples and/or couples in a live-in relationship cannot adopt children as a couple.

HHHH. BECAUSE Section 57(2) of the JJ Act, 2015 while providing the eligibility for prospective adoptive parents, states that in case of a couple, the consent of both the spouses for the adoption shall be required.

IIII. BECAUSE Regulation 5(3) of the Adoption Regulations, 2022 states that no child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.

JJJJ. BECAUSE vide Office Memorandum bearing No. CARAICA013/1/2022/Administration dated 16.06.2022, the Central Adoption Resource Authority (CARA) has decided, in line with Regulation 5(3) of the Adoption Regulations, 2022, that even single prospective adoptive parents who are in a live-in relationship with a partner will not be considered eligible to adopt a child and their registration from concerned agencies/authorities will not be considered for approval.

KKKK. BECAUSE same sex couples also cannot have children through surrogacy, as the Surrogacy (Regulation) Act, 2021, only allows married couples to have children through surrogacy inasmuch as under Section 2(1)(h) of the Surrogacy (Regulation) Act, 2021, "couple" means the legally married Indian man and woman above the age of 21 years and 18 years respectively.

LLLL. BECAUSE same sex couples also cannot have children by opting for assisted reproductive technologies (ART) inasmuch as S. 2(1)(e) of the Assisted Reproductive Technology

(Regulation) Act, 2021 defines "commissioning couple" as an infertile married couple who approach an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the services authorised of the said clinic or bank.

MMMM. BECAUSE same sex couples are excluded from private entitlements, such as club memberships, health benefits in private employment, opening of joint accounts, spousal benefits extended under certain work permits. Same sex couples face more barriers to entry and higher scrutiny in aspects of private life and health insurance nominations, mutual fund/savings plan nominations even though the law permits non-relatives to be nominated.

NNNN. BECAUSE as a same sex couple the Petitioners have been denied the automatic rights that come from being a married couple, for example to prove residence, a spouse's rented or owned home is sufficient for opposite sex married couple.

OOOO. BECAUSE a government servant in a same sex relationship cannot extend employment benefits available to spouse, to their same sex partner. These include coverage under the Central Government Health Scheme, compassionate appointments, family pension on the death of a government servant, requests for family postings and requests for same-city postings when both partners are in government service.

PPPP. Despite having the same emotional, financial, and romantic commitment to each other, same sex couples are rendered strangers in law, and are excluded from the rights and privileges available through the institution of marriage. Exclusion from this legal regime violates Article 14, 15, 16, 19 and 21 of the Constitution.

Excluding same-sex couples under the SMA is manifestly arbitrary and unreasonable

QQQQ. BECAUSE SMA violates article 14 insofar as the classification is arbitrary and unreasonable inasmuch as it excludes same sex couples from the right to a valid and legal marriage.

RRRR. BECAUSE the provisions of SMA fall foul of Article 14 as they fail the test of reasonable classification.

SSSS. BECAUSE there is no constitutionally valid intelligible differentia between LGBTQ+ and non- LGBTQ+ persons.

TTTT. BECAUSE equality before law is designated to protect all persons against legislative discrimination and to prevent any class of persons to be singled out as a special subject not to be covered under a legislation.

UUUU. BECAUSE inability to procreate is not a reasonable distinction for discrimination against same sex couples with respect to the right to marry. The law does not prohibit other couples who cannot have children from marrying, and many

couples have children through adoption or rely on artificial insemination and other assisted reproductive technology.

VVVV. BECAUSE there is no intelligible differentia between same sex couples and opposite sex couples.

WWWW. BECAUSE this Hon'ble Court has held that there can be no mathematical precision or formula to classification but if there is no difference between the classified group and non-classified one, then classification cannot be regarded as reasonable differentia as there has to be an acceptable and persuasive reason in favour of the classification.

XXXX. BECAUSE to withstand the test of Article 14 the objective of a statute must be in tune with constitutional morality and not an assumed public or majoritarian morality.

YYYY. BECAUSE it is the responsibility of Constitutional Courts to protect minorities from arbitrary and unreasonable discrimination predicated on popular ideas of the notion of marriage. It is therefore the responsibility of this Hon'ble Court to uphold constitutional morality to read down the unreasonable discrimination of the SMA.

ZZZZ.BECAUSE when the grounds of classification are impermissible even if the objective of the Act are permissible or appear to embody legitimate state interest, the legislation, to the extent of its discrimination, cannot be constitutionally valid.

AAAAA. BECAUSE the exclusion of same-sex couples from the Special Marriage Act is manifestly arbitrary inasmuch as there is no fair or reasonable justification for the exclusion of couples merely because they are of the same sex.

BBBBB. BECAUSE a law may become arbitrary with the passage of time and hence, as society has changed and accepted same-sex couples, the SMA ought also to be interpreted to extend the regime of marriage to the Petitioners.

Courts below have protected LGBTQ+ couples just as they protect inter-caste and inter-religious couples

CCCCC. BECAUSE marriage is the forging of an enduring relationship. It is intimate to a degree of being sacred. It is an association that promotes bilateral loyalty and everyone should have equal access to this association.

DDDDD. BECAUSE Courts have protected couples in their union, and their right to choice of partner when they have fallen in love outside accepted social mores, legally embracing all adult couples into the social institution of marriage. Legal embracing the choice of couples can often lead to social embracing of love that may fall outside traditional constructs of acceptable norms.

EEEEEE. BECAUSE increased protection of inter-caste or inter-religious marriages by the Supreme Court has had a cascading effect on High Courts providing (i) police protection to same

sex couples who may fear violent familial backlash, and (ii) directing release from illegal confinement of a LGBTQ+ person, in the same manner as protection has been given to other couples who face threats and violence from their families and communities for their choice to marry outside their caste, religion, or social diktat.

FFFFF. BECAUSE the legislative recognition of live-in relationships as being in the nature of marriage is also an indication of the continuous evolution of the ideas around marriage, either consistent with or contrary to the societal beliefs.

GGGGG. BECAUSE this Hon'ble Court has the responsibility to play the role of a counter majoritarian institution, protecting constitutional morality over social morality. Public opinion may run counter to the rule of law and constitutionalism.

The right to privacy predicated on dignity, autonomy, liberty is violated if same sex marriages are not legally recognised

HHHHH. BECAUSE sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual.

IIIII. BECAUSE privacy of the individual is an essential aspect of dignity as well. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself.

JJJJ. BECAUSE privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy.

KKKKK. BECAUSE every individual in society irrespective of gender identity or sexual orientation, is entitled to the intimacy and autonomy which privacy protects. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy.

LLLLL. BECAUSE right to privacy must encompass and protect personal intimacies of the home, the family, marriage, motherhood, procreation and child-bearing, and this Hon'ble Court has held this right to be implicit in the concept of ordered liberty.

MMMMM. BECAUSE the right to privacy is not merely the right to be left alone. The right to Privacy been extended to protecting an individual's interests in making vital personal choices such as the right to abort a foetus; rights of same sex couples—including the right to marry; rights as to procreation, contraception, general family relationships, child-bearing, education, data protection, etc.

NNNNN. BECAUSE a right to privacy with respect to other matters of family life extends to the decision to enter the

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relationship that is the foundation of the family in our society,
i.e., the decision to marry.

OOOOO. BECAUSE the right to privacy being an intrinsic part of the right to life and personal liberty under Article 21, the State cannot interfere in someone's desire to go through a ceremony which gives them the same rights and benefits under law that accrue to married opposite-sex couples.

Denying same sex couples the right to marry violates Article 19 of the Constitution

PPPPP. BECAUSE Article 19(1)(a) guarantees freedom of speech and expression of all citizens including expression of choice of partner.

QQQQQ. BECAUSE not having the legal regime and space to be assured recognition in the choices around love, can lead to a deterioration of mental health. This can lead to a connected despair about the future leading to restrictions in free speech and expression.

RRRRR. BECAUSE a meaningful expression of a choice of partner in a society like India that socially places the institution of marriage on a pedestal cannot be attained if same sex couples do not have the option to legally solemnize their union.

SSSSS. BECAUSE the assumption that marriage can only be between couples of the opposite-sex results in sex stereotyping which gravely suppresses freedom of expression.

TTTTT. BECAUSE in a society that primarily recognizes partners within the institution of marriage, not being able to express the choice of a romantic partner within that institution, inhibits the Petitioners' ability to find their place within the social fabric of their community.

UUUUU. BECAUSE the agony of this inhibition of expression has been seen by the Petitioners through their work as mental health professionals, in persons across gender identity and sexual orientation.

VVVVV. BECAUSE forcing LGBTQ+ persons into heterosexual marriages deeply impacts their mental health and well-being which affects their ability to exercise the freedoms guaranteed under Article 19.

WWWWW. For freedom of association and union guaranteed under Article 19(1)(c) includes the right to choice of marital partner.

XXXXX. BECAUSE the institution of marriage is ultimately a union of two persons and their families coming together to forge a new unit of a family.

YYYYY. BECAUSE a union of persons who want to enter into committed relationships outside the realm of personal law is supposed to be given the legal recognition of marriage under the SMA.

ZZZZZ. BECAUSE the exclusion of same sex couples from the ability to form a union recognized in a legal regime is a violation of the right to freedom to form a civil union.

AAAAAA. BECAUSE this Hon'ble Court has held that the right to privacy includes the right to form intimate associations with persons of one's choice.

Freedom of Conscience

BBBBBB. BECAUSE the freedom to decide who will enter a union of companionship based on a shared sense of values is an integral component of freedom of conscience.

CCCCCC. BECAUSE the choice of a marital partner is also a facet of freedom of conscience under Article 25 of the Constitution. A partner is one's companion on life's ethical and moral journey.

DDDDDD. BECAUSE compatibility between partners is also a matter of conscience, as partners support each other socially, financially, spiritually and intellectually and guide one another should they falter.

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Judicial Review

EEEEEE. BECAUSE Judicial Review is part of the basic structure of the Constitution and a violation of equality before law in the exclusion of same sex marriage from India's civil marriage law, cannot be left to Parliament to decide.

FFFFFF. BECAUSE limited conditions laid on the solemnization and recognition of marriage is to secure the basic requirement that the union be between consenting adults. As such, the non-inclusion from the right to marry of the Petitioners' who are consenting adults, and who fall outside any degree of prohibited relationships merely on the basis of their sexual orientation has no rational nexus to the object sought to be achieved by the Act.

GGGGGG. BECAUSE the SMA was enacted to cover cases of marriage as per choice of parties that were not covered by any other legislations. The legislative intent of the SMA has been held to provide for the choice and agency of a person to enter into a marriage of their will, irrespective of social or religious acceptance of the marriage.

HHHHHH. BECAUSE under the framework of the SMA, the State is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the

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Special Marriage Act, 1954 enacted in free India to cover cases not covered by any other legislation on marriages as per choice of parties for a court marriage.

IIIIII. BECAUSE Courts have read in conditions into statutes to achieve the basic purpose of the statute which may be lost because the statute lacked necessary specifications to match the object of the statute.

JJJJJJ. BECAUSE while interpreting a statute that has a legitimate object but needs to be saved from the vice of unconstitutionality due to an unintelligible differentia, the purpose of the legislation as well as realities of social change are relevant.

KKKKKK. BECAUSE this Hon'ble Court has held in this regard that the law regulates relationships between people. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose.

LLLLLL. BECAUSE this Hon'ble Court has held the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

MMMMMM. BECAUSE in adjudicating the constitutional validity of statutes, this Hon'ble Court determines whether the laws made by the Legislature are in conformity with the provisions of the Constitution.

NNNNNN. BECAUSE the role of the judiciary is the protection of fundamental rights which is essential to promote a just and tolerant society.

OOOOOO. BECAUSE the purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular.

PPPPPP. BECAUSE the Constitution ought to be interpreted in a way that would enable citizens to enjoy rights guaranteed by it in the fullest manner and ought not to interpreted in a way that whittles rights down.

QQQQQQ. BECAUSE LGBTQ+ persons have the right to not be relegated to second-class citizenship while allowing other persons free entry into the regime of legal protections of the institution of marriage.

Interpretation to save the SMA from the vice of unconstitutionality

RRRRRR. BECAUSE the SMA must be interpreted in such a manner as to save it from the vice of unconstitutionality.

SSSSSS. BECAUSE the right of same sex couples to marry should be read into the provisions of SMA.

International Law and Comparative Law

TTTTTT. BECAUSE international law recognizes same-sex relationships, including marriage. India has a constitutional duty to honour these internationally recognized rules and principles.

UUUUUU. BECAUSE refusing same-sex couples the right to marry a partner of their choice contradicts India's international obligations.

VVVVVV. BECAUSE the human rights treaties that India has ratified require States parties to guarantee the rights to equality before the law, the equal protection of the law and freedom from discrimination.

WWWWWW. BECAUSE human rights treaty bodies have affirmed that the States are obligated to protect individuals from discrimination on grounds of sexual orientation and/or gender identity, as these factors do not limit an individual's entitlement to enjoy the full range of human rights to which they are entitled.

XXXXXX. BECAUSE international law recognizes a person's rights to marry a partner of their choice and to found a family, which is not limited or restricted in any manner by their sexual orientation and/or gender identity.

YYYYYY. BECAUSE well-established principles of international law regarding affording the right to found a family has been recognized to all persons, and ought to be extended to LGBTQ+ persons by this Hon'ble Court being a constitutional court in line with our constitutional mandate of equality, liberty and non-discrimination.

ZZZZZZ. BECAUSE the right to marry is embodied in India's international obligations of the Universal Declaration of Human Rights and the International Convention of Civil and Political Rights which are enforceable in India under the Protection of Human Rights Act, 1993.

AAAAAAA. BECAUSE this Hon'ble Court has already recognized Yogyakarta Principles and held that they must be recognized and followed to the extent that they are not inconsistent with Part III of the Constitution.

BBBBBBB. BECAUSE this Hon'ble Court has held that the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (Yogyakarta Principles) conform to our constitutional view of fundamental rights of the citizens of India and persons who come before this Hon'ble Court.

CCCCCCC. The Yogyakarta Principles were adopted in 2007 as a coherent and comprehensive identification of the obligation of

States to respect, protect and fulfil the human rights of all persons regardless of their sexual orientation or gender identity.

DDDDDDD. BECAUSE the Yogyakarta Principles state that States shall ensure that marriages and other legally-recognised partnerships may be entered into only with the free and full consent of the intending spouses or partners.

EEEEEEE. BECAUSE the Yogyakarta Principles specifically iterate an obligation to ensure that irrespective of gender identity, sexual orientation, gender expression or sex characteristics, all persons have the right to universal enjoyment of human rights, right against non-discrimination, right to recognition before the Law, right to found a family and participate in cultural life of a community, right to economic, social and cultural rights, right to expression, opinion and forming association etc.

FFFFFFF. BECAUSE there is an increasing international judicial consensus around sexual orientation equality, including recognizing same-sex marriages.

GGGGGGG. BECAUSE as held by this Hon'ble Court in *Navtej Singh Johar*, the accumulated wisdom reflected in the judgements delivered by other constitutional courts provide a sound and appreciable confirmation about the guarantees contained in the Indian Constitution.

HHHHHHH. BECAUSE more than 30 countries have legalised same-sex marriage as of today.

IIIIII. BECAUSE *inter alia* Austria, Brazil, Colombia, Costa Rica, Ecuador, Mexico, Slovenia, South Africa, Nepal, Taiwan, United States of America, Ecuador, Argentina, Brazil, Colombia, Uruguay, have granted legal recognition to same-sex marriage by way of judicial pronouncements.

JJJJJJ. BECAUSE marriage equality has found recognition in several jurisdictions in Europe. Same-sex marriage has been legalized in the Netherlands (2001), Belgium (2003), Spain (2005), Norway (2009), Sweden (2009), Portugal (2010), Iceland (2010), Denmark (2012), France (2013), the United Kingdom (2013), Luxembourg (2015), Ireland (2015), Finland (2017), Malta (2017), Germany (2017), Austria (2019), and Switzerland (2021).

KKKKKKK. BECAUSE the US Supreme Court, in *Obergefell v. Hodges*, 576 US 644 (2015) (9-judge bench), read a right to same-sex marriage into the equality clause. It was held that the Constitution entitles same-sex couples to civil marriage “on the same terms and conditions as opposite-sex couples.” Justice Anthony Kennedy speaking for the majority held that:

“The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty”

Justice Kennedy further held as under:

"This analysis compels the conclusion that same-sex couples may exercise the right to marry. The four principles and traditions to be discussed demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples."

LLLLLLL. BECAUSE the US Supreme Court further held that:

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right"

MMMMMMM. BECAUSE on 12.06.2019, Ecuador's Constitution Court (10-18-CN/19) ruled to overhaul the country's laws and hold that legislation prohibiting same sex marriage was discriminatory and unconstitutional, and that same-sex couples enjoy equal rights.

NNNNNNN. BECAUSE the Inter-American Court of Human Rights, in 2018, issued an advisory opinion (Advisory Opinion OC-24/17) to Costa Rica that signatories of the American Convention on Human Rights are obliged to make same-sex marriage legal. It was held that:

"States must ensure access to all the legal institutions that exist in their domestic laws to guarantee the protection of all the rights of families composed of same sex couples, without

discrimination in relation to families constituted by heterosexual couples.”

OOOOOOO. BECAUSE in *Oliari v. Italy*, 2015 ECHR 176, the ECtHR held that gay couples are equally capable of entering into stable and committed relationships in the same way as heterosexual couples. It further affirmed the view that same sex couples are in need of legal recognition and protection of their relationship.

PPPPPPP. BECAUSE in *Oliari*, the ECtHR noted that there exists a clear gap between the social reality of the applicants (same sex couples), who openly live their relationship, such as the Petitioners in the present case, and the law, which fails to formally recognize same sex partnerships. In doing so, the State authorities have overstepped their margin of appreciation and failed to fulfil their positive obligation to ensure that the applicants have available specific legal framework providing for the recognition and protection of their same sex unions.

QQQQQQQ. BECAUSE the Constitutional Court of Austria ruled on 04.12.2017 (*G-258-259 of 2017*) that denial of marriage equality was discriminatory, legalizing same-sex marriage, and held as under:

“The distinction in the law between opposite-sex and same-sex relationships as two different legal institutions thus violates the principle of equality, which forbids any discrimination of individuals on grounds of personal characteristics, such as their sexual orientation.”

RRRRRRR. BECAUSE most recently (08.07.2022) the Constitutional Court of Slovenia (6:3) (Decision No. U-I-486/20, Up-572/18) legalized same-sex marriage and adoption

by same-sex couples. It was held that Slovenia's statutory provisions allowing for only opposite-sex marriages and adoptions violated a constitutional prohibition against discrimination. It was held that such discrimination cannot be justified by the traditional meaning of marriage as a union of husband and wife, nor can it be justified by the special protection of the family.

SSSSSSS. BECAUSE the Constitutional Court of South Africa in *Minister of Home Affairs and Another v. Fourie and Another*, Case CCT 60/04, and *Lesbian and Gay Equality Project and Others v. Minister of Home Affairs and Others*, Case CCT 10/05, held that same-sex couples have a constitutional right to marry at par with entitlements and responsibilities enjoyed by heterosexual couples. The Constitutional Court of South Africa held as under:

"81... A law that creates institutions which enable heterosexual couples to declare their public commitment to each other and achieve the status, entitlements and responsibilities that flow from marriage, but does not provide any mechanism for same-sex couples to achieve the same, discriminates unfairly against same-sex couples. It gives to the one and not to the other. The instruments created by the legal system exclude from their reach persons entitled to be protected by them."

TTTTTTT. BECAUSE the Supreme Court of Nepal in *Sunil Babu Pant v. Nepal Government*, (2008) 2 NJA LJ 262, in relation to same-sex marriages, have held as under:

"Looking at the issue of same sex marriage, we hold that it is an inherent right of an adult to have marital relation with another adult with his/her free consent and according to her/his will."

UUUUUUU. BECAUSE the Taiwan Constitutional Court ruled in 2017 (Judicial Yuan Interpretation No. 748) that marriage could not be restricted to opposite-sex couples, and held as under:

"The current provisions of the Marriage Chapter do not allow two persons of the same sex to create a union of intimate and exclusive nature for the purpose of living a common life. This is obviously a gross legislative flaw. To such extent, the provisions of the Marriage Chapter are incompatible with the spirit and meaning of the freedom of marriage as protected by Article 22 of the Constitution."

VVVVVVV. BECAUSE as held in *Navtej Singh Johar*, in the march of civilisation across the spectrum of a compassionate global order, India cannot be left behind.

WWWWWWW. Any other ground with the permission of this Hon'ble Court.

60. That the Petitioners herein has not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any High Court or any other Court throughout the territory of India.

61. Petitioners have no alternative, equally efficacious remedy except approaching this Hon'ble Court under Article 32 of the Constitution of India.

62. That this Petition is made *bona fide* and in the interest of justice.

PRAYER

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In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ:

(a) Declaring that the Special Marriage Act, 1954 ought to apply to "*a marriage between any two persons*" regardless of their gender identity and sexual orientation; or in the alternative

(b) Declaring that the Special Marriage Act, 1954, is unconstitutional and violative of Articles 14, 15, 19, and 21 of the Constitution of India, insofar as it does not provide for solemnization of marriage between a same sex couple; and

(c) Pass any other writ, order or direction that this Hon'ble Court may deem fit and necessary in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS
IN DUTY BOUND SHALL EVER PRAY

Through

DRAWN BY
ARUNDHATI KATJU & SHRISTI BORTHAKUR,
ADVOCATES

SETTLED BY
DR. MENAKA GURUSWAMY,
SENIOR ADVOCATE

DRAWN ON: 12/11/22
FILED ON: 14/11/22
NEW DELHI

FILED BY

PRIYA PURI