

Synopsis

Petitioners, an Indian citizen and an Overseas Citizen of India, are two gay men who married in Washington D.C, United States in 2017. Their marriage was officiated by Judge Sri Srinivas, the Chief United States Circuit Judge for the U.S. Court of Appeals of District of Columbia Circuit and is valid under US law. On 05.03.2020, they approached the Indian consulate at New York to register their marriage under the Foreign Marriage Act, 1969. The consulate refused the application for registration on grounds of their sexual orientation alone. The Indian consulate would have registered the marriage of any similarly placed opposite sex couple. The consulate violated Petitioners' rights under Articles, 14, 15, 19 and 21 which the Supreme Court in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 has held is guaranteed to LGBT and non-LGBT Indians with equal force. Further, the FMA ought to be read to apply to same- sex marriages and is unconstitutional to the extent it does not do so.

Illustrative of an immediate impediment to the Petitioners are the travel restrictions put in place during Covid-19. Before the pandemic, the Petitioners regularly visited India annually during Diwali and Dussehra festivals. Amidst the lockdowns during the Covid-19 pandemic, all foreigners including OCI cardholders were restricted from entering the country. When a relaxation was brought to the same in May, 2020, it was restricted to certain class of OCI cardholders such as those persons whose spouse was an Indian national, or those whose parents were Indian nationals. Non recognition of the Petitioners' marriage by law in India continues to

disentitle them to travel as a married couple to India and spend time with their families.

The Petitioners love each other and have been in a committed relationship since 2012. The 1st Petitioner, who is an Indian citizen, met the 2nd Petitioner (an Overseas Citizen of India) in Washington D.C. They fell in love and over time, as their relationship grew, they met each other's parents and the families grew close. With the blessings of the parents, the Petitioners decided to take the next step in their journey—to get married to each other. Following the court registration in 2017, the Petitioners, with the full support and blessings of their parents and family members, were married in Killeen, Texas in March 2019 in a traditional Jain wedding with all the ceremonies commonly performed at such events. Thereafter, in November 2019, the parents of the 1st Petitioner held a reception for the newly-weds in their hometown in New Delhi which was attended by around 100 close friends and family.

The Petitioners are approaching this Hon'ble Court invoking its writ jurisdiction under Article 226 of the Constitution of India, *inter alia*, seeking legal recognition of their marriage under the Foreign Marriage Act, 1969. The Petitioners submit that the Respondents' refusal to register the marriage of the Petitioners, who are a same-sex couple, violates Articles 14, 15, 19, and 21 of the Constitution of India, and therefore, warrants interference of this Hon'ble Court. Further, the Foreign Marriage Act, 1969 inasmuch as it discriminates against same-sex couples by denying legal recognition of their marriage is ultra vires Articles 14, 15, 19 and 21

of the Constitution of India, and ought to be read down to extend to same-sex couples.

The Petitioners submit that the Hon'ble Supreme Court has in various decisions held that the right to marry a person of their choice is inherent in Article 21 of the Constitution of India. The Petitioners seek protection of this fundamental guarantee which is being denied to them solely because they are a same-sex couple.

The Hon'ble Supreme Court in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 observed that history owes an apology to the LGBTQ community for the decades of exclusion and discrimination meted out by the Indian society. The Petitioners submit that non-recognition of same-sex marriages is a wanton act of discrimination that strikes at the root of dignity and self-fulfillment of LGBTQ couples.

Hence, the instant Petition.

List of Dates

Date	Particulars
1969	The Foreign Marriage Act, 1969 was enacted by the Indian Parliament to grant legal recognition of marriages between an Indian citizen and non-citizen.
2012	The Petitioners, both gay men, are a same-sex couple who have been in a committed relationship since they met and fell in love in 2012.
19.01.2017	The Petitioners were married in Washington D.C. in a court ceremony officiated by the Hon'ble Justice Sri Srinivasan, the Chief United States Circuit Judge for the U.S. Court of Appeals of District of Columbia Circuit.

06.09.2018	A Constitution Bench of the Hon'ble Supreme Court of India passed its historic decision in <i>Navtej Singh Johar & Ors. V. Union of India & Ors.</i> reported in (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, gave great impetus to the LGBT movement in India.
29-30.3.2019	With the full support and blessings of their parents and family members, Petitioners were married in Killeen, Texas in March 2019 in a traditional Jain wedding with all the ceremonies commonly performed at such events, including the recitation of <i>Navkar</i> and <i>Shanti</i> mantras, <i>chedda bandhan</i> , <i>sangeet</i> , <i>baraats</i> , <i>pheras</i> etc.
30.11.2019	The parents of the 1 st Petitioner held a reception for the newly-weds in their hometown in New Delhi which was attended by around 100 close friends and family.
05.03.2020	Having firm roots in India, and desirous of obtaining legal recognition of their marriage in India, the Petitioners applied to the 2 nd Respondent in the Indian Consulate in New York, USA for registration under the Foreign Marriage Act, 1969, but were denied on the ground that they are same-sex couple.
07.03.2020	The 1 st Petitioner addressed an email to the Consulate General setting out the relevant facts of 05.03.2020 stating therein that denial of recognition of their marriage was purely discriminatory and an affront to the principles of equality and dignity enshrined under Articles 14, 15, 19 and 21 of the Constitution of India.
10.03.2020	The then Consulate General of India at New York, Mr. Sandeep Chakravorty, replied vide email dated 10.03.2020 to the Petitioners. While denying the allegations of discrimination, the Consulate General informed the 1 st Petitioner that there are no extant legal provisions or rules which apply to the Petitioners' particular case and as such, they

	are not able to provide the service of provision of Certificate/Registration of Marriage.
.10.2020	Aggrieved, the Petitioners prefer the instant petition under Article 226 of the Constitution of India.

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRA ORDINARY CIVIL JURISDICTION
WRIT PETITION (C). NO. 7657 OF 2020

IN THE MATTER OF:

1. VAIBHAV JAIN

[REDACTED]

2. PARAG VIJAY MEHTA

[REDACTED]

[REDACTED]

[REDACTED]

...PETITIONERS

VERSUS

1. UNION OF INDIA
THROUGH THE SECRETARY, MINISTRY OF EXTERNAL
AFFAIRS
2. MARRIAGE OFFICER,
CONSULATE GENERAL OF INDIA, NEW YORK

BOTH THROUGH THE STANDING COUNSEL (CIVIL)
DELHI HIGH COURT
NEW DELHI

...RESPONDENTS

**PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA
SEEKING *INTER ALIA* A WRIT OF MANDAMUS DIRECTING THE
RESPONDENT NO. 2 TO REGISTER THE MARRIAGE OF THE
PETITIONERS UNDER THE FOREIGN MARRIAGE ACT, 1969.**

MOST RESPECTFULLY SHOWETH

1. The Petitioners have preferred the instant petition under Article 226 of the Constitution of India seeking, *inter alia*, a writ of mandamus to the Respondents directing them to register the Petitioners' marriage under the Foreign Marriage Act, 1969 (hereinafter "FMA") as it would any other married couple. The Petitioners are a same-sex couple who married in the United States in the year 2017. The 1st Petitioner is an Indian citizen and the 2nd Petitioner is an Overseas Citizen of India (OCI). The Petitioners seek to avail of the rights, benefits and privileges associated with the legal recognition of marriage in India and hence, wish to register their marriage in accordance with the provisions of the FMA. The Respondents have denied the Petitioners such recognition solely because they are a same-sex couple.

PARTIES

I. PETITIONERS

2. The Petitioners, both gay men, are a same-sex couple who have been in a committed relationship since they met and fell in love in 2012. In 2017, the Petitioners were married in Washington D.C. in a court ceremony officiated by the Hon'ble Justice Sri Srinivasan, the Chief United States Circuit Judge for the U.S. Court of Appeals of District of Columbia Circuit. Following the court registration, the Petitioners, with the full support and blessings of their parents and family members, were married in Killeen, Texas in March 2019 in a traditional Jain wedding with all the ceremonies commonly performed at such events, including the recitation of *Navkar* and *Shanti* mantras, *chedda bandhan*, *sangeet*, *baraats*, *pheras* etc. Thereafter, in November 2019, the parents of the 1st Petitioner held a reception for the newly-weds in their hometown in New Delhi which was attended by around 100 close friends and family.

3. On 05.03.2020, the Petitioners moved an application before the Respondent No. 2 at the Indian Consulate in New York City, New York seeking registration of their marriage under the FMA, 1969. By communication dated 10.03.2020, the

Respondent no. 2 refused registration on the sole and admitted ground that they are a same-sex couple. Aggrieved, the Petitioners are before this Hon'ble Court, *inter alia*, seeking legal recognition of their marriage which flows directly from their fundamental right to marry a person of their choice as recognized by the Hon'ble Supreme Court of India as well as this Hon'ble Court.

4. The 1st Petitioner, Mr. Vaibhav Jain, is an Indian citizen. The 1st Petitioner obtained his Bachelors Degree in Dental Sciences from the [REDACTED] in Bengaluru in 2010, and thereafter went on to read for his Masters in Public Health from the [REDACTED] University in Washington D.C., USA in 2013. The 1st Petitioner has worked in the World Health Organization and is presently a Public Health Consultant residing in the United States.
5. The 2nd Petitioner, Mr. Parag Vijay Mehta, is an Indian-origin US citizen and an Overseas Citizen of India. After obtaining his Bachelor of Arts degree from the University of [REDACTED] [REDACTED] (U.S.A) in 1999, he read for his Master's in Public

Administration at [REDACTED] New York in 2000. The Petitioner is the Executive Director and Senior Vice President of the [REDACTED] Centre for Inclusive Growth based out of New York.

II. RESPONDENTS

6. The 1st Respondent is the Union of India through the Ministry of External Affairs. The Consular, Passport and Visa Division of the 1st Respondent holds charge over the consulates and embassies of the Government of India across the world, including the Consulate General of India, New York, USA.
7. The 2nd Respondent is the Marriage Officer appointed under S. 3 of the Foreign Marriage Act, 1969, in charge of performing the functions entrusted under the FMA, 1969 in the United States of America at the Consulate General of India, New York.

FACTS

8. The Petitioners met in June 2012 in Washington D.C., when they danced with each other at a Pride Parade. The Petitioner no. 1 was [REDACTED] years old and Petitioner no. 2 was [REDACTED] years old when they met in 2012. After they first met, the 2nd Petitioner

reached out to the 1st Petitioner on Facebook. Thereafter, the Petitioners went out for dinner which became a six-hour long conversation, where they discovered their shared Jain faith and love for old Bollywood films. Over the next few years, as the Petitioners came to know each other better, they discovered that they shared common beliefs and interests, and soon enough, they fell in love. Eight years since they first met, the Petitioners have come to deeply cherish their relationship based on love, respect, and support of each other.

9. The Petitioners Nos. 1 and 2 hail from traditional middle-class families in India and the U.S. respectively. The 1st Petitioner belongs to a Digambar Jain family. His parents have been settled in [REDACTED] [REDACTED] for the past 50 years. The 1st Petitioner's father is a highly regarded and well-respected member of the Jain community in [REDACTED]. His mother is a homemaker and a graduate of Lucknow University. The 1st Petitioner grew up in a typical middle-class joint family, with his *nani*, *tau*, *tai*, and his cousins with a pervading sense of community and family bonds. As is the

case with many people, the 1st Petitioner's aspiration to have a marital relationship that is recognized by Indian law and society derives from this upbringing where he imbibed core familial values and beliefs buoyed by long-term commitments to spouse and family.

10. Growing up, the 1st Petitioner struggled with his sexuality and hid it from his parents for 27 years. In school, the 1st Petitioner had suffered bullying by teachers and students alike. The 1st Petitioner grew up without knowing any other LGBT people around him due to the conservative positions that society held about homosexual relationships. Yet, at the same time, the 1st Petitioner grew up seeing many of his family members being able to enjoy companionship through marriage in opposite-sex relationships. This added to the 1st Petitioner's doubts about whether he would be able to find someone whom he loved and get married to with the blessings of his near and dear ones.

11. The 2nd Petitioner's parents, who are doctors, emigrated to the United States in 1972. Like many Indians who migrated to the United States, the 2nd Petitioner's parents, who are

Gujarati Jains, have a strong sense of community and actively participated in the affairs of the Indian American and Gujarati diaspora. The 2nd Petitioner's father [REDACTED] was the President of the India Circle community group in the 1980s and founded the Gujarati Samaj of Central Texas in the 1990s. In addition to being a surgeon and businessman, Dr. [REDACTED] is a regular speaker at Indian diaspora conventions and holds a signature workshop entitled "American Born Confused Desis—Who is really confused parents or kids?". Over the years, [REDACTED] has also garnered a venerable position among the Indian-American youth, who have constantly turned to him for relationship and marriage advice.

12. Despite being doctors, the 2nd Petitioner's parents had misconceptions about homosexuality and held traditional notions about relationships, marriage, and family. As a child, Petitioner no. 2 struggled with his sexuality and, like the 1st Petitioner, hid it from his parents and his family. Petitioner no. 2 suffered from depression on account of his sexuality through his growing years and even attempted to commit

suicide on several occasions while he was in school. Throughout his childhood, Petitioner no. 2 never imagined that he could have a relationship that could be joyously recognized by his parents and society, much less that such a relationship could be sanctified by marriage.

13. The 2nd Petitioner only told his parents about his sexuality in 1999 at the age of [REDACTED]. It was the day of his college graduation. He hoped that the pride his parents felt in him that day would help them love and accept them even when he told them about his sexuality. At the ceremony where the 2nd Petitioner delivered the keynote address on the 51st Annual Honors Day convocation at the University of Texas at Austin, his parents were beaming with pride and excitement about their son's achievements.
14. After the ceremony following a quick lunch, the 2nd Petitioner and his family returned to their apartment. At that point of time, overwhelmed by emotions, the 2nd Petitioner shared with his parents about his past struggles with his sexuality and personal conflicts that came with such struggles. The 2nd Petitioner confided to his parents that these struggles had

even led him to attempt suicide several times when he was in high school, and finally, he had after many years mustered the courage to tell them the truth about his sexuality. All these years, the 2nd Petitioner had reluctantly refrained from revealing to his parents that he was gay for fear of hurting them. The 2nd Petitioner's parents were shocked by their son's revelation that he was gay. His mother was unable to speak from shock. However, to the pleasant surprise of the 2nd Petitioner, his father immediately embraced him and declared his support for his son.

15. Even though the 2nd Petitioner's father had declared his support for his son almost immediately, his father still had to come to terms with his own misunderstandings about homosexuality. This personal conflict of ██████████ led him to rely on scientific journals which helped him rid his mind of homophobic notions and embrace his son for who he is. Anticipating that there would be other family members and close friends who may have similar misunderstandings, ██████████ wrote a letter to all their immediate family members to declare his love and support for his son. In the

letter, [REDACTED] addressed his own conflicts with the revelation about his son and stated that the most important thing for him and his family to do was to support his son. In this moving letter, [REDACTED] declared:

“...But as I look at Parag, our homophobic notions, fixed ideas about marriage, sex and life suddenly change. We realized that the most important thing for us to do now is to support this great son of ours. We have the same degree of pride in being his parents now as we had when we sat among 3000 people watching him give that excellent speech yesterday. So what should we do? Well, we realize that you have made a significant contribution to Parag’s life over the past twenty-two years. Your love and encouragement has played a vital role in his development. Thus, we believe you should know. We can never change his destiny, but we refuse to live in denial. We owe it to Parag and all he has brought to our lives to face this reality, accept the situation and do the best we can do to support him. [REDACTED] and I will always love and support him. He is our son, our brother and our pride. We just wanted you to hear this from us and to know that we will always love our Parag.”

True copy of the letter dated 17.04.1999 is annexed herewith and marked as “**Annexure P-1**”.

16. The Petitioners have been in a committed relationship for the past eight years since they met for the first time in 2012. Over time, the Petitioners met and spent quality time with each other’s families. While the relationship of the Petitioners as a

couple was not known to the 1st Petitioner's parents, the 2nd Petitioner's parents had come to accept the couple and the relationship. As the bond between the Petitioners grew stronger over the years, the 2nd Petitioner's mother, Ms. [REDACTED], came to accept not just her son but also the partner he had chosen for himself, the 1st Petitioner. She encouraged the couple to take the relationship to a more serious status. She advised the Petitioners that to take the relationship to the next step it would be important for the 1st Petitioner to tell his parents about his sexuality.

17. It also soon became clear to the 1st Petitioner that it would be impossible to build a relationship with the 2nd Petitioner if he did not tell his parents about his sexuality. The Petitioners were deeply in love with each other and were travelling the world together, and seeing photos of the couple on social media, some of the family members of the 1st Petitioner had raised questions about his sexuality. The 1st Petitioner was advised by the 2nd Petitioner that it was important for him to reveal the truth to his parents himself rather than them hearing about it from someone else or hearing painful

rumours. Even though this was a personally difficult and stressful thing for the 1st Petitioner to do, his commitment and love towards the 2nd Petitioner emboldened him to finally share his truth to his own parents. The 1st Petitioner realized that this crucial step in his life had to be taken as they no longer wished to hide their relationship from the public eye, and particularly, from his own parents.

18. In 2013, the 1st Petitioner was selected for a summer internship at the World Health Organization in Switzerland. The 1st Petitioner's parents were naturally proud of his achievements, and to commemorate this achievement, they planned a family holiday to Switzerland. It is here that the 1st Petitioner revealed his sexuality to his parents. Through a difficult conversation addressing his personal conflicts and confronting his parents' disbelief and confusion, the 1st Petitioner revealed that he was gay and was in love with the 2nd Petitioner.

19. This revelation by the 1st Petitioner came as a shock to his parents who were very entrenched with the traditional notions of sexuality and companionship. The 1st Petitioner's

parents struggled to accept this reality about their son's sexuality. His mother froze in shock but soon enough, his father reassured Petitioner no. 1 of his love and support. The 1st Petitioner also told his parents that he had suffered depression and anxiety throughout his childhood years because he had kept his sexual orientation a secret. The rest of that night was spent by the 1st Petitioner and his parents talking through various aspects about his life and personhood that had until then remained a secret to the parents. At the end of this long conversation with questions from the parents that caused frustration, discomfort and sadness to the 1st Petitioner, they finally understood the magnitude of the struggle leading up to that night and the courage of their son to be able to finally tell his truth. The 1st Petitioner's parents expressed immense sadness that it had taken so many years for their son to be able tell them his truth for fear of losing their love and affection and that he had to suffer alone because he wanted to protect them from the truth.

20. Both sets of the parents struggled to accept their sons' sexuality when they came to know about it. However, over the

years they came to understand and learn about the societal and legal impediments that surrounded homosexuality, and how it perpetuated degrading myths about sexual minorities. Notably, it was the reaction of the 1st Petitioner's late *nani* (who was 85-years old at the time) that the family drew support and strength from in their struggle to understand the truth about the 1st Petitioner. The 1st Petitioner's *nani* on hearing about his sexuality remarked, with the tender concern she had for any of her grandchildren, that as long as he was healthy, happy and doing alright, why should anyone be bothered about his sexuality. This remarkable attitude about the 1st Petitioner's sexuality from an octogenarian and revered figure in the family went a long way in easing the struggles his parents and other family members had about coming to terms with their own misunderstandings. After the Petitioners revealed their relationship and their long-term commitment to each other, their parents not only accepted their sons but also joined in by supporting their dreams and aspirations.

21. The 2nd Petitioner and his parents made visits to India to meet with the parents of the 1st Petitioner, and as the families came together, they began to understand more deeply the commitment the Petitioners had to each other. Consequently, they also recommended that the Petitioners move towards consecrating their relationship through marriage. Like any other parents, the Petitioners' parents wished them to have a happy, stable, and settled married life. As they had come to accept their children and their relationship, the Petitioners' parents wished that their close friends and family and the larger society would also embrace and accept them. This next step in their relationship was not only important for the Petitioners themselves, but also for their parents. Marriage of their sons is an individual dream and aspiration that the parents have held and planned for. Marriage being not only a coming together of two individuals, but two families, the 1st Petitioner's parents met their counterparts and made trips to New Delhi to firmly secure this union.
22. The 2nd Petitioner wrote a letter to the parents of the 1st Petitioner asking for their consent for the Petitioners'

marriage while both the families were on a cruise. In this letter written in Hindi, the 2nd Petitioner declared his love for the 1st Petitioner and his intention to no longer keep their relationship a secret. In this touching declaration of his love for the 1st Petitioner, the 2nd petitioner stated:

“I love Vaibhav with all my heart. I believe Vaibhav is truly my life partner. It is my belief that our coming together was solely due to God’s grace. I wish to live the rest of my life with Vaibhav, to start a family with him, and grow old with him.

...

Today, Vaibhav and I are ready to move forward together in life. With great respect, today I seek your blessings for when Vaibhav and I propose marriage to each other. We have already promised this each other many years ago—but today we wish to place this promise officially, publicly and legally before the world.

...

I am not only asking Vaibhav’s hand in marriage, but also a relationship with both of you and your family. Would you, as always, love us, be with us, fight for us, provide us with security, place faith in us and give us strength to keep our faith in each other? What I ask of you today, every parent will without hesitation give their children. Perhaps, what I am really asking of you is, ‘Would you also be *my* mummy and daddy?’”

True copy of the letter dated 20.07.2016(along with translation to English) from the 2nd Petitioner to the 1st Petitioner’s parents is annexed herewith and marked as “**Annexure P-2**”.

23. Having obtained the consent and blessings of their parents, each of the Petitioners were waiting for the other to first propose marriage. The Petitioners were at New Mexico with two of their friends as the 1st Petitioner had planned a surprise birthday party for the 2nd Petitioner for his 40th birthday. Given this was a significant milestone in his life, the 2nd Petitioner decided to give a surprise of his own to the 1st Petitioner. The 2nd Petitioner proposed to the 1st Petitioner atop a hill in the backdrop of a picturesque sunrise in Santa Fe, New Mexico on 27.09.2016, the day after the former's 40th birthday. The Petitioners also wanted this precious moment in their lives to be celebrated with their friends and family. To this end, the whole event was broadcast real-time over Facebook Live and was watched by thousands of friends and family members. True copy of the photographs taken on 27.09.2016 along with news-clipping of the event is annexed herewith and marked as "**Annexure P-3**".
24. The Petitioners were already living together in the United States, however, they wanted their relationship to be legally recognized through the institution of marriage. The

Petitioners wanted to extend the protections available under the law to each other, ranging from residency benefits, tax benefits, property rights regarding renting and owning apartments as well as healthcare decisions.

25. As they were residing in the District of Columbia (D.C.) where same-sex marriages were recognized since 2010 under the Religious Freedom and Civil Marriage Equality Amendment Act, 2009, the Petitioners with the support of both families, legally married in Washington D.C. on 19.01.2017 at the U.S. Court of Appeals of District of Columbia Circuit. The wedding was officiated by Hon'ble Justice Sri Srinivasan, the Chief United States Circuit Judge for the U.S. Court of Appeals of District of Columbia Circuit. Notably, he is the highest Indian American Judge in the United States judicial system. True copy of the Certificate of Marriage dated 19.01.2017 issued by the Supreme Court of the District of Columbia Marriage Bureau is annexed herewith and marked as "**Annexure P-4**".
26. On 06.09.2018, a Constitution Bench of the Hon'ble Supreme Court of India passed its historic decision in *Navej Singh*

Johar & Ors. V. Union of India & Ors. reported in (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, gave great impetus to the LGBTQ movement in India.

27. On a personal level, this gave immense sense of security to the Petitioners, and succor to their parents who could now, after this decision, accept and support their children's relationship without fear and shame in society. The *Navtej Singh Johar* decision also resonated on a deeper level to the Petitioners and their parents, particularly, Hon'ble Justice Indu Malhotra's observation in the decision:

“644. History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that homosexuality is a completely natural condition, part of a range of human sexuality.”

This observation by the highest court in India resonated personally with the family of the Petitioners. They were reminded of their own struggles that they had to overcome

about their children's sexuality. In turn, it emboldened them to hold up with pride their children's lives, relationships and personhood to their friends, extended family and the society at large.

28. Following their civil wedding, the Petitioners organized a traditional wedding in accordance with their religious, cultural, and familial beliefs in Killeen, Texas, USA. The Petitioners are both Jains and wanted to have a traditional Jain wedding, just like their other siblings and extended families. Both the families sat together to plan the wedding incorporating the rites and rituals of a traditional Jain wedding. Planning began in December 2018, culminating in a two-day event on March 29-30, 2019, when the Petitioners got married in a traditional Jain wedding.
29. The wedding was attended by hundreds of friends and family. The Petitioners had always dreamed of having an elaborate Indian Jain wedding that they had seen and been part of many times over the years, within their families and of friends. The Petitioners being devout Jains wished to include traditional events that held emotional significance with each

of the families. The Petitioners, in consultation with the elders in the community, made certain modifications to the events.

30. The wedding began with two baraats where each son-in-law mounted on horses was greeted by his mother-in-law with a *tilak* and *aarti*. The Petitioners were escorted to the *mandap* by the maternal uncles preceded by girls from their respective families carrying flowers. After the exchange of *jaimalas*, a *puja* was held where the *Navkaran and Shakti mantras* (sacred prayers in Jainism) were recited in the presence of a *pandit*. Each of the grooms led two of the four *pheras* and the traditional *kanyadaan* was instead held as a 'var-daan'. This was followed by a *Chedda Bandhan, hasta milaap, mangal phera and saptapadi*. The celebrations also had a 'sangeet-baraat event', wedding and reception. The events came to a close with the Petitioners surprising the guests by making their exit from the venue in a helicopter that was arranged for the event, marking their shared love for filmy moments. True copies of the wedding invitations and events detail are annexed herewith and marked as "**Annexure P-5**". True

copies of certain photographs from the wedding held on March 29-30, 2019 are annexed herewith and marked as **“Annexure P-6”**.

31. The parents of the 1st Petitioner wanted to hold a reception in New Delhi and celebrate this moment as they would have for any of their children and relatives. As many of the relatives of the 1st Petitioner could not attend the wedding in Texas, and also to allow for friends and family in India to be able to join in this joyous moment in the lives of the Petitioners, a reception was held in New Delhi on 30.11.2019. Around 100 of the closest family and friends of the Petitioners, including the members of the joint family that he grew up with—his *nanis*, *chachas*, *buas* – all attended the function. There were dance programs by 1st Petitioner’s cousins and nieces. Classmates and teachers of the 1st Petitioner were also in attendance at this event. There were speeches by family members and the event had a signature hashtag #2Jainz. The event held in the Lalit hotel in New Delhi was a grand celebration. True copy of the photographs of the New Delhi

reception held on 30.11.2019 are annexed herewith and marked as “**Annexure P-7**”.

32. The Petitioners have since been settled in the United States but continue to maintain strong, familial roots in India. The 1st Petitioner, as stated above, is an Indian citizen, and a permanent resident of New Delhi. The 2nd Petitioner has a wide network of family and friends in India. Having firm roots in India, and the constant interaction with their home and family members, the Petitioners believed that it would be necessary to have their marriage legally recognized in India.
33. The 1st Petitioner has operational bank accounts in India, and files tax returns under the Income Tax Act, 1961. The 1st Petitioner also has coparcenary rights over the ancestral property of his parents situate in India. The 1st Petitioner is an Indian passport holder. To be able to add the name of the 2nd Petitioner as spouse on his passport, a recognized marriage certificate issued under the Foreign Marriage Act, 1969 would be required. This, in turn, is crucial for applying for visa for travel to India for the couple, as the 2nd Petitioner’s benefits as an OCI cardholder is subject to

notifications issued by the Respondents time to time. More recently, during the Covid-19 pandemic these notifications have prevented the Petitioners from travelling to India as a couple.

34. The Petitioners wished for the legal recognition of their status as a married couple, and to be able to secure the rights, privileges, and benefits for each other appurtenant to the legal recognition of marriage in India. Towards this end, the Petitioners wanted to seek registration of their marriage under S. 17 of the Foreign Marriage Act, 1969. True copy of the Foreign Marriage Act, 1969 is annexed herewith and marked as “**Annexure P-8**”.
35. Availing of the online application facility provided by the Consulate General of India in the United States, having its office in the city of New York, the Petitioners herein made an application seeking registration of their marriage under S. 17 of the FMA. As per the guidelines provided on the website, the Petitioners were required to appear in person to the complete the formalities before the Consulate General of India, New York. True copy of the application along with

requisite forms filed by the 1st Petitioner with the Consulate General of India, New York is annexed herewith and marked as “**Annexure P-9**”.

36. On 05.03.2020, the Petitioners approached the office of the Consulate General of India, New York to complete the formalities to obtain a registration of their marriage. The Petitioners were ready with the requisite documentation in support of their marriage duly solemnized in the United States as well as other statutory forms. The Petitioners were also accompanied by three witnesses, [REDACTED], [REDACTED], [REDACTED], should their presence be required.
37. At the consulate, after waiting for their turn as per the token system, the Petitioners were called to the document collection center. After realizing that the Petitioners were a same-sex couple, the consular officer asked them to wait until she consulted with her supervisor. Thereafter, the Petitioners were requested to meet the consular officer in the interview room, where she explained to them that they would not be able to get a Certificate of Marriage. When asked by the

Petitioners as to why they were denied a Certificate of Marriage, the Petitioners were informed that the name of the 2nd Petitioner was not updated as spouse in the 1st Petitioner's passport. At this juncture, the Petitioners supplied a copy of the Certificate of Marriage issued by the Superior Court of District of Columbia Marriage Bureau as a proof of their marriage. The Petitioners also reminded the officers of the 2nd Respondent that this was not a requirement under S. 17 of the FMA.

38. Thereafter, the Consul for Visa and Attestation informed the Petitioners that the Consulate would not register their marriage and consequently, no certificate of marriage could be issued. On further inquiry, the Petitioners were informed orally that the Consulate would not entertain their application because they were a same-sex couple. Thus, Consulate General of India, New York refused to accept the application for registration of the marriage of the Petitioners under S. 17 of the Act for reasons outside of those prescribed under the Act, and on a completely extraneous and

discriminatory ground that the Petitioners were a same-sex couple.

39. Since a written refusal to the application was not provided the 1st Petitioner by an email dated 07.03.2020 addressed to the Consulate General set out the relevant facts leading up to the refusal to register their marriage at his offices on 05.03.2020. The 1st Petitioner also brought it to the attention of the Consulate General that such denial of recognition of their marriage was purely discriminatory and an affront to the principles of equality and dignity enshrined under Articles 14, 15, 19 and 21 of the Constitution of India. True copy of the email dated 07.03.2020 issued by the 1st Petitioner is annexed herewith and marked as “**Annexure P-10**”. The then Consulate General of India at New York, Mr. Sandeep Chakravorty, replied vide email dated 10.03.2020 to the Petitioners. While denying the allegations of discrimination, the Consulate General informed the 1st Petitioner that there are no extant legal provisions or rules which apply to the Petitioners’ particular case and as such, they are not able to provide the service of provision of Certificate/Registration of

Marriage. True copy of the email dated 10.03.2020 issued by the Consulate General of India in New York is annexed herewith and marked as “**Annexure P-11**”.

40. The Petitioners also came to know that various orders been passed by different High Courts in the country including this Hon’ble Court protecting same-sex couples after the decision in *Navtej Singh Johar’s* case (cited supra). The various High Courts have stepped in under their constitutional authority under Article 226 of the Constitution of India to protect same-sex couples from arbitrary detention (issuing appropriate writs in the nature of a Habeas Corpus), and declarations that cohabitation of a same-sex couple is a protected facet of liberty under Article 21.
41. Recently, the Hon’ble High Court of Judicature at Madras in *Arunkumar v. Inspector General of Registration* in W.P. No. 4125 of 2019 by an order dated 22.04.2019 has held that that a marriage solemnized between a man and transwoman, both professing Hindu religion is a valid marriage under S. 5 of the Hindu Marriage Act, 1956 and that the Registrar of Marriages is bound to register the same. The Court employed the

principle of updating construction to hold that “bride” within the meaning of S. 5 of the Hindu Marriage Act, 1956 ought to include a transgender/intersex person who identifies herself as a woman. True copy of the order dated 22.04.2019 passed by the Hon’ble High Court Of Judicature at Madras is annexed herewith and marked as **Annexure P-12**.

42. A non-exhaustive list of orders passed by various High Courts protecting sexual minority couples are:

- a. Order dated 01.10.2018 passed by this Hon’ble Court in W.P. (Crl.) No. 3005 of 2018 entitled “*Sadhana Sinsinwar & Anr. V. State & Ors.*” whereby, apart from granting police protection to a same-sex couple, the Court also directed action against a police officer who threatened the couple with false cases;
- b. Order dated 06.12.2019 passed by this Hon’ble Court in W.P. Crl. No. 3407 of 2019 entitled “*Monu Rajput & Anr. v. State of Ors.*” directing police protection to be granted to a same-sex couple in view of threats faced from family members;

- c. Order dated 12.04.2019 passed by this Hon'ble Court in W.P. (Crl.) No. 1075 of 2019 entitled "*Bhawna & Ors. v. State & Ors.*" directing police protection to a same-sex couple;
- d. Order dated 12.06.2020 passed by the Hon'ble High Court of Uttarakhand in Habeas Corpus petition No. 8 of 2020 entitled "*Madhubala v. State of Uttarakhand & Ors.*" whereby the Court clarified that cohabitation by a same-sex couple is not illegal and is protected under Article 21 of the Constitution of India;
- e. Order dated 22.07.2020 passed by the Hon'ble High Court of Punjab and Haryana in C.R.W.P. No. 5024 of 2020 entitled "*Paramjit Kaur & Anr. V. State of Punjab*" whereby police protection was granted to a same-sex couple
- f. Order dated 23.07.2020 passed by the Hon'ble High Court of Gujarat at Ahmedabad in Special Criminal Application No. 3011 of 2020 entitled "*Vanitaben Damjibhai Solanki v. State of Gujarat*" whereby

police protection was granted to a same-sex couple who were themselves serving as police constables.

A compilation of the aforesaid protection orders passed by various High Courts is annexed herewith and marked as “**Annexure P- 13(Colly.)**”.

43. Moreover, in the wake of the Covid-19 pandemic, the non-recognition of the Petitioners’ lawful marriage has caused immense hardship. For instance, before the pandemic, the Petitioners regularly visited India annually during Diwali and Dussehra festivals. Amidst the lockdowns during the Covid-19 pandemic, all foreigners including OCI cardholders were restricted from entering the country. Relaxations brought to the same in May, 2020, were restricted to certain classes of OCI cardholders such as those persons whose spouse was an Indian national, or those whose parents were Indian nationals. True copy of the notification dated 22.05.2020 issued by the Ministry of Home Affairs (Foreigners Division) is annexed herewith and marked as “**Annexure P-14**”.
44. Aggrieved by the refusal by the Respondents to issue a Certificate of Registration of Marriage under the FMA, the

Petitioners are constrained to approach this Hon'ble Court by way of the instant petition invoking its extraordinary writ jurisdiction under Article 226 of the Constitution of India. The grounds set out below also support the declarations, directions and orders sought for by the petitioners and each of them, as well, may be treated in the alternative and without prejudice to one another:

GROUND

- I. **The Foreign Marriage Act, 1969 inasmuch as it fails to recognize same-sex marriages violates Article 21 of the Constitution of India**
 - A. Inasmuch as the Foreign Marriage Act, 1969 fails to recognize same-sex marriages, it violates multiple facets of Article 21 of the Constitution of India:
 - (a) Non-recognition of same-sex marriages violates the right to marry a person of one's choice
 - B. The right to marry a person of one's choice has been expressly recognized as being a facet of the right to life and liberty under Article 21 of the Constitution of India. A Constitution Bench of the Hon'ble Supreme Court, in *Common Cause v. Union of India* reported in (2018) 5 SCC 1] held:

“346. ... Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives.” (emphasis supplied)

In *Shafin Jahan v. Ashokan K.M.* reported in (2018) 16 SCC 368, a 3-Judge bench of the Hon’ble Supreme Court relying on the aforesaid decision held that the right to marry a person of one’s choice is a fundamental right under Article 21 of the Constitution of India. The Petitioners enjoy this right.

- C. 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. Inasmuch as this right is denied to LGBTQIA+ persons like the Petitioners, the same is a constitutional violation.
- D. The Petitioners herein are gay men who each found love, companionship, and a partner in the other. Giving expression to this integral facet of the dignity of their personhood, Petitioners exercised their right to marry a person of their choice. The FMA, 1969 in denying

registration/recognition of same-sex marriages violates the fundamental right under Article 21 of the Constitution of India.

The Petitioners were denied registration under the FMA 1969 by the 2nd Respondent vide communication dated 10.03.2020 solely on the ground that they were a same-sex couple. The actions of the 2nd Respondent violate the fundamental right of the Petitioners under Article 21 of the Constitution of India to marry a person of their own choice.

(b) Non-recognition of same-sex marriages violates the Petitioners' right to dignity as LGBT people and as a same-sex couple

E. The Hon'ble Supreme 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.

F. A 9-Judge Bench of the Hon'ble Supreme Court in *K.S. Puttaswamy v. Union of India & Ors.* reported in (2017) 10 SCC 1 held that the dignity of an individual, the equality between human beings, and the quest for liberty are the foundational pillars of the Indian Constitution. The Court

further held that dignity is a constitutional value that finds expression in the Preamble. The Court held that the right to privacy, self-determination, and autonomy are aspects of the right to dignity protected under the Indian Constitution. The Court further held that the family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.

- G. Dignity is a facet of liberty under Article 21 of the Constitution of India which encompasses the freedom of choice in matters ranging from family, marriage, procreation, and sexual orientation.
- H. Marriage is a solemn expression of this freedom of choice of each of the spouses. Legal recognition of this expression protects the dignity of the individuals within marriage as a matter of personhood as well as within society.
- I. The non-recognition of same-sex marriages under the FMA strikes at the root of the dignity of same-sex couples like the Petitioners. To be able to determine their social unions, whether intimate or otherwise, is an essential facet to right to life. Therefore, the non-recognition of same-sex

marriage is a deprivation of the liberty of the Petitioners under Article 21 of the Constitution.

II. The Foreign Marriage Act, 1969 violates Articles 14 and 15 of the Constitution of India

(a) Non-recognition of same-sex marriage is manifestly arbitrary

J. The principle that a manifestly arbitrary law violates Article 14 of the Constitution of India is well-settled.

K. The Supreme Court in the Constitution Bench decision in *Shayara Bano v. Union of India* [(2017) 9 SCC 1], has held that a statute can be struck down as being manifestly arbitrary if the provision is capricious, irrational and/or without adequate determining principle, as also if it is excessive or disproportionate. The Constitution Bench in *Navtej Singh Johar's* case, invoked the principle of manifest arbitrariness to strike down S. 377 of the Indian Penal Code, 1860. The Court held:

“353. Insofar as Article 14 is concerned, this Court in *Shayara Bano v. Union of India* [*Shayara Bano v. Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] , has stated, in para 101, that a statutory provision can be struck down on the ground of manifest arbitrariness, when the provision is capricious, irrational and/or without adequate determining

principle, as also if it is excessive or disproportionate. We find that Section 377, in penalising consensual gay sex, is manifestly arbitrary. Given modern psychiatric studies and legislation which recognises that gay persons and transgenders are not persons suffering from mental disorder and cannot therefore be penalised, the section must be held to be a provision which is capricious and irrational. Also, roping in such persons with sentences going up to life imprisonment is clearly excessive and disproportionate, as a result of which, when applied to such persons, Articles 14 and 21 of the Constitution would clearly be violated. The object sought to be achieved by the provision, namely, to enforce Victorian mores upon the citizenry of India, would be out of tune with the march of constitutional events that has since taken place, rendering the said object itself discriminatory when it seeks to single out same sex couples and transgenders for punishment.” (emphasis supplied)

- L. The Petitioners submit the inasmuch as the FMA 1969 fails to recognize marriages between same-sex persons it is capricious, irrational and without adequate determining principle.
- M. In light of the findings by the Hon’ble Supreme Court that LGBT persons are entitled to the full range of protections and guarantees under the Indian Constitution, including the equal protection clause, the non-recognition of a same-sex marriage in accord with the FMA 1969 is manifestly arbitrary.

N. The Petitioners were refused a certificate of registration under the FMA 1969 by the 2nd Respondent, on the arbitrary ground that there are no extant regulations permitting them to grant a certificate of marriage to a same-sex married couple. The denial of legal recognition to same-sex married couples solely on this ground is without any adequate determining principle and deserves to be struck down as violating Article 14 of the Constitution of India.

(b) Non-recognition of same-sex marriage fails the rational nexus test

1) Lack of reasonable classification

O. The object of the FMA 1969 (as stated in its Statement of Objects and Reasons) is to provide a comprehensive legislation to govern cases of marriages between persons solemnized outside India where at least one of the parties is an Indian citizen. By non-recognition of same-sex marriages, the FMA creates a classification between opposite sex married couples and same-sex married

couples who are both validly and legally married under a foreign law of marriage. The effect of the FMA is to recognize the former while denying recognition to the latter. In view of the same, the classification between opposite-sex and same-sex marriages for the purposes of the Foreign Marriage Act, 1969 is artificial and unreasonable.

P. There is no reasonable or intelligible differentia in the classification of marriages between same-sex and opposite-sex couples in the context of the FMA 1969 which is directed at providing recognition within in India of a marriage between two persons, one of whom is an Indian citizen, that has been validly and legally solemnized in a foreign country.

Q. Marriage is a formal, social, legal and emotional expression of companionship and recognition of the dignity and humanity of a couple by law and society. The hopes and aspirations surrounding marriage are no different for a same-sex couple and opposite-sex couple. The Hon'ble Supreme Court has also 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, have live-in relationships, perform coitus or even marry.” The failure to recognize marriages between same-sex couples treats sexual minorities, who are entitled to equal opportunity to advance and develop their human potential and social, economic and legal interests, as second class citizens for the purposes of Article 14 of the Constitution of India.

R. As such the classification of the two sets of persons viz. same-sex married couples and opposite-sex married couples on the basis of sexual orientation of the parties amounts to treating equals as un-equals and falls foul of Article 14 of the Constitution of India.

2) Non-recognition on the basis of such classification has no rational nexus to the object of the legislation

S. The impugned classification has no rational nexus to the object sought to be achieved by the FMA 1969.

T. The object of the Foreign Marriage Act, 1969, is two-fold:

- a. To regulate extra-territorial marriages between adults at least one of whom is a citizen of India, thereby, curing a lacuna in the Special Marriage Act, 1954; and,
 - b. To recognize the validity of such a marriage so far as India was concerned subject to the conditions mentioned in the law. These conditions have been laid down in S. 4 of the FMA 1969, which relate to the status of previous marriage (if any), age of the Petitioners, state of mind to enter into a marital relationship, and whether the persons are within the prohibited degrees of relationship.
- U. The Petitioners' marriage meets the conditions laid down under the FMA, viz., (i) the union is between consenting adults, (ii) they are not within degrees of prohibited relationship dictated by full-blood, half-blood, adoptive or ancestral relationships.
- V. There is no rational nexus to the object of the legislation viz. to grant recognition under Indian law to an extra-territorial marriage between two consenting adults one of whom is an Indian citizen. The Petitioners' marriage was

validly solemnized in the United States where it has been officiated by a high constitutional authority. The Petitioners' marriage was refused registration by the 2nd Respondent on a ground outside of the FMA, 1969 which is that the Petitioners are a same-sex couple. Therefore, the non-recognition of same-sex marriages under the FMA 1969, and consequently, the act of the 2nd Respondent in refusing registration *vide* communication dated 10.03.2020 is in violation of Article 14 of the Constitution of India.

- (c) Non-recognition of same-sex marriage violates Article 15 on grounds of sex and sexual orientation

W.The Hon'ble Supreme Court in National Legal Services Authority v. Union of India & Ors, reported in (2014) 4 SCC 438, has held that discrimination on the ground of "sex" under Article 15 of the Constitution of India is not restricted to biological characteristics and expanded the same to include gender identity. The Court also held that non-recognition of the law of gender identity of individuals is discriminatory. The Constitution Bench of

the Hon'ble Supreme Court in *Navtej Singh Johar & Ors. v. Union of India* (cited supra) has held that the expanded interpretation of "sex" as per Article 15 includes sexual orientation. The Bench also held that any ground of discrimination, direct or indirect, on the basis of "sex" violates Article 15. The aforesaid decisions have given an expanded reading of the word "sex" in Article 15 to include both gender identity, and sexual orientation.

- X. The non-recognition of the same-sex marriages on the basis of sexual orientation of the Petitioners violates Article 15 of the Constitution of India.
- Y. The provisions of the FMA 1969 exclude same-sex couples from registration, and thereby, refuse them recognition of marital status in India. The Petitioners submit that such denial of recognition being on sole ground that they are a same sex couple is discriminatory.
- Z. Inasmuch as the FMA 1969 recognizes only marriage between opposite-sex persons, it discriminates on the basis of sexual orientation of the parties and hence violates

the equal protection clause under Article 14 of the Constitution of India.

AA. The 2nd Respondent has refused to issue a certificate of marriage registration to the Petitioners solely on the ground that they are same-sex couple. This denial to register at the officers of the 2nd Respondent and subsequently, by way of communication dated 10.03.2020 is solely and admittedly based on the sexual orientation of the Petitioners. The acts of the 2nd Respondent are discriminatory and violate Article 15 of the Constitution of India.

III. The Foreign Marriage Act, 1969 inasmuch as it does not recognize same-sex marriages violates the freedom of expression under Article 19(1)(a) of the Constitution of India

BB. The 1st Petitioner is an Indian citizen and is entitled to the fundamental right of expression under Article 19(1) of the Constitution of India. The Hon'ble Supreme Court in a wide array of cases has upheld the right of choice of partner as a facet of the freedom of expression. The Petitioners are gay men, and their sexual orientation is a

fundamental facet of expression inherent to their personhood.

CC. Relying on the decisions of the 9-Judge Bench of the Hon'ble Supreme Court in *K.S. Puttaswamy's case* (cited supra), and the decision of the Court in the *NALSA* case (cited supra), it was held in *Navtej Singh Johar* that S. 377 of the Indian Penal Code, 1860 inasmuch as it placed an unreasonable restriction of freedom of expression of LGBT persons violates Article 19(1)(a) of the Constitution.

The Constitution Bench held:

“268.16. An examination of Section 377 IPC on the anvil of Article 19(1)(a) reveals that it amounts to an unreasonable restriction, for public decency and morality cannot be amplified beyond a rational or logical limit and cannot be accepted as reasonable grounds for curbing the fundamental rights of freedom of expression and choice of the LGBT community. Consensual carnal intercourse among adults, be it homosexual or heterosexual, in private space, does not in any way harm the public decency or morality. Therefore, Section 377 IPC in its present form violates Article 19(1)(a) of the Constitution.” (emphasis supplied)

DD. The Hon'ble Supreme Court in *Shafin Jahan's case* (cited supra) has held as under:

“84. ...

The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define one's personhood and identity. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith. The Constitution guarantees to each individual the right freely to practise, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. The law prescribes conditions for a valid marriage. It provides remedies when relationships run aground. Neither the State nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution." (emphasis supplied)

Further, the Hon'ble Supreme Court in *Asha Ranjan v. State of Bihar*, (2017) 4 SCC 397 held:

***"61. ... choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognised in the Constitution under Article 19, and such a right is not expected to succumb to the concept of "class honour" or "group thinking". It is because the sense of class honour has no legitimacy even if it is practised by the collective under some kind of a notion.**"* (emphasis supplied)

EE. The Petitioners are gay men, entitled to avail of the constitutional protection afforded to their freedom of expression which flows from their sexual orientation.

Their freedom of expression includes their right to exercise inherently individual choices regarding whether or not to marry, and whether or not to marry a particular person. Their choices regarding marriage while being a member of the LGBT community cannot be said to be contrary to public order, decency, or morality.

FF. The Hon'ble Supreme Court in *Navtej Singh Johar's* case has held that the morality conceived of under the Constitution is constitutional morality. Constitutional morality is founded on the idea of inclusiveness, and the constitutional courts are guided by it and not societal morality. As such, the non-recognition of LGBT persons' choice of marital partner under the FMA 1969 is an unreasonable restriction on the exercise of their right under Article 19(1)(a) of the Indian Constitution.

GG. The Petitioners hail from traditional middle-class Jain families. A closely-knit familial experience undergirds their upbringing, and has over the years, shaped their views on companionship, love and marriage. For the petitioners, getting married to each other is an expression

of their personal commitment to each other, and recognition of same is crucial to their relationship. These choices that are inherently individual, yet shaped by upbringing in traditional familial values, forms the core of their desire to have a legally recognized marriage. These factors form the core of the expression of the Petitioners to solemnize their relationship within the legal sanctity afforded by marriage. The refusal of the 2nd Respondent to register the marriage of the Petitioners under the FMA 1969 strikes at the root of their freedom of expression and violates Article 19(1)(a) of the Constitution of India.

IV. The Foreign Marriage Act, 1969's failure to recognize the marriage of same sex couples denies them legal rights, benefits and privileges available to heterosexual couples

HH. The recognition of marriage within a legal framework allows and encourages spouses to protect and look after each other. Marriage is a legal relationship that creates rights, privileges, benefits and liabilities upon the parties. The range of benefits and privileges that obtain to two individuals by virtue of their marriage are denied to the

Petitioners. The 1st Petitioner, who is an Indian citizen wishes to extend these benefits and protections to the 2nd petitioner but is unable to do so as legal recognition of their marriage has been denied.

II. The 1st Petitioner is a citizen of India having firm roots in this country. The 1st Petitioner through his parents who are residents of New Delhi are entitled to properties, monies, and other assets in India. The 1st Petitioner under various extant laws is entitled to share many rights, benefits and privileges with his legally wedded spouse. Illustratively, some of these rights may include:

a. Section 80-C 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 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)]; and,
- A contribution in the name of a wife or a husband for participation in the Unit-Linked Insurance Plan [Section 80C(2)(x)].

b. Section 6 of the Payment of Gratuity Act, 1972 requires that a nomination be made by every employee who has completed one year of service. Section 6(3) of the Act provides that if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family and any nomination made in favour of a person who is not a member of the family shall be void. "Family" is defined under Section 2(h) of the Payment of Gratuity Act, 1972 to include

amongst others the employee, their spouse, children, dependent parents and parents of the spouse.

- c. Rule 3(2) of the Payment of Wages (Nomination) Rules, 2009 under the Payment of Wages Act, 1936 provides that if an employed person has a family at the time of making a nomination, the nomination shall be in favour of the spouse, or the spouse in preference followed by one or more members of his family. Section 2(b) of the said Rules does not include a non-marital partner in the definition of 'family', which is defined under Rule 2(b) to include a spouse, minor or dependent child and dependent parents.
- d. 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 conferring the right to receive the amount that may stand to his credit in the fund in the event of his

death. Clause 2(g) of the said Scheme defines “family” to include a wife, a husband, dependants or widow of son and children. Clause 61(3) provides that if the member of the scheme has a family at the time of making a nomination, the nomination shall be in favour of one or more persons belonging to his family. A nomination made by such person in favour of a person not belonging to his family shall be invalid.

- e. Under Section 10A(4) of the Employees’ Compensation Act, 1923, the Commissioner (appointed under Section 20 of the Act) may inform any of the dependants of a deceased workman that is it open to the dependents to prefer a claim for compensation. Section 2(d) of the said Act defines “dependent” to include a widow or widower, children, the deceased’s parent, and in the absence of living parents, the grandparents
- f. Under the Pradhan Mantri Shram Yogi Maan-dhan Yojana, passed under the Unorganized Workers’

Social Security Act, 2008, a subscriber would receive a minimum assured pension of Rs. 3000 per month after attaining the age of 60 years and in the event of the death of the subscriber, the spouse of the beneficiary shall be entitled to receive half of the pension as family pension; which benefit is also not available to same-sex partners. No person other the spouse of the subscriber may receive the benefit of family pension.

g. Section 122 of the Indian Evidence Act, 1872 provides for spousal privilege, i.e., immunity to married people from being compelled to disclose any communication made to them during marriage by any person to whom they are married. They shall also not be permitted to disclose any such communication, unless the person who made it, or his representative in interest consents.

JJ. The 2nd Petitioner who is an OCI cardholder is entitled to parity with Non-Resident Indians in all respect of all facilities available to them in economic, financial, and

educational fields except in matters of acquisition of agricultural or plantation properties. The non-recognition of the same-sex marriage, as in the case of the Petitioners, under the Foreign Marriage Act, 1969 in India renders these rights, benefits and privileges illusory merely on the basis of their sexual orientation, and preference of choice of married partner. Illustratively, in times like the Coronavirus pandemic, restrictions have been placed on international travel into India. All foreigners including OCI cardholders were restricted from entering the country. When a relaxation was brought to the same in May 2020, it was restricted to certain class of OCI cardholders such as those persons whose spouse was an Indian national, or those whose parents were Indian nationals. Absent legal recognition of the Petitioners' marriage, these benefits extended to certain classes of OCI cardholders is denied to the 2nd Petitioner.

KK. The FMA 1969 grants recognition within India to marriages solemnized in a foreign country. The Petitioners' marriage is a valid and legal marriage

solemnized in the United States of America. The 2nd Respondent's refusal to recognize the Petitioners' marriage operates as a bar on the 1st Petitioner to avail of and extend these rights, benefits and privileges to the married partner of his choice.

V. **The Foreign Marriage Act, 1969 inasmuch it fails to recognize same-sex marriages is contrary to the evolving social and legal nature of the institution of marriage**

LL. Marriage as a central social institution has existed over many centuries, and in various civilizations in history it has been regarded as a core social element of an individual's existence. While each society prescribed sets of values in relation to the institution of marriage, over time, these values have constantly evolved to accommodate the changing concepts of legitimacy within the sphere of the family.

MM. Marriage is intrinsically tied to the Indian social fabric. Apart from being a union between two individuals, it is also the coming together of two families. There is a social interest in the preservation and protection of the institution of marriage that the law recognizes. Courts

have often intervened to prevent the breakdown of a marital relationship not only on the individual considerations of the spouses, but also while bearing in mind societal considerations.

NN. Marriage also encompasses an aspirational and transcendental facet of personhood. Intertwined with the concept of individual autonomy, self-determination, privacy and dignity is the concept of companionship, family and marital life. Law frames the relationships between the state and the individual and between individuals inter-se, including in the realm of marital life—marriage, divorce, adoption, and succession, to name a few.

OO. As society has evolved, law has also adopted such changing norms through legislative frameworks. This facet of the law has been recognized by the Hon'ble Supreme Court in the context of S. 125 of the Cr.P.C in *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188:

“16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to

help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law." (emphasis supplied)

PP. The State has also constantly negotiated the relationship between individuals within the marital realm to rid it of certain social evils despite majoritarian or societal sanction for such practices. The abolition of Sati, and the recognition of inter-caste marriages in the Hindu religion are prominent historical examples. The enactment of the Hindu Codes in 1956 (including the Hindu Marriage Act, 1956) is also a radical and transformative step towards the reformation of the institution of marriage. This statement of the evolution of law has found expression in the decision of the Hon'ble Supreme Court in *Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1:

“30. With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role. Very often a dominant group loses its primacy over other groups in view of ever changing socio-economic scenario and the consequential vicissitudes in human relationship. Law takes its own time to articulate such social changes through a process of amendment. That is why in a changing society law cannot afford to remain static. If one looks at the history of development of Hindu Law it will be clear that it was never static and has changed from time to time to meet the challenges of the changing social pattern in different times.”(emphasis supplied)

QQ. Over time the judiciary as well as the legislative branch has stepped in to rid the institution of marriage of its various socially regressive practices. The prominent march in this direction since independence can be observed in the protection of rights of women in a marital relationship. Reliance in this regard is placed on the decisions of the Hon’ble Supreme Court in *Mary Roy v. State of Kerala* in (1986) 2 SCC 209 (upheld succession rights of Christian women), *Githa Hariharan v. RBI* in (1999) 2 SCC 228 (upheld the right of a Hindu mother to act as the natural guardian of the child during the lifetime

of the father), and more recently, in *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (the practice of Triple Talaq was abolished). 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 laws that govern marriage, succession etc. As stated above, the Foreign Marriage Act, 1969 as well as the Special Marriage Act, 1954 are secular legislations.

RR. On the nature of marriage as an institution, the Constitution Bench of the Hon'ble Supreme Court in *Joseph Shine v. Union of India*, (2019) 3 SCC 39, provided a progressive interpretation while striking down the provision that made adultery an offence. The Court held:

“168. The hypothesis which forms the basis of the law on adultery is the subsistence of a patriarchal order. Section 497 is based on a notion of morality which fails to accord with the values on which the Constitution is founded. The freedoms which the Constitution guarantees inhere in men and women alike. In enacting Section 497, the legislature made an ostensible effort to protect the institution of marriage. “Ostensible” it is, because the provision postulates a notion of marriage which subverts the equality of spouses. Marriage in a constitutional regime is founded on the equality of and between spouses. Each of them is entitled to the same

liberty which Part III guarantees. Each of them is entitled to take decisions in accordance with his and her conscience and each must have the ability to pursue the human desire for fulfilment. Section 497 is based on the understanding that marriage submerges the identity of the woman. It is based on a notion of marital subordination. In recognising, accepting and enforcing these notions, Section 497 is inconsistent with the ethos of the Constitution. Section 497 treats a woman as but a possession of her spouse. The essential values on which the Constitution is founded—liberty, dignity and equality—cannot allow such a view of marriage. Section 497 suffers from manifest arbitrariness.

...

212. The State undoubtedly has a legitimate interest in regulating many aspects of marriage. That is the foundation on which the State does regulate rights, entitlements and duties, primarily bearing on its civil nature. Breach by one of the spouses of a legal norm may constitute a ground for dissolution or annulment. When the State enacts and enforces such legislation, it does so on the postulate that marriage as a social institution has a significant bearing on the social fabric. But in doing so, the State is equally governed by the norms of a liberal Constitution which emphasise dignity, equality and liberty as its cardinal values. The legitimate aims of the State may, it must be recognised, extend to imposing penal sanctions for certain acts within the framework of marriage. Physical and emotional abuse and domestic violence are illustrations of the need for legislative intervention. The Indian State has legitimately intervened in other situations such as by enacting anti-dowry legislation or by creating offences dealing with the harassment of women for dowry within a marital relationship. The reason why this constitutes a legitimate recourse to the sovereign authority of the State to criminalise conduct is because the acts which the State proscribes are deleterious to human dignity. In criminalising certain

types of wrongdoing against women, the State intervenes to protect the fundamental rights of every woman to live with dignity. Consequently, it is important to underscore that this judgment does not question the authority and even the duty of the State to protect the fundamental rights of women from being trampled upon in unequal societal structures. Adultery as an offence does not fit that paradigm. In criminalising certain acts, Section 497 has proceeded on a hypothesis which is deeply offensive to the dignity of women. It is grounded in paternalism, solicitous of patriarchal values and subjugates the woman to a position where the law disregards her sexuality. The sexuality of a woman is part of her inviolable core. Neither the State nor the institution of marriage can disparage it. By reducing the woman to the status of a victim and ignoring her needs, the provision penalising adultery disregards something which is basic to human identity. Sexuality is a definitive expression of identity. Autonomy over one's sexuality has been central to human urges down through the ages. It has a constitutional foundation as intrinsic to autonomy. It is in this view of the matter that we have concluded that Section 497 is violative of the fundamental rights to equality and liberty as indeed, the right to pursue a meaningful life within the fold of Articles 14 and 21.” (emphasis supplied)

SS. The Hon'ble Supreme Court also rejected the notion of marriage as being inherently with the goal of procreation. The majority in *Navtej Singh Johar's* case (cited supra) held:

“230. With the passage of time and evolution of the society, procreation is not the only reason for which people choose to come together, have live-in

relationships, perform coitus or even marry. They do so for a whole lot of reasons including emotional companionship. Homer Clark writes:

“But the fact is that the most significant function of marriage today seems to be that it furnishes emotional satisfactions to be found in no other relationships. For many people it is the refuge from the coldness and impersonality of contemporary existence.” (emphasis supplied)

It is noteworthy that the legislative recognition of live-in relationships as being in the nature of marriage are also an indication of the continuous evolution of the institution of marriage in the legal realm either consistent with or even contrary to the societal beliefs around the same. The Petitioners seek to make the institution of marriage more inclusive in seeking participation and recognition of same-sex couples within the legal framework of marriage.

TT. The Petitioners submit that within the liberal Constitutional framework in India, constitutional courts have effected progressive reform to laws governing marriage by exercising their inherent power of judicial review. Similarly, the rights of sexual minorities have also received recognition and protection by the Courts as seen above. It is submitted that the non-recognition of the

rights of LGBT persons to marry under the FMA 1969, is a regressive clog in the march towards equality. The Petitioners submit that the instant case is a fit case for exercise of this Hon'ble Court's power of judicial review to read down the FMA 1969 inasmuch as it governs foreign marriages to a more egalitarian and inclusive one which recognizes, instead of invisibilizing same-sex couples.

VI. Recognition of same-sex marriage under the Foreign Marriage Act, 1969 is consistent with constitutional morality

UU. The Hon'ble Supreme Court has time and again held that constitutional morality must triumph over regressive or majoritarian social mores. It is submitted that in recognizing the constitutional guarantees and protections available to sexual minorities, the Court in *Navtej Singh Johar's* case upheld the principle of constitutional morality. The Court held:

“123. The concept of constitutional morality is not limited to the mere observance of the core principles of constitutionalism as the magnitude and sweep of constitutional morality is not confined to the provisions and literal text which a Constitution contains, rather it embraces within itself virtues of a wide magnitude such

as that of ushering a pluralistic and inclusive society, while at the same time adhering to the other principles of constitutionalism. It is further the result of embodying constitutional morality that the values of constitutionalism trickle down and percolate through the apparatus of the State for the betterment of each and every individual citizen of the State.” (emphasis supplied)

VV. In outlining the duty of Courts in the face of violation of fundamental rights of minorities the Court further held:

“133. In this regard, we have to telescopically analyse social morality vis-à-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality.” (emphasis supplied)

WW. The transgression of the fundamental rights of same-sex couples in this case is singularly due to the dereliction on the part of the Respondents to recognize fully the rights of LGBT persons, and in this case, their right to marry a person of their choice.

XX. R.F. Nariman, J. in the above decision held that Courts must not wait for the legislature to step in in the face of

gross violation of fundamental rights and must uphold the principle of constitutional morality:

“352. Another argument raised on behalf of the interveners is that change in society, if any, can be reflected by amending laws by the elected representatives of the people. Thus, it would be open to Parliament to carve out an exception from Section 377, but this Court should not indulge in taking upon itself the guardianship of changing societal mores. Such an argument must be emphatically rejected. The very purpose of the fundamental rights chapter in the Constitution of India is to withdraw the subject of liberty and dignity of the individual and place such subject beyond the reach of majoritarian governments so that constitutional morality can be applied by this Court to give effect to the rights, among others, of “discrete and insular” minorities. [This phrase occurs in one of the most celebrated footnotes in the US Supreme Court's constitutional history, namely, Footnote 4 of United States v. Carolene Products Company, 1938 SCC OnLine US SC 93 : 82 L Ed 1234 : 304 US 144 (1938).] One such minority has knocked on the doors of this Court as this Court is the custodian of the fundamental rights of citizens. These fundamental rights do not depend upon the outcome of elections. And, it is not left to majoritarian governments to prescribe what shall be orthodox in matters concerning social morality. The fundamental rights chapter is like the North Star in the universe of constitutionalism in India. [In William Shakespeare's Julius Caesar (Act III, Scene 1), Caesar tells Cassius—“I could be well moved, if I were as you; If I could pray to move, prayers would move me: But I am constant as the Northern Star, Of whose true-fixed and resting quality There is no fellow in the firmament.”] Constitutional morality always trumps any imposition of a particular view of social morality by shifting and different majoritarian regimes.” (emphasis supplied)

YY. Finally, Justice D.Y. Chandrachud in *Navtej Singh Johar* held regarding the rights of LGBT persons in the context of constitutional morality as under:

“606. Constitutional morality will impact upon any law which deprives the LGBT individuals of their entitlement to a full and equal citizenship. After the Constitution came into force, no law can be divorced from constitutional morality. Society cannot dictate the expression of sexuality between consenting adults. That is a private affair. Constitutional morality will supersede any culture or tradition.

...

608. LGBT individuals living under the threats of conformity grounded in cultural morality have been denied a basic human existence. They have been stereotyped and prejudiced. Constitutional morality requires this Court not to turn a blind eye to their right to an equal participation of citizenship and an equal enjoyment of living. Constitutional morality requires that this Court must act as a counter-majoritarian institution which discharges the responsibility of protecting constitutionally entrenched rights, regardless of what the majority may believe. [Arvind Narrain, “A New Language of Morality: From the Trial of Nowshirwan to the Judgment in Naz Foundation”, *The Indian Journal of Constitutional Law*, Vol. 4 (2010).] Constitutional morality must turn into a habit of citizens. By respecting the dignity of LGBT individuals, this Court is only fulfilling the foundational promises of our Constitution.” (emphasis supplied)

ZZ. The Petitioners who are gay men, submit that grave injustice has been caused to them as well as to similarly placed same-sex couples who cannot exercise their right to marry a partner of their choice despite their long-awaited recognition as full citizens under the Indian Constitutions. It is submitted that the Petitioners herein are firm believers in the values of community, family and marriage, and as such denial of legal recognition of the same, has rendered their aspirations meaningless. It is submitted that there is no ban on recognition and registration of same-sex marriage per se as per the provisions of the Foreign Marriages Act, 1969 or any other law in force. The Petitioners are denied legal recognition thereby depriving them of the enjoyment of the rights, benefits and privileges that are guaranteed to a heterosexual couple in accord with various extant Indian laws. The Petitioners submit that the recognition of same sex marriage under the provisions of the 1969 Act are in line with the principles of constitutional morality. Continuance of such non-recognition of same-sex marriages in these

legislations as they stand today are a violation of Articles 14, 15, 19 and 21 of the Constitution of India.

VII. The Foreign Marriage Act, 1969 inasmuch as it fails to recognize same-sex marriages is in violation of freedom to form associations under Article 19(1)(c)

AAA. Failure to recognize same-sex marriages as that of the Petitioners is a violation of the Article 19(1)(c) of the Constitution of India which grants the Petitioners the freedom to form associations with other persons, including through marriage.

BBB. Marriage is a foundational association that plays a crucial role in the construction and preservation of the social fabric. The right to marry is a choice and freedom granted to persons under the Constitution to associate with any person in a public and legally recognized expression of their love and commitment to the other.

CCC. The law having recognized this freedom of association to opposite-sex couples, the denial of the same fundamental freedom to same-sex couples merely because of their sexual orientation is discriminatory.

DDD. The grant of a freedom under Article 19 of the Constitution cannot be denied on the sexual orientation of the right-holder.

VIII. The Foreign Marriage Act, 1969 inasmuch as it fails to recognize same-sex marriages violates the freedom of conscience

EEE. The Foreign Marriage Act, 1969 in failing to recognize same-sex marriages violate the freedom of conscience of same-sex couples. Freedom of conscience is a fundamental right under Article 25 of the Constitution of India, and is not restricted to religious matters.

FFF. The Hon'ble Supreme Court in K.S. Puttaswamy's case has recognized freedom of conscience of an individual as being wider than mere religious beliefs and encompassing even political beliefs.

GGG. Conscience is intrinsic to the concept of liberty enshrined in the Preamble. Liberty and autonomy in matters of intimate association, exercise of choice of partner are all facets of the freedom of conscience.

HHH. Marriage between two individuals is a pure exercise of the freedom of conscience. This exercise is constitutionally

protected and legislatively recognized through the various laws governing marriage, including the Foreign Marriage Act, 1969 for opposite-sex couples. However, same-sex couples, like the Petitioners are denied these constitutional guarantees on the basis of their sexual orientation.

IX. Application of Principle of updating construction

III. This Hon'ble Court ought to apply the principle of updating construction to interpret the Foreign Marriage Act, 1969 to include and recognize same-sex marriages.

JJJ. The principle of updating construction has been affirmed by the Hon'ble Court in *State of Maharashtra v. Praful B. Desai* reported in (2003) 4 SCC 601.

KKK. The Petitioners submit that the Foreign Marriage Act, 1969 was enacted at a time when same-sex marriages were incomprehensible due to currency of regressive and unscientific ideas around homosexuality. Since then society has marched forward in the direction of recognition of the liberty, and freedom of LGBT persons.

LLL. As such many jurisdictions across the world have judicially recognized the right of same-sex persons to marry the person of their choice. Apart from the western societies such as United States, United Kingdom, and other parts of Europe, this recognition has also been granted to many parts of the Global South. South Africa, Taiwan, Colombia, Brazil and even limited recognition in our neighbouring countries such as China and Nepal.

MMM. The Petitioners submit that the Foreign Marriage Act, 1969 can be saved from the vice of unconstitutionality by judicially constructing it to be applicable in the case of recognition/registration of same-sex marriages as well.

NNN. The Petitioners also place reliance on various orders passed by different High Courts in the country including this Hon'ble Court protecting same-sex couples relying on the decision in *Navtej Singh Johar's* case (cited supra). The various High Courts have stepped in under their constitutional authority under Article 226 of the Constitution of India to protect same-sex couples from arbitrary detention (issuing appropriate writs in the

nature of a Habeas Corpus), and declarations that cohabitation of a same-sex couple is a protected facet of liberty under Article 21.

OOO. The Petitioners submit that the instant case is a fit case for this Hon'ble Court to exercise its jurisdiction under Article 226 of the Constitution of India to recognize same-sex marriages under the Foreign Marriage Act, 1969, employing the principle of updating construction.

X. The Foreign Marriage Act, 1969 ought to be read down to recognize same-sex marriages in line with the principle of comity of nations

PPP. The Petitioners submit that the FMA 1969 inasmuch as it does not recognize developments in constitutional law and rights of LGBT people in relation to marriage is directly in conflict with the principle of comity of nations.

QQQ. It is settled that the Courts in interpreting the Constitution and statutes ought to take into account developments in international law with due deference to the principle of comity of nations. The FMA 1969 inasmuch as it governs marriages solemnized outside India between persons, one of whom is a citizen of India,

has extra-territorial operation. Notably, the FMA 1969 was enacted pursuant to the recommendations of the 23rd Law Commission of India with the object of streamlining the law relating to recognition of marriages solemnized outside India between Indian citizens, or an Indian citizen and a foreign citizen. This was necessitated as the Special Marriage Act, 1954 did not govern extra-territorial marriages, and private international law that governed the field required streamlining. Reading down the FMA 1969 to include same-sex marriages is in line with this object behind its enactment.

RRR. Indian citizens situated in various parts of the world outside the country have benefited from the recognition granted to their marriages solemnized in foreign countries under the Foreign Marriage Act, 1969. However, this right under the law has been denied to LGBT Indian citizens by non-recognition of marriages between same-sex couples under the FMA 1969.

SSS. The Petitioners submit that same-sex marriages have been recognized under the law in as many as 30 democracies in

the world either through judicial intervention or legislation. It is submitted that LGBT Indian citizens like the 1st Petitioner herein are denied benefit of recognition of their marriage under the Foreign Marriage Act, 1969. The Petitioners submit that FMA 1969 being a statute having extra-territorial operation ought to be brought in conformity with these international developments.

TTT. Any other grounds that may be raised by the Petitioners at the time of hearing of the present writ petition.

45. The 1st Petitioner is an Indian citizen having a permanent address in [REDACTED]. The 2nd Petitioner is an OCI cardholder and the spouse of the 1st Petitioner as per their marriage solemnized in the United States. The Respondent No. 1 is within the jurisdiction of this Hon'ble Court. This Hon'ble Court has territorial jurisdiction to entertain the instant writ petition.
46. The Petitioners have no alternative efficacious remedy save and except the present petition the relief claimed wherein, if granted, shall be complete. The Petitioners have demanded justice, but justice has been denied to them.

47. The Petitioners have not filed any other writ petition either in this Hon'ble Court or any other High Court or in the Supreme Court of India with regard to the subject matter of the instant petition.

PRAYERS

In light of the above facts and circumstances, this Hon'ble Court may be pleased to:

- A. Issue an appropriate writ, order, or direction in the nature of a declaration under Article 226 of the Constitution of India that the Foreign Marriage Act, 1969 inasmuch as it excludes same-sex marriages violates Articles 14, 15, 19 and 21 of the Constitution of India; and further read the Foreign Marriage Act, 1969 to recognize marriages between consenting adults irrespective of the gender and sexual orientation of the parties;

- B. Consequently, issue an appropriate writ, order, or direction in the nature of a mandamus under Article 226 of the Constitution of India directing the 2nd Respondent herein to issue a Certificate of Marriage as per S. 17 of the Foreign Marriage Act, 1969 to the Petitioners;