IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. 260 OF 2023

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

<u>IN THE MATTER OF:</u>

Rituparna Borah &Ors. …PETITIONERS

Versus

Union of India ...RESPONDENT

<u>WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONERS BY MS. VRINDA GROVER, ADVOCATE</u>

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I. <u>DENIAL OF CHOICE, VIOLENCE AND CONFLICT WITH NATAL FAMILY:</u>

Petitioner Nos. 1-4:

1. The Petitioner Nos. 1-4 are before this Hon'ble Court to secure legal and constitutional protections which can enable and assist persons such as the Petitioners herein to live their lives of choice, with dignity, autonomy and independence. The Petitioner Nos. 1-4 have witnessed and continue to see many lesbian, gay, bisexual and transgender ("queer and trans") persons struggle with the violence that they face from their natal families, including providing adequate social and legal support to Petitioner Nos. 5-10 herein. Their queer feminist activism of 4 decades informs them that these difficult individual struggles, which are often fought alone without social support or official assistance, can be aided by assembling an appropriate legal scaffolding, and the dynamism of the forever transformative Constitution of India provides the legal tools to build the same.

2. The Petitioner No. 1, Rituparna Borah, identifies as a lesbian woman and is a queer feminist activist with over 15 years of experience of working on issues of gender and sexuality. She is currently a board member at Nazariya, which is a queer feminist resource group that focuses, inter alia, on awareness and accessibility of the rights of queer and trans persons by conducting training sessions, engaging in advocacy and running a dedicated help line. The Petitioner no. 1 has handled various cases of natal family and marital family violence against queer and trans persons. Further, the Petitioner has also supported queer and trans couples who have faced "corrective rape" and conversion therapy at the hands of their natal families. The Petitioner no. 1 is also a trained peer counselor and has successfully run the helpline of Nazariya.

3. The Petitioner no. 1 has lost both her parents, her father only very recently. While her father was an ally and was supportive and understanding of her sexual orientation and lifestyle choices, her surviving familial relatives are not. She suffers from Fibromyalgia and Chronic Fatigue, which has been recognised in the UK as a potentially disabling condition. Her diagnosis requires those close to her to provide regular care and support and also to take medical decisions on her behalf and in her best interest. Such crucial medical decisions that determine her quality of life cannot be left to her surviving natal family members who do not support, respect or understand her and her lifestyle decisions. Currently, with no existing allies in her natal family, the Petitioner no.1 also doesn't wish to nominate any surviving members of her natal family as beneficiaries to her estate or her belongings, or desire that any legal rights or claims in her name accrue to them. Rather, she wants to assign such benefits, rights and claims to the people who might not be her de jure family but are her de facto support system and will take decisions in her best interest.

4. The Petitioner No. 2 Chayanika Shah is a queer woman – a teacher, researcher and activist based in Mumbai. She has a doctorate degree and was a Physics lecturer in a Mumbai based college, from which she took voluntary retirement in 2008. Since her retirement she has been actively teaching and conducting seminars on themes such as Gender Studies, Queer Studies and Science Education.

5. In the last 14 years, Petitioner No.2 has collaborated on three studies related to queer and trans lives. The first was a research study titled, *"Breaking the Binary: Understanding concerns and realities of queer persons assigned gender female at birth across a spectrum of lived gender identities"*, which was based on qualitative interviews with 50 such individuals across the country. This study was conducted from 2009 to 2013 and later published as a book titled "*No Outlaws in the Gender Galaxy*" co-authored by her and published by Zubaan Press in 2015. The second was a short study in 2013 with TISS, Mumbai titled, "*Making sense: Familial journeys towards acceptance of gay and lesbian family members"*. More recently from 2017 to 2019 she has been part of a multi-city study housed in TISS, Mumbai titled "*An exploratory study of discrimination based on marginalized genders and sexualities*".

6. As a member of voluntary collectives like Forum Against Oppression of Women (FAOW) for the last 4 decades and more recently of the People's Union for Civil Liberties (PUCL), Petitioner No. 2 has been actively working on issues related to human rights from a queer feminist lens. She has been part of a voluntary group based in Mumbai, LABIA - A Queer Feminist LBT Collective from 1995 to 2021. As part of LABIA, she has worked towards creating space and support for many queer and trans people from Mumbai. They have worked with other feminist queer and trans groups and women's groups to provide safe shelter and security to many people from across the country as well. Over the years, as more and more people reached out, LABIA along with the other organizations and individuals worked within a loose network of queer and trans groups and individuals across the country, of which she remains an active member.

7. The Petitioner No. 3, Minakshi Sanyal is a queer feminist activist and Indian citizen based in Kolkata. She has been engaged in the LGBTQIA+ rights movements and feminist movements in India for more than two decades. She is co-founder of Sappho (formed in 1999) and Sappho for Equality (formed in 2003), Kolkata, which is the first queer and trans rights collective and organization in eastern India. She served as the Managing Trustee for Sappho for Equality during 2003 - 2020 and continues to play an active role in mobilizing queer and trans communities in West Bengal. The Petitioner No. 3's life's journey depended on nothing but self-reliance, which is why she took voluntary retirement at the age of 53 from a public sector company and devoted herself completely to the feminist movement and the movement for the rights of marginalized sexualities. For the last 7 years, she has been actively engaged in conducting sessions on gender and sexuality at various higher educational institutions.

8. In 2014-1015 the Petitioner No. 3 was engaged in a research study, titled, '*Politics of Living: In search of a roadmap for LBT(F to M)Q activism*'. Her jointly edited book titled '*Monologue: Dui Banglar Lesbian Kathan / Lesbian Narratives of Bangladesh and West Bengal*' was published in 2021 in both Bengali and English languages.

9. The Petitioner No. 4, Maya Sharma, who identifies as a lesbian woman, is a queer activist and writer, and is a part of the National Network of Lesbian, Bisexual and Intersex (LBI) Women and Transgender Persons.

She is an Indian citizen and is based in Vadodara. In the late 1980s, the Petitioner No. 4 worked on the issues of single women in Delhi resettlement colonies. While working there she realized that the diversity amongst the single women concealed ‘women who loved women’.These patterns also emerged in her work with trade unions.

10. The Petitioner No. 4has a prolific writing career which beganwith her co-authoring a book on single women in Hindi, ‘*KinaroPeyUgtiPechaan*,’ She has also written abook titled, ‘*Loving Women: Being Lesbian in Unprivileged India*’, published in 2006 by Zubaan Books, which is based on her experience of living in Gujarat in the late 1990’s when the queer voices of the marginalized community were barely audible. Her most recent publication, ‘*Footprints of a Queer History: Life Stories from Gujarat*’, published in 2022 by Yoda Press, is the result of her years of involvement with queer issues: supporting queer couples in crisis, interacting with families of queer children and of bringing home the fragile entitlements available to trans persons under the *Transgender Persons (Protection of Rights) Act, 2019*. The stories narrated in Petitioner No. 4’s books tell a tale of her personal struggle, in overcoming natal family violence, socio-legal struggles and finding friendships and love. Her life’s work has meticulously cataloged the pain, stigma and silence which is woven into the everyday existence of the queer community.

<u>The National Network for LBI Women and Trans Persons</u>

11. Petitioner Nos. 1-4 are part of an informal network called *National Network of LBI Women and Trans Persons*. This network's members include queer, intersex and trans individuals from Mumbai, Kolkata, Vadodara, Thrissur, Delhi, Chennai, Hyderabad and other cities. The members of the Network have been active in other collectives and organizations working with and for queer and trans persons over several decades, whereby they have created spaces for these communities to reach out for connection and in case of any urgent crisis in their lives;

12. This network was created during a conference held in Bangalore in June 2008, when Petitioner Nos. 1-4 came together with others as an informal network of individuals and organizations. The network has evolved as new groups were formed and new people joined from different cities. They stayed in touch through joint campaigns and conferences from time to time but most importantly as a network collaborating with each other as they responded to pleas for help from queer and trans persons from across the country;

13. Over the years Petitioner Nos. 1-4 and other members of the network have been contacted directly by a large number of queer and trans individuals, including Petitioner Nos. 5-10 herein. The presence of this network in different states has made a significant difference because distress migration from home towns and states has been a feature of the lives of queer and trans persons, due to violent opposition, hostility and discrimination from natal families and local communities. They are forced to leave their homes and take refuge and shelter in anonymity in other states as far away as possible from their natal families because they fear being apprehended and separated. The Petitioners No. 1-4 often work in coordination since many a times the person(s) may need help in multiple locations.

14. Runaway queer and trans persons, often wish to marry each other and are seeking to secure some legal and social sanction for their relationship, particularly given the hostility, threat and violence that is inflicted on them not only by society at large but specifically from family members, opposed to their choice and decision. They have tried different ways of solemnising their relationship, through ceremony in temples or approaching state authorities to help them get married. They often approach queer and trans activists, including Petitioner Nos. 1-4 when they desire to live as a married couple, so that their relationship is recognised with respect and dignity, and the ire of family and discrimination by society is blunted on account of the social and cultural privileges attached to 'marriage' and the recognition of their 'spouse' by family and the world at large. Petitioner Nos. 1-4 have assisted a significant number of such couples hailing from all parts of the country, from the remotest of villages to the biggest of metropolis; from all religions, castes and also from adivasi communities. The common thread running through the lives of all queer and trans couples is the myriad forms of violence that they suffer from their natal families and local communities. More often than not the natal family is hostile to the relationship and opposed to the choice of partner, and far from being a source and space of love and protection, becomes a source and site of conflict from which such persons need protection, including seeking legal and constitutional protection through marriage.

15. While intervening in such situations across the country, Petitioner Nos. 1-4 have used all available statutory and constitutional mechanisms, including the provisions for addressing violence against women, habeas corpus petitions and appeals to higher officials in the police hierarchy, in order to safeguard the right to life and personal liberty of queer and trans persons. In some cases, they have been able to help the people get the required support and security to lead their chosen lives. In some, they have not been able to help because families employed physical violence and force to separate the partners. In some others, it was too late to intervene, where one or both of them ended their lives, as they could no longer endure the relentless coercion, violence and pressure from their families to end the relationship. Petitioner No.1-4 have also witnessed situations where natal families have reconciled and accepted the choices made by their children, however, the proportion of instances where the family remains in conflict with queer and trans persons far outnumber these happy endings.

16. The Petitioner Nos. 1-4 also find in the course of their work and their own lives that family violence is also continuously directed towards queer and trans persons who may not be in relationships because their families disapprove of their self-determination of their gender and/or sexuality. This violence includes attempts at conversion therapy, depriving them access to education, forced marriages, disallowing them to be mobile and communicate with others like them, and even threats or actual disinheritance.

PETITIONERS 5-10

17. The Petitioner Nos. 5-10 are before this Hon'ble Court for the legal recognition of their right to solemnize a marriage with a partner of their choice, irrespective of sexual orientation or gender identity. The Petitioners No. 5-10 have all suffered physical, verbal and psychological abuse from their natal families and subjected to bias, discrimination and prejudice from the State machinery because of their self-determined gender identity, sexual orientation and choice in life partner. The current legal regime's non-recognition of the right of queer and trans persons to solemnize a marriage has exacerbated the prejudice and abuse faced by them leaving them vulnerable and veritable strangers in law.

18. The Petitioner No. 5 aged about 23 years old, identifies as a trans-masculine person and Petitioner No. 6about 22 years old is a cis-gender woman and they are in a romantic relationship. Petitioner No.

5has completed his education up to Class XI and Petitioner No. 6 has completed her education up to Class VI. They are both Indian citizens and hailfrom socially and economically marginalized communities in Howrah, West Bengal.

19. when Petitioners 5-6shared the news of their relationship with their families in 2019, Petitioner No. 5's family brutally assaulted him which almost left him for the dead. His father threatened him that he must forget Petitioner No. 6and get married. Petitioner No. 6also met with violence at the hands of her brother.

20. Petitioner Nos.5and6 have made several attempts to elope due to the grave resistance from the former's natal family, but were unsuccessful as his family members traced their location, separated them and dragged him home against his wishes. In early 2020, when they both escaped to Barasat, Petitioner No. 5's family eventually found them after 3 months and manipulated them into returning home on the false assurance that they had accepted the relationship. However, on arriving home, Petitioner No. 6 was immediately sent to her residence and Petitioner No. 5's family again physically abused him.He was so distraught after repeatedly suffering physical violence and verbal abuse at the hands of his own family, he began contemplating self-harm as a way to escape his abusive circumstances.

21. During her stay at her natal family home, Petitioner No. 6 reached out to Sappho for Equality (SFE) - a Kolkata-based organization which works for the rights of LBI women and trans persons, for assistance as she was facing pressure from her brother to get married. The familial rejection of her relationship with Petitioner No. 5and the constant threat of a forced marriage also pushed the Petitioner no. 6 to contemplate self-harm as a means to escape her abusive circumstances. As both the Petitioners were confined to their homes against their will due to Covid lockdown measures, they experienced constant and heightened insecurity to their physical and mental health within their homes.

22. On their final attempt at elopement on 05.02.2021, Petitioner Nos. 5 and 6 visited the Dunlop Police Station, Kolkata, for help. Subsequently, they called SFE's helpline and sought assistance as Petitioner No. 5 was apprehensive of his family's intervention to forcefully separate them again. SFE sought the intervention of the West Bengal State Women's Commission, who instructed the Dunlop Police Station to keep Petitioner Nos. 5and 6 safely in police custody for the night.The Petitioner Nos. 5 and 6 spent the night at the police station as they feared violence from their natal families. However, instead of assuring the Petitioners of theirsafety and security, the police subjected them to verbal abuse, issued threats of violence and shamed them for leaving their natal families in order to pursue their relationship. The police even contacted Petitioner No. 6's father and told him to "discipline" her through physical violence.

23. The police's hostile treatment of the Petitioner Nos. 5& 6 is illustrative of the general attitude of law enforcement towards queer and trans couples who runaway from natal families due to the real threat of violence, wherein the legacy of criminalization and the vagueness of the legal status of such relationships translates into a climate of social disapproval by families and the police alike.

24. Due to their inability to complete their education, both Petitioner Nos. 5 and 6 have faced significant challenges in securing formal employment. At present, Petitioner No. 5 works at a cafe and Petitioner No. 6 works in a boutique and they both struggle for sustenance on a daily basis. After leaving SFE's temporary safe residence, both Petitioners continue to face challenges in securing rental housing due to intersectional vulnerabilities on account of their gender identity, sexual orientation, religion and class, apart from their inability to cohabit as a married couple in the eyes of law.

25. Petitioner No. 7, 23 years old, identifies as a trans-masculine person and Petitioner No. 8 (21 years) is a cis-gender woman and they are in a romantic relationship. They are both Indian citizens.

26. Petitioner No. 7used to regularly visit Petitioner No. 8 at her residence, in Baranagar, North 24 Parganas, West Bengal, as they both lived there with their natal families. However, when Petitioner No. 8's parents learnt about their intimacy, they started harassing and physically abusing her to discourage her from continuing the relationship with Petitioner No. 7.

Unable to face the violent abuse at home, Petitioner No. 8 decided to leave her natal home of her own volition.

27. Since June 2020, Petitioner Nos. 7 and 8 have been living together in a rented house at Salt Lake, Kolkata.After Petitioner No. 8's father learnt of her relationship with Petitioner No. 7, he canceled her enrollmentat the Techno India College, where she was pursuing a Bachelor in Business Administration, and started pressuring her to get married. In order to separate them against their wishes, Petitioner no. 8's mother even lodged a criminal complaint against Petitioner No. 7 in September 2022, falsely alleging that he had abducted her daughter and stolen valuable items from their residence.Her family went to the extent of displaying "missing persons" posters in public spaces and employed local goons to trace their location.These acts by Petitioner No. 8's natal family heightened the risk to their safety and security.

28. Due to the false FIR lodged by the natal family of Petitioner no. 8, Petitioner No. 7 was arrested and he was only released on bail after unjustly suffering 3 months of detention due to an egregious abuse of the process of law. Petitioner No. 8's family was present at the court for the hearings and they attempted to forcefully bring her home. However, the family members ceased their attempts as soon as they realized they could not risk drawing attention to the dispute in the court premises.

29. Petitioner No. 8's parents persisted in their attempts to bring her back to the natal home by any means whatsoever. Her mother made pleas of her father being missing or her being subjected to domestic violence, in order to compel her to come home. Petitioner No.7 and 8 decided to return to their natal home temporarily until such circumstances settled down. When they returned home, they were forcibly trapped and they learnt that the Petitioner No. 8's mother had employed false pretexts in order to bring her home and restrict her liberty. They both were not allowed to go outdoors and were under strict surveillance within the home. Both their phones were confiscated to cut them off from any support from the outside world. Her family manipulated her by imputing false and malicious allegations of "human trafficking" on Petitioner No. 7. They involved their relatives and neighbors in the matter to "counsel" Petitioner No. 8 to break the relationship and when the "counseling" wouldn't suffice, everyone verbally abused and issued threats of physical violence against Petitioner No. 7 and 8 to forcibly separate them. The Petitioner No. 8's father even threatened to sexually assault Petitioner No.7.

30. When Petitioner No. 7 and 8 discretely attempted to contact the local police for help, they were of no assistance whatsoever as they only spoke to Petitioner No. 8's natal family to verify their safety and well-being, who falsely assured the police of the same and silenced the matter.At this stage, in September 2022, Petitioner No. 7 contacted SFE and desperately requested for urgent help to protect Petitioner No. 8. When the SFE team reached Petitioner No. 8's residence, they were intimidated by 3 men who were business associates and family friends of Petitioner No. 8's father. The men threatened the SFE teamandsaid that they considered homosexuality to be a "perversion" and claimed that Petitioner No. 7 is a "bad influence" on Petitioner No. 8. In front of Petitioner no. 8's natal family, SFE members asked her whether she wants to stay with her parents or live with Petitioner No. 7. When Petitioner No. 8 asserted that she wants to live with Petitioner No. 7, the SFE team helped her pack her belongings and requested her parents to handover her certificates and essential official documents.

31. Petitioner No. 8's parents initially resisted but eventually handed over the documents. The SFE team also contacted the Belgachia Police Station for help, who instructed all parties to appear before them to resolve the matter. At the police station, the police officers initially supported the family and insisted that Petitioner No. 8should return to her natal home. However, with SFE's intervention and explanation of the rights of all consenting adults to choose a partner and live together irrespective of gender identity and sexual orientation, the police changed their attitude. The Police officers counseled Petitioner No. 8's mother that the family cannot interfere in her private decisions. Even when Petitioner Nos. 7 and 8 were leaving the police station along with the SFE team, they were chased by Petitioner No. 8's mother who was verbally abusing them.

32. At present, Petitioner Nos. 7 and 8are living together in a rented house in Kolkata. However, the criminal proceedings falsely initiated by the family of Petitioner No. 8against Petitioner No. 7are currently pending and have detrimentally affected his employment opportunities. Petitioner No. 8 is currently the sole earning member and supports the family. Petitioner No. 8’s family continues to keep a watch on her whereabouts and contact her from time to time in order to manipulate her into breaking the relationship and returning to her natal home.

33. Petitioner No. 9 is a 21 year old, cis-gender woman and Petitioner No. 10 is a 22 year old transgender man and they are both in a romantic relationship. They met when they were studying in Class VI in a government school in Darbhanga, Bihar. They fell in love during their formative schooling years. They are both Indian citizens.

34. In November 2019, when they were in Class XI, Petitioner No. 10's parents started pressuring him to marry. On 26.11.2020, when he refused to get married, his family sent him to his elder sister’s house in Muzaffarpurand started looking for a man to marry him in the meantime. At his sister’s home, he confided in her about his gender identity and his relationship with Petitioner No. 9. His sister understood and accepted his identity and decided to not let him go back to the natal home because their parents threatened to kill him if he did not marry.

35. In January 2020, Petitioner No. 10’s parents started issuing death threats to his elder sister and her husband for supporting his decisions.

His sister sent him to their maternal grandmother's home in Samastipur, where he lived up to October 2020. During this time, Petitioner No. 10's maternal uncle requested his family to allow him to finish his education up to Class XII.

36. In December 2021, Petitioner No. 10's family arranged his marriage with a man in Patna.Petitioner No. 10 informed the man about his relationship with Petitioner No. 9 and requested him to refuse the marriage proposal before their respective families, however, the man expressed his wish to solemnize the marriage notwithstanding Petitioner No. 10's explicit wishes. On 13.12.2021, the marriage ceremony was performed.

37. In March 2022, Petitioner No. 10 convinced his 'spouse' to send him to study in Darbhanga to prepare for an ITI diploma course. Petitioner No. 9also came to Darbhanga to prepare for the CTET exam. Here, Petitioner Nos.9 and 10 started living together in a rented house. On 27.03.2022, Petitioner No.10's 'spouse' came to meet him for Holi celebrationswhere he demanded Petitioner No. 9 to have sex with him and threatened to tell their families about their relationship if she refused. When Petitioner No. 9 refused, Petitioner No. 10's 'spouse' physically assaulted them both and informed their families of their relationship. Apprehensive about their safety and security, Petitioner Nos. 9 and 10 decided to run away. They went to the nearest railway station and arrived at the Sitamarhi railway station. On 28.03.2022 at

3:00 AM, their families found them both at the Sitamarhi railway station and took them both by force to Petitioner No. 10's paternal aunt's home in Baheri, where they committed physical assault on both of them in separate rooms. Petitioner No. 10's father demanded Rs.15000/- from the mother of Petitioner no.9 as a pre-condition for her release.

38. Petitioner No. 10's family coerced him to write a 'suicide letter' where he was ordered to assign the reason for his 'death' to Petitioner no. 9. He wrote the letter under fear for his safety, but when he didn't mention Petitioner No. 9's name in it, his father cut his wrist. His father again demanded that he write the letter and mention that he is not 'mentally stable'. After Petitioner No. 10 wrote the letter under fear for his safety, his father submitted copies of the 'suicide letter' to the nearest police station and the local sarpanch.

39. In April 2022, Petitioner No. 9 contacted Nazariya - a Delhi-based queer feminist resource group - for help, who connected them with Women Special Cell in Darbhanga. Petitioner Nos. 9 and 10 decided to flee from their natal family homes on 29.04.2022 and meet at the Baheri police station. However, on 28.04.2022, Petitioner No. 10's family confiscated his phone and his 'spouse' physically assaulted him. On 29.04.2022, Petitioner No 9 and 10met at the Baheri Police Station, after leaving home under false pretexts to evade surveillance from the families. At the Baheri Police Station, they were redirected to the LaheriyaSaray Police Station which is designated as the Mahila Police station, where the officers noted the couple's written statements. The police officers assisted Petitioner No.10and his 'spouse' in preparing their petition for divorce, which was signed by both parties. On the night of 29.04.2022, Petitioner Nos. 9 and 10 arrived at Patna to stay in *Garima Greh* shelter homes for transgender persons, which operates under the aegis of the Ministry of Social Justice and Empowerment (MOSJE).

40. Since June 2022, Petitioner Nos. 9 and 10 have been living at a rented house in New Delhi since they couldn't live together at the Garima Greh in Patna for a long duration, as cis-gender women are not permitted to stay at these shelter homes.

Panel Hearing on Familial Violence against Queer and Trans persons:

41. At a panel hearing on familial violence on queer and trans persons and their implications for "marriage equality" organized by the National Network of LBI Women and Tran Persons and PUCL on 01.04.2023, several queer and trans persons shared testimonies of the conflict with natal families.

42. These testimonies were heard by an eminent panel chaired by a retired high court judge, and included civil society organizations which provide social and legal support to runaway couples, experts on women and child welfare, queer feminist activists, anti-caste activists, human rights advocates and feminist academics. The expert panel heard testimonies from 32 queer and trans persons from across the country and from diverse locations with respect to age, gender, class, caste, religion and ability. The panel held a press conference on the 03.04.2023 at Press Club, Delhi where they stated that the extent of familial violence inflicted on queer and trans persons makes a compelling case for the state to adopt measures to safeguard their fundamental right to personal liberty and to lead a life of dignity.

43. Natal family violence in the form of physical, verbal, emotional and economic abuse often begins in childhood. This manifests as restrictions on the freedom of queer, trans and gender-non conforming persons to gender expression in the manner they choose to wear the clothes and hair, their mobility, communication with friends and peers; often it includes families putting a stop to their childrens' education.

44. Several cis women and trans masculine persons narrated their traumatic and humiliating experiences of being forced into marriages at ages as young as 14 years old. The multiple deprivations they face as a consequence of refusal to engage in sexual relations without consent, such as starvation, domestic violence and rape within their marital homes occurred with the explicit or tacit approval of their natal families. Some were even forced to have children.

45. When queer and trans people escaped these violent situations in their natal or marital homes, alone or with chosen partners, the families would collude to forcibly bring them or their partners back to their respective “homes” where they were placed under house arrest for months. Some were sent to “rehab” centres or psychiatric facilities and subjected to physical restraint, heavy sedation and/or "conversion therapies" in contravention of professional ethics guidelines. When the queer trans persons defied the boundaries of caste and religion, the violence that they faced was even more severe.

46. The families frequently employed physical violence, threats, and emotional manipulation. Several women, when they were outed as lesbian or bisexual, were subjected to threats of "corrective" rape or to actual rape by close family members, including fathers and brothers. In many cases, the police actively colluded with natal families in tracking down queer and trans persons who had run away from violent homes. Further misuse of police mechanisms in the form of false missing persons report abduction and even trafficking complaints are found to be rampantly filed against queer and trans couples who runaway from homes to flee violence from natal families.

47. Queer feminist activists observed how hetero-patriarchal norms have virtually turned every state and non-state actor which is meant to support and protect, into sites of abandonment and violence for them, be it the family, landlords, employees, police, judiciary, mental institutions, rehabilitation centres, psychiatrists and doctors, among others. Queer and trans persons who are living with HIV and/or seeking trans-affirmative healthcare services do not share this aspect of their lives with natal families, for the fear of further alienation and aggravated violence due to the stigma attached to their health concerns. In such context, queer and trans persons often rely on their kinship networks of queer and trans friends, community groups and/or partners to help them navigate the healthcare decision-making processes, who serve as an indispensable support system and perform their roles as 'chosen families'. However, such persons are not recognized and granted decision-making authority, by healthcare establishments or facilities, for queer and trans persons since they do not qualify as 'family' or 'next of kin' as per law (*Marriage equality alone will not free queer persons from violent families, The News Minute, April 3 2023; Why India should recognize same-sex marriages: Testimonies by queer, trans persons, Indian Express, April 4, 2023*).

48. The myriad experiences of the queer and trans persons show that despite decriminalization of adult consensual relationships, queer and trans persons remain stigmatized, and are neither free to choose their partners nor to make families and living arrangements of their choice. Their lives continue to be dominated by the diktats of and violence from natal families. These testimonies emphasize the urgent need for the state to adopt all measures to protect the right to life with human dignity and personal liberty of queer and trans persons, which is fundamental to create an enabling environment for them to be let alone to decide matters relating to marriage and other modes of organizing chosen families.

49. These lived realities of queer and trans persons across the nation raise the following important questions of law for the consideration of this Hon’ble Court:

i. Whether issuance of directions on protection from violence by natal families and other non-state actors is imperative for protecting the fundamental right to life and personal liberty and the right to found a family under Article 21 of the Constitution?

ii. Whether this Hon’ble Court’s declarations on transcending the institution of marriage as a source of rights and recognizing ‘atypical families’ or ‘chosen families’ merits grant of relief to individuals irrespective of gender identity, sexual orientation and marital status to nominate ‘any person’ as ‘next of kin’ in order to protect against undue interference by ‘guardians, close relatives and family members’?

iii. Whether SMA needs to be interpreted to recognize queer and trans marriages to save it from constitutional invalidity on grounds of Articles 14, 15, 19 and 21 of the Constitution?

iv. Whether the “notice, domicile and objection” framework under Sections 5-9 of SMA is unconstitutional, illegal and ultra vires?

v. Whether this Hon’ble Court must intervene to save the validity of pre-existing marriages where one party has transitioned to their self-determined gender identity?

II. Interference, opposition and violence from natal families, irrespective of marital status, violates the fundamental Right to Life and Personal Liberty under Article 21 of the Constitution:

50. Whether or not queer and trans persons are in intimate relationships, they are often faced with conflict from the natal family by virtue of the opposition to the self-determination of gender identity and sexual orientation;

51. Despite solemnization and registration of marriages, queer and trans couples will remain vulnerable to unabated cycles of opposition, interference and violence from natal families, undermining the fundamental right to marry and found a family, therefore, it is incumbent to protect the life and liberty under Article 21 irrespective of relationship/marital status;

52. International human rights bodies recognize that the predominant social and cultural justification for natal family violence suffered by queer and trans individuals in Asia is embedded in notions of "family honour" - the same oppressive norm which fuels opposition, interference and violence against inter-caste and inter-faith couples (*Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: Practices of so-called "conversion therapy", A/HRC/44/53, 1 May 2020, at para. 25*);

53. Queer and trans persons run away from natal families and homes often due to real and imminent threats of forced marriage and corrective rape, or when the family finds out about their identity. The families typically respond by detaining them against their will under 'house arrest' and without communication with any of their friends. Often their education is stopped and their jobs, if any, discontinued (*This Is Why We Became Activists: Violence Against Lesbian, Bisexual and Queer Women and Non-Binary People, Human Rights Watch (2023) at pages 58-76*);

54. In case of queer and trans couples, natal families often file false missing person complaints when their adult 'daughters' voluntarily leave homes and use the police to track them across states. They often also file false charges of abduction and theft against the partners as well as their own adult children, as acts of retaliation and insidious means to seek their 'custody' and compel them into heterosexual expectations of society (*The Unspoken: A Qualitative Research on Natal Family Violence, Shakti Shalini (2023), at pages 23-25*);

55. Heteronormativity leaves no choice for queer and trans people to realize their pleasure either in terms of having a partner of their same gender or in terms of wanting to identify with a different gender than the one they were ascribed at birth, or even expressing non-stereotypical gender behaviour like cutting their hair. Indeed, one of the main attacks for both trans feminine people and trans masculine people is on the basis of hair, which is very linked to gender expression for transgender people. For trans feminine people, cutting off the hair by force is common and sometimes it has led to even murder of the person by their family. Similarly cutting of long hair by trans masculine people is also punished, in fact many cannot even cut their hair till they come out of their family. Expression of any self-pleasure, let alone homosexuality, has no legitimate space (*Towards Gender Inclusivity: A Study on Contemporary Concerns Around Gender, Alternative Law Forum and LesBIT, 2013, at page 37*);

Conflict with Law: Prosecution and Persecution

56. District courts have directed that in cases of missing persons cases, once the police have obtained statements from the runaway queer and trans couples that they are adults and have left their natal homes of their free will and volition, the case must be closed forthwith and the police must ensure there is no further interference in the relationship (*S. Sushma &Anr. v. Commissioner of Police &Ors., WP No. 7284/2021, order dated 07.06.2021, at para. 43-A)*;

57. The gravity of the impunity in law with which natal families commit violations against their adult queer and trans children is occasionally mirrored by orders of constitutional courts, wherein, instead of directly seeking production of the detenu before court in a habeas corpus petition filed by the same sex partner, the court directed the detenu's statement to be recorded at her residence and to undergo "counseling sessions" for 4-5 days. This undue deference to the natal family by a constitutional court completely ignores the coercion and violence that queer and trans persons are vulnerable to within their homes, many of whom do not have access to social and legal support to exit abusive homes (*Order dt. 06.02.2023 in Devu G. v. State of Kerala, SLP (Criminal) No. 5027/2023*);

58. In yet another case of constitutional courts mirroring heterosexist violence against queer and trans persons, the State of Kerala is directed 'regulate' provision of conversion therapy, rather than impose an outright prohibition on the same. A complex web of social, cultural and religious conditioning leads to systemic dehumanization of queer and trans persons in our society. In such context, a vast majority of queer and trans individuals are violently coerced by natal families to submit to medically abusive practices in order to purportedly "cure" their self-determined gender identity or sexual orientation, while a minority of this group "chooses" to submit only in expectation of cessation of natal family violence. The court's inability to take cognizance of this lived reality will have disastrous consequences for the physical and mental health for queer and trans persons in society, as the proposed guidelines will promote unscientific medical procedures and embolden natal families to perpetuate this cycle of violence under the illusion of "informed consent" (*Order dt. 10.12.2021 in Queerala v State of Kerala, WP (C) No. 21202/2020, at para. 5*);

59. This Hon'ble Court has declared that any kind of torture or torment or ill-treatment in the name of "honour" that violates the right to choose a partner in a relationship or marriage by any group of persons is illegal and has issued directions to state governments for adopting preventive, remedial and punitive measures, including establishment of safe houses to respect, protect and fulfill the fundamental right to marry and found a family for inter-caste and inter-religious couples (*Shakti Vahini v. Union of India, (2018) 7 SCC 192, at para. 55*);

60. This Hon'ble Court has applied the same apparatus of preventive, remedial and punitive measures to restrain cases of mob lynching and destruction of property by "self-appointed keepers of public morality" (*Tehseen S. Poonawala v. Union of India, (2018) 9 SCC 501 at para. 40; Kodungallur Film Society v. Union of India, (2018) 10 SCC 713 at paras. 18-20*);

61. This Hon'ble Court's directions to state governments for adopting preventive, remedial and punitive measures are extended to runaway queer and trans couples by High Courts, who face similar vulnerability to "honour" based natal family violence. However, this apparatus is not available on a national level for queer and trans persons (*Dhanak of Humanity &Ors. v. State of NCT &Anr. WP (Crl)1321/2021, final order dated 23.07.2021*);

62. High courts have directed the Ministry of Social Justice and Empowerment (MOSJE) in a series of orders to enlist non-governmental organizations (NGOs) in order to make shelter homes available for all members of the queer and trans community in a manner similar to the *Garima Greh* welfare scheme, which provides shelter homes run by members of the trans community for at-risk members of their community (*S. Sushma &Anr. v. Commissioner of Police &Ors., WP No. 7284/2021, orders dated 23.12.2021 at paras. 1-5, 08.04.2022 at paras. 15-18, 08.07.2022 at paras. 5-6, 22.08.2022 at paras. 10-12 and 09.12.2022 at paras. 20-23*);

63. High Courts are in early stages of recognizing transgender women's access to justice as 'aggrieved women' under the DV Act, however, the right is made conditional on compulsory sex re-assignment surgery in complete violation of *NALSA's* declaration of self-determination of gender identity. This practice will further condemn transgender persons to lack of redress with respect to domestic violence and create barriers to access the architecture of support services under the law, as it will exclude a vast majority of the community who are unable to afford trans-affirmative healthcare services (*Order dt. 16.03.2023 in Vithal Manik Khatri v. Sagar Sanjay Kamble @ Sakshi Vithal Khatri, WP (C) No. 4037/2021, at para. 11*);

64. This Hon'ble Court has recognized the epidemic of police abuse of the power of arrest in course of criminal justice administration as a tool of harassment and corruption, and directed all state governments to issue instructions to police officers to compulsorily follow the mandate of Sections 41 (*When police may arrest without warrant*) and 41-A (*Notice of appearance before police officer*) of the Criminal Procedure Code, 1973 ("CrPC") in order to prevent unlawful arrest, in cases where the offence is punishable with less than or up to 7 years. In fact, this Hon'ble Court has revitalized this mandate by routinely passing strictures against state governments and the defaulting police officers in order to protect the fundamental right to personal liberty of persons under Article 21. As queer and trans persons voluntarily runaway from abusive homes and are regularly harassed by natal families and the police under pretext of commission of offences relating to abduction (Section 363, IPC – punishable up to 7 years) of the partner and/or theft (Section 379 – punishable up to 3 years), this Hon'ble Court may be pleased to issue directions to all state governments to instruct the police officers to compulsorily follow the mandate of Sections 41 and 41-A, CrPC when responding to complaints involving queer and trans adults who voluntarily leave natal homes (*Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 at paras. 11-13; Social Action Forum for Manav Adhikar v. Union of India, (2018) 10 SCC 443; Mohammed Zubair v. State of NCT of Delhi, 2022 SCC Online SC 897*);

International and Comparative Law on Gender Based Violence Against Queer and Trans Persons:

65. The *Yogyakarta Principles* reflect the application of international human rights law to the lives and experiences of persons of diverse sexual orientations and gender identities, including but not limited to the Universal Declaration of Human Rights, 1948 ('UDHR'); International Covenant on Civil and Political Rights, 1966 ('ICCPR'), International Covenant on Economic, Social and Cultural Rights, 1966 ('ICESCR'), Convention on the Elimination of All Forms of Racial Discrimination, 1965 ('CERD'); Convention on the Elimination of All Forms of Discrimination Against Women, 1979 ('CEDAW'); Convention on the Rights of the Child, 1989 ('CRC') and the Convention on the Rights of Persons with Disabilities, 2006 ('CRPD') (*Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007)*);

66. This Hon'ble Court must mould appropriate relief by taking into account Principle 7 (Right to Freedom from Arbitrary Deprivation of Liberty) of the *Yogyakarta Principles*, which enjoins states to adopt all measures to ensure that sexual orientation or gender identity may under no circumstances, de jure or de facto, be the basis for arrest or detention as well as undertake training programmes to educate police and other law enforcement agencies regarding the prohibition of arbitrary arrest or detention on such basis;

67. The Committee on the Elimination of Discrimination against Women has stated unequivocally that member states must all take measures to respond to gender based violence, forced marriages, non-consensual medical procedures and other status-based discrimination against queer and trans women (*General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 at para. 29(c)(i)*);

68. A study of violence against women (VAW) laws in five Asian countries (Sri Lanka, Pakistan, Malaysia, Philippines and Japan) revealed they were directly or indirectly disriminatory and did not extend adequate protections – or in some cases any protections – to queer and trans people. In many respects, it was reported that the states not only failed to prevent but also condoned violence against female bodied and transgender people. The family was reported as the primary perpetrator of violence. Family members carried out emotional, verbal, physical and sexual violence against queer and trans people. This violence occurred regularly and had greater and longer lasting impact than violence perpetrated by non-family members. State institutions, including medical, mental health and women's shelter networks across the Asian region were insensitive and not trained to assist queer and trans victims of violence. In general, service providing agencies responded poorly to queer and trans individuals who face violence. Women's shelter programs set up specifically to assist women fleeing violence turned away lesbians in need of emergency shelters for violence. The authors recommend that respective states must review existing VAW legislation to cover queer and trans people, ministries must direct state-funded victim assistance programs to expand services to queer and trans people and ensure that NGOs receive training and implement good practices on safe, inclusive, sensitive services for queer and trans people in need of assistance for violence, foreg., legal redress, healthcare, social welfare, etc. (*VIOLENCE: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia, The International Gay and Lesbian Human Rights Commission (2014)*);

69. The *Domestic and Family Violence Protection Act, 2012* of Queensland (Australia) requires courts to take into account lesbian, bisexual, transgender and intersex people's heightened vulnerability to domestic violence in moulding appropriate relief to survivors (*Section 4: Principles for administering Act*) and directing access to services relating to counseling, disability, health, education, housing or homelessness and legal aid (*Section 169C(1)(a) and (h): Definitions for part*);

70. The *Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011)* requires member states of the European Union (EU) to adopt all preventive, remedial and punitive measures in order to respond to gender based violence against women. The treaty enjoins member states that "*Parties are encouraged to apply this Convention to <u>all victims of domestic violence</u>. Parties shall pay <u>particular attention to women victims of gender-based violence</u> in implementing the provisions of this Convention*" (*Article 2 – Scope of the Convention*). Member states are further mandated to ensure that implementation of the treaty shall be secured without discrimination on basis of sexual orientation or gender identity (*Article 4 – Fundamental rights, equality and non-discrimination*). The convention requires member states to recognize, encourage and support, at all levels, the work of relevant non-governmental organizations and of civil society active in combating violence against women and establish effective co-operation with these organizations (*Article 9 – Non-governmental organizations and civil society*) in facilitating access to services such as legal and psychological counselling, financial assistance, housing, education, training, assistance in finding employment and shelters (*Article 20 – General support services*) (*Council of Europe Treaty Series 210 – Violence against women and domestic violence, 11.V.2011*);

71. This Hon'ble Court must mould appropriate relief by taking into account Principle 5 (Right to Security of the Person) of the Yogyakarta

Principles, which enjoin states to adopt all measures in order to respect, protect and fulfill the right to protection by the state against violence or bodily harm on basis of sexual orientation or gender identity, whether inflicted by state or non-state actors;

72. This Hon'ble Court must also take into account Principle 30 (Right to State Protection) of the *Yogyakarta Principles Plus 10*, which enjoins states to take all measures to prevent, punish and provide remedies for discrimination, violence and other harm on basis of sexual orientation, gender identity, gender expression or sex characteristics, whether by state or non-state actors. States are further mandated to establish support services for survivors of sexual assault, harassment, violence and other harm on such grounds (*Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, as adopted on 10 November 2017, Geneva*);

73. Queer and trans people, whose identity intersects with their belonging to religious minorities or oppressed caste, need relief in terms of recognition *and* redistribution. Recognition seeks removal of sexual orientation and gender identity based restrictions under SMA. However, redistribution can offer medico-legal care for survivors of gender based violence, affordable housing and employment opportunities to most at-risk queer and trans people from religion and caste minorities, who are fleeing from natal family violence (*Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation, Nancy Fraser, The Tanner Lectures on Human Values, Delivered at Stanford University April 30–May 2, 1996*);

74. This Hon'ble Court's determination of legal recognition of queer and trans marriages must proceed through the lens of transformative constitutionalism, which mandates moulding of relief under a 'social science' approach and not based on 'traditional legalism'. In the context of conflict with natal families and gross disparities in material wellbeing of a vast majority of the queer and trans community, marriage alone cannot remedy historical injustices. The Constitution recognizes that our society has deeply entrenched inequalities, thus, merely recognizing queer and trans marriages will not remedy existing inequalities, unless positive action is taken to mitigate the same. Therefore, access to a national-level state apparatus to prevent, remedy and punish all forms of violence against queer and trans persons, with support services, can lay the groundwork for them to exercise the right to found a family without fear of any adverse or punitive consequences (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at paras. 95-110*)

III. <u>Non-recognition of 'atypical families' or 'chosen families' beyond constraints of marriage, blood or adoption violates Articles 14, 15, 19 and 21:</u>

Revisiting the Paradigm of Care in Context of Conflict inflicted by Natal Families:

75. For those who ‘come out’ as queer or trans to their families or are inadvertently found out to be queer or trans, the conflict from the family does not start and end with relationships. Irrespective of relationship status, queer or trans individuals are seen as “ill and abnormal”. Families resort to all desperate attempts to “reform” their children through coercive and violent means, which involve illegal and medically harmful methods like “conversion therapies” or traditional methods through faith-healers or even forced heterosexual marriage, which is seen as a “cure” for all assertions of individual choice;

76. Queer and trans individuals face opposition, denial of identity, restriction of liberty, surveillance, forced marriages and violence from “guardians, close relatives and family members” when they ‘come out’ and present their authentic selves before their families and society. The limitations of law’s recognition of only a typical family unit is grossly inadequate as it strips queer and trans individuals the autonomy to choose ‘any person’ in order to secure their best interests and ensure security of person, especially where the natal family is predisposed to reject and harm the queer and trans person. Queer and trans people form different kinds of families for taking care and responsibility for and of each other, and pooling of financial and immoveable assets, which are not protected by the law’s notion of a ‘family’;

77. Queer and trans individuals face invidious interference and opposition from natal families on account of any choice (whether personal, professional, economic and others) that affirms the centrality of their gender identity and sexual orientation to their lives, irrespective of whether or not they are in relationships and/or cohabit with a partner. Hence, the recognition of an individuals’ ability to nominate ‘any person’, not conventionally related, yet being most intimate, available and reliable, to secure their best interests in circumstances of vulnerability, incapacity or when the individual is unable to make a decision for any other reasons assumes greater significance for unmarried queer and trans individuals who, out of abundant caution, need to clearly define and limit the role of their natal families in their private lives to every possible extent, including exclusion in the most dire events. The primary objective being to ensure one’s best interests, a large number of queer and trans persons, informed by their lived experiences of natal family rejection, hostility and violence, need the legal right to substitute natal family relatives with their chosen family or ‘nominee’ for medico-legal as well as social purposes. In the absence of such legal recognition, the law perpetuates natal family violence on queer and trans persons even decades after they may have succeeded in escaping violent and abusive families. Perpetuation of such violence, even though seemingly as per law, is impermissible under the constitutional scheme which does not permit the perpetuation of historic injustices, biases and prejudices through promulgation or continuance of laws;

78. While some queer and trans persons wish to make the choice to get married, there are also many others who do not share such aspirations, and the law cannot ignore or have a blind spot towards the rights of such queer and trans persons. In this context, apart from ensuring that the bouquet of rights ensuing from marriage is made accessible to queer and trans persons, there is an imminent need for recognition of the right of queer and trans persons to a chosen family and for legal recognition of such atypical families. The recognition in law of the right to choose a family "*disrupts assumptions around the primacy of marriage as the principal marker of adult commitment*" (*Chosen Family, Care, and the Workplace, Deborah A. Widiss, 05.11.2021, Yale Law Journal*);

79. A critical mass of the queer and trans community may not choose marriage as an institution to define the meaning of their intimate relationships and lives; whereas on the contrary, they seek and choose to assign rights and obligations with respect to the most intimate aspects of their private lives in relation to housing, custody of minor children, end of life care decisions, among others, to individuals like friends, live-in partners and any other persons of vital importance in their lives. These lived experiences with chosen families occur against a backdrop of restrictions and interference by natal families who deny dignity and autonomy in life and death. It is pertinent to note that while the notion of a chosen family may be borne out of the conflict inflicted by the natal family, it is not an idea that challenges natal family bonds, but merely allows for a more inclusive understanding of adult intimacies and commitments, leading to conceptualizing of families that are more capacious, inclusive and available to queer and trans persons, especially when in need of care (*Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India', Edited and Compiled by Bina Fernandez, India Centre for Human Rights and Law (1999), pgs. 83-88, marked as* ***Annexure-P8 at Page 240-245A***);

80. The latest data shows that single person households constitute 12.5% of all households in India. Moreover, 7.5% of all households are single parent families, a majority of which households (approximately 13 million) are headed by women. Recent academic work on motherhood in India explores non-normative families, primarily by women identifying as queer or lesbian, unwed biological mothers and unmarried friends raising adopted children together. These emerging narratives which are not based on conjugal or romantic bonds further demonstrate the need for re-defining laws governing families and dependency (*Nandy, Amrita (2017): Motherhood and Choice: Uncommon Mothers, Childfree Women, New Delhi, Zubaan*);

81. Kinship between unrelated persons could be experienced as equivalent of biological or legal ties, and within queer and trans communities, individuals are more likely to form families of friends. There is no compelling reason for the state to withhold associated rights from non-conjugal households and relationships premised on care-giving and economic interdependence, and this Hon'ble Court must mould appropriate relief by taking into account caring arrangements, consent to healthcare decisions, sharing property, among others (*Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships, Law Commission of Canada (2001)*);

82. Older queer and trans persons are more likely to live alone and experience social isolation and report poorer health outcomes. Family rejection and limitations in the recognition of certain forms of families mean that often older queer and trans persons are more likely to rely on chosen family for caregiving support *(Report of the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic, A/75/258, 28 July 2020, at para. 12*);

83. The need for recognition of chosen families was manifestly evident during the Covid-19 pandemic. After the lockdowns, many transgender people had no option but to return to their parental or family homes, which they had left or were disowned due to their choice of gender non-conforming identity, as they could not sustain themselves when their means of earning were lost. Due to stay-at-home restrictions, many queer and trans youth were confined in hostile environments with unsupportive family members. This increased their exposure to violence, as well as their anxiety and depression. The suicides of transgender persons during the lockdowns are the evidence of both the material and psychic abandonment that trans and queer persons were struggling against, with natal families forcing outlawed conversion therapy on the one hand and isolating any networks for support, on the other. With no access to friends, partners and community, many trans persons found themselves particularly lonely. These experiences reveal that desperate circumstances for queer and trans individuals can be exacerbated if the only available support system is the natal family. Trans communities have thus articulated the demand for recognition of their 'non-traditional family structures' (*Report of the Study of Impact of the Covid-19 and Lockdowns on the Transgender Community in Karnataka, GamanaMahilaSamuha (2020), pages 10, 20; Vikramaditya Sahai, Aj Agrawal and Almas Shaikh, 'Exclusion Amplified: COVID-19 and the Transgender Community (CLPR, Bangalore, 2020) at page 13*);

84. It is most difficult to overcome violence and discrimination faced from parents, siblings, relatives because queer and trans adolescents and adults alike are conditioned to not recognize such harmful acts as 'violence' at the behest of the 'family unit'. Worse even, the violence normalized and considered to be means of discipline. On the other hand, the compulsoriness of marriage in order to redraw boundaries with the natal family undermines every other way of living and making families. When marriage is recognized as the only means of claiming rights as a family unit in law and society, it undermines other ways of living and loving. Queer and trans communities' experiences say that they find support and care primarily in queer friendships, kinships and intimacies. They depend on these affective relationships for survival - from health emergencies, illness, financial crisis, emotional break-down, decisions about life and care (*Queer-Trans* Intimacies and Communities - Envisioning Rights and the Way Forward, National Queer-Trans* People Meet Report, 25-26 June 2022, Kolkata*);

85. In *NALSA,* this Hon'ble Court did not limit its writ jurisdiction to issue a positive declaration to the concern on self-determination of gender identity. Rather, in order to do complete justice to a historically marginalized community, this Hon'ble Court issued expansive directions to central and state governments to ensure access to healthcare, framing of social welfare policies and grant of reservation in educational institutions and public appointments, among others, under Article 32. Likewise, it is essential that this Hon'ble Court traverses beyond the recognition of queer and trans marriages under SMA and protect rights of queer and trans individuals whose lived experiences demand the moulding of relief to recognize the autonomy and authority to assign rights and responsibilities to members of a chosen family (*National*

Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at para. 135);

86. It is respectfully submitted that but for the condition of conjugality and marital status between legally wedded parties, chosen families perform the same roles of care-giving, financial inter-dependence and sharing of domestic responsibilities. The denial of recognition of rights and responsibilities of members of chosen families, but rewarding married parties with robust protections in law, proceeds on basis of conjugality and marital status of parties to the relationship. The impairment of the autonomy of persons to organize their chose families and the violations arising from non-recognition interfere with Article 15's proscription of discrimination on basis of sex and the analogous ground of marital status. Therefore, denial of recognition to chosen families must be assessed on the test of strict scrutiny by evaluating the impact of exclusion from the material benefits as well as the expressive norm of dignity *(Reading Swaraj into Article 15: A New Deal for All Minorities, TarunabhKhaitan, NUJS Law Review, 2 NUJS L. Rev. 419 (2009), pages 424-425*);

87. The principle of substantive equality mandates that the statemust not exact conformity as a price for equality. Instead, it should accommodate difference and aim to achieve structural change. Queer and trans individuals, who do not choose marriage, deserve the recognition and protection of law when they seek to nominate 'any person' beyond the constraints of 'guardians, close relatives or family members' as they seek to lead autonomous lives independent of any restrictions imposed by natal families, by virtue of their inherent dignity. (*Francis Coralie Mullin v Administrator, Union Territory of Delhi, (1981) 1 SCC 608 at paras. 6-8; Lt. Col. Nitisha v. Union of India, 2021 SCC Online SC 261 at para. 56*);

88. The inviolable nature of the human personality is manifested in the ability of an individual to make intimate choices. The recognition that the fundamental right to privacy is an intrinsic recognition of heterogeneity and the right of the individual to stand against the tide of conformity must lead towards the inescapable conclusion of recognition of the authority of the individual in nominating 'any person' in order to secure their best interests in matters relating to organizing chosen families and other vital aspects of life (*Justice K.S. Puttaswamy v. Union of India (I), (2017) 10 SCC 1 at para. 323*);

89. The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother, a father and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally, if not more deserving, not only of protection under law but also of the benefits available under social welfare legislation and policies. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. (*Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088 at para. 26*);

90. While much of law's benefits are rooted in the institution of marriage, the law in modern times is shedding the notion that marriage is a precondition to the rights of individuals (alone or in relation to one another). Changing social mores must be borne in mind when interpreting the provisions of an enactment to further its object and purpose. Statutes are considered to be "always speaking". Societal reality indicates the need to legally recognize non-traditional manifestations of familial relationships. Such legal recognition is necessary to enable individuals in non-traditional family structures to avail of the benefits under beneficial legislation. Both married and unmarried persons have equal decisional autonomy to make significant choices regarding their own welfare (*X v. Principal Secretary, Health* *and Family Welfare Department, Govt. of NCT of Delhi, 2022 SCC Online SC 1321 at paras. 40-45*);

91. Adults with capacity to consent have the fundamental right to self-determination and autonomy to refuse medical treatment. In this regard, Advance Directives by a terminally-ill person or a person in vegetative state, for withdrawing medical treatment, is entitled to be followed by a treating physician under Article 21 of the Constitution. This Hon'ble Court has laid down guidelines to facilitate the process of implementing Advance Directives, and outlined the role of *guardians, close relatives or family members* of the executor in giving effect to the same (*Common Cause v Union of India, (2018) 5 SCC 1 at paras. 198-201; 2023 SCC Online SC 99 at pages 17-18*);

92. Competent courts routinely declare and appoint one spouse as the legal guardian of the medically incapacitated spouse, for managing the estate as well as participating in healthcare decisions in the best interests of the family (*Rajni Hariom Sharma v Union of India and Anr., 2020 SCC Online Bom 880*);

93. The ability to nominate a caregiver in such emergency healthcare situations is severely restricted for queer and trans individuals who are facing conflict from their natal families. Often the 'guardians, close relatives or family members' are at best unaware of the wishes of the person, or worse, actively dishonour the wishes of the person, thereby, violating their rights and heaping indignity even in the midst of critical events;

94. Likewise queer and trans individuals are stripped of autonomy with respect to nominating ‘any person’ due to the non-recognition in law of ‘atypical or chosen families’ which are formed beyond the constraints of marriage, blood or adoption, in matters ranging from estate planning, housing, transfer of property, employment-based partner benefits, guardianship of children, access to assisted reproductive technologies and many other private aspects of family life;

95. Certain HighCourts have expanded the scope of legal heirs for the hijra community by declaring that non-conjugal kinship bonds of the *guru-chela parampara* are not opposed to public policy and recognized members of a hijra gharana as lawful heirs with respect to devolution of property of a deceased member (*Illyas v. Badshah alias Kamla, AIR 1990 MP 334 at pages 216-218; Sweety v. General Public, AIR 2016 HP 148 at paras. 6-15*);

96. Section 14 of the *Mental Healthcare Act, 2017 (MHCA)* recognizes an individual’s right to appoint ‘any person’ as the nominated representative, in addition to ‘relatives’, for purposes of giving effect to their advance directive on the course of mental healthcare treatment in the event of their incapacity. It is humbly submitted that the law’s recognition of ‘any person’ as capable of serving the best interests of individuals in a state of vulnerability or incapacity ought to be reproduced in general contexts for queer and trans individuals to assign a right, title, interest, claim or benefit accrued as per law;

97. The Parliamentary Standing Committee on Health and Family Welfare tasked with examining the Mental Healthcare Bill, 2013 received objections with respect to appointment of ‘any person’ as a nominated representative and assigning broad ranging caretaking responsibilities for persons with mental illness by several members deposing before the committee. The objections were based on grounds that codification of such practice in formal law is “alien to Indian culture”, will pose a “danger” to the patient’s health, lead to “conflict” between natal family and the nominated representative over the best interests of the person with mental illness and is liable to “misuse” by the nominated representative in usurping the property and other social and economic rights that vest in the person with mental illness. However, the Department of Health and Welfare issued a complete response to all concerns by stating that the appointment of nominated representative is limited for purposes for mental healthcare decision-making and the principle complies with the rights based framework that seeks to protect the autonomy of persons with mental illness against “perceived rights” of natal families and caregivers. It is respectfully submitted that the prayer of Petitioners herein with respect to nomination of ‘any person(s)’to act as their nominee or next of kin is based on the same rationale that informs Section 14 of MHCA, which is binding law (*Report*

No. 74, Department-Related Parliamentary Standing Committee on Health and Family Welfare at pages 8, 52);

Comparative Law on Recognition of Chosen Families - Care-giving, Economic Inter-dependence and Domestic Responsibilities:

98. The *Hawaii Reciprocal Beneficiaries Act, 1997* in the United States of America (USA) recognizes relationships of any two individuals who have significant personal, emotional and economic interdependence, and grants equal rights and benefits as those available only to married couples (*Section 572C-2: Findings*). The law includes friends who do not share a romantic relationship and persons who may be related to one another, to register as reciprocal beneficiaries;

99. The *Adult Interdependent Relationships Act, 2002* in the Canadian province of Alberta defines a ‘relationship of interdependence’ as a relationship outside marriage in which any two persons (1) share one another’s lives (2) are emotionally committed to one another, and (3) function as an economic and domestic unit (*Section 1(1)(f)*). In determining whether two persons function as an economic and domestic unit, it is immaterial whether the persons have a conjugal relationship (*Section 1(2)*);

100. The *Relationship Act, 2003* in Tasmania (Australia) allows persons to enter into registered partnerships as either a 'significant relationship' (*Section 4*) or 'caring relationship' (*Section 5*), which are characterized by financial dependency, care-giving and domestic support, wherein a conjugal relationship is immaterial;

101. The *Colorado Designated Beneficiary Act, 2009* recognizes the right of any two individuals who are (1) above 18 years of age, (2) competent to enter into contracts, (3) neither party is married to the other, (4) neither party is another person's designated beneficiary and (5) both parties enter into the agreement without force, fraud or duress (*15-22-104. Requirements for a valid designated beneficiary agreement*) to enter into an agreement for purposes of caregiving responsibilities in disability, incapacity or estate planning in order that people are not placed at the mercy of existing laws that vest decision-making power in persons the parties wish to not authorize (*15-22-102. Legislative declaration*);

102. The *Ordinance No. 2020-16, City of Somerville* in Massachusetts (USA) passed an ordinance on 'domestic partnerships', defined as an entity formed by people who (1) are 18 years or older and competent to contract, (2) are in a relationship of mutual support, caring and commitment, and intend to remain in this relationship, (3) reside together, (4) are not married, (5) are not related by blood, and (6) consider themselves to be a family (*Section 2- 502(c)*);

103. The *Cuban Family Code (2022)*, popularly referred to as the '*Code of Affection',* recognizes rights and obligations of any persons who share an 'affective relationship' which is based on financial dependence, care-giving and domestic support;

104. This Hon'ble Court must mould appropriate relief by taking into consideration India's duty to follow Principle 24 (Right to Found a Family) of the Yogyakarta Principles, which mandates that all states must recognize the diversity of family forms, including those not defined by marriage or descent, and take all measures to ensure that no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members, including but not limited to family-related social welfare and other public benefits;

IV. The "notice, domicile and objection" framework under Sections 5-9 of SMA violates Articles 14, 15, 19 and 21

105. On 08.09.1954, during Lok Sabha debates on passage of the Special Marriage Bill (1952), Shri Ventkatraman issued the following statement in justification of the requirement of notice, domicile and objection framework under SMA (*Lok Sabha Debates on Special Marriage Bill dated 08.09.1954 at pages 1329-1330*):

"*<u>The amendment which I place before this House is to increase the period of residence from 14 days to 30 days, since we do not want to</u>*

provide opportunities for some runaway people going to an out of the way place and getting themselves registered without adequate notice to the parties who are really interested in the marriage.

The question may be asked, how does thirty days, in any way, prevent such a contingency occurring? It is likely that if a person resides for a period of thirty days in a place, he would come into contact with a number of people, his presence there would also be noticed or felt by the persons whom he ought to inform. His relations would come to know the whereabouts of the person and, therefore, there are less chances of some couples running away and getting themselves married, if the period is thirty days than it is if it were only a period of fourteen days. I am not suggesting that this is a fool-proof amendment. All that I am saying is that if the period is increased from fourteen to thirty days, the chances of people coming to know of the residence of that person in that place would be more and the relatives and friends interested in him would also come to know of it and, if any objection has got to be raised they may be able to raise it.."

106. As evident on the face of the record, it is respectfully submitted that the epidemic of abuse suffered by inter-caste and inter-religious couples eloping to escape violent natal families in order to solemnize and register marriages is the *intended consequence* of the provision on notice, domicile and objection *('How the Special Marriage Act is Killing*

Love', Article 14, dated 19.10.2020 marked as ***Annexure-P10*** *at pages 252-265*);

107. Queer and trans persons who faced violent resistance to their relationships from natal families or third parties approached High Courts for relief even before *Naz Foundation v. Govt. of NCT of Delhi, 2009 (111) DRJ 1(DB)*. However, since at the time the law de facto criminalized LBTI relationships, the vast majority of legal records relating to protection cases of queer and trans persons between the period 1947 to 2009 do not authentically represent the gender identity or sexual orientation of parties before the courts, since openly identifying as queer or trans could invite social hardships and legal penalties ('*Queer Women and Habeas Corpus in India: The Love that Blinds the Court', Ponni Arasu and Priya Thangarajah, 19(3) Indian Journal of Gender Studies 413, (2012), pgs. 4-6, 8-17, marked as* ***Annexure-P5 at Page 114-137***);

108. Despite landmark declarations of this Hon'ble Court with respect to self-determination of gender identity (*NALSA*) and decriminalization of sex between consenting adults (*Navtej Singh Johar*), queer and trans persons are routinely compelled to resort to High Courts for seeking remedies against arbitrary interference and violations by natal families and third parties (*Mansur Rahman v Superintendent of Police, 2018 SCC Online Mad 3250; Sadhana Sinsinwar and Another v State &Ors., WP (Crl) No. 3005 of 2018 disposed of by final order dated 01.10.2018;*

SSG v State of West Bengal, Writ Petition No. 23120(W) of 2018, disposed of by final order dated 29.01.2019; Bhawna and Others v State and Others, WP (Crl) No. 1075 of 2019, order dt. 12.04.2019; Monu Rajput v State, 2019 SCC Online Del 9154; Madhu Bala v State of Uttarakhand and Others, 2020 SCC Online Utt 276; Paramjit Kaur and Another v State of Punjab and Others, CRWP no. 5042/2020disposed of by final order dated 20.07.2020; Sultana Mirza and Another v State of Uttar Pradesh, Writ Petition (C) 17394/2020, disposed of by order dated 02.11.2020; Raunak Roy v State of Karnataka, WP (C) 85 of 2020, disposed of by final order dated14.12.2020; Poonam Rani and Another v State of UP and 5 others, Writ Petition (C) No. 1213 of 2021 disposed of by final order dated20.01.2021; S. Sushma &Anr. v Commissioner of Police, order dated 07.06.2021 in WP No. 7284/2021);

109. An analysis of the aforesaid cases reveals that this process is fraught with real and imminent challenges for queer and trans people, as they are compelled to negotiate exercising their right to choose a partner against threats to personal safety and economic security by natal families. The recourse of approaching High Courts on an ad-hoc basis often provides limited relief in terms of prevention of imminent threat to life. In this context, solemnization and registration of marriages irrespective of gender identity and sexual orientation and striking down of the notice, domicile and objection framework under SMA can ameliorate the impact of arbitrary interference and violence by natal families and third parties (*The L World: Legal Discourses on Queer Women', Surabhi Shukla, 13 NUJS L. Rev. 3 (2020), pgs. 14-22, marked as **Annexure-P6 at Page 138-162***);

SMA and Intersectionality of Caste, Religion, Sexual Orientation and Gender Identity:

110. The struggle of individuals who seek registration of their marriages under SMA irrespective of gender identity and sexual orientation is located within the larger history of struggles against various forms of social subordination in India. The impugned provisions under SMA perpetuate the unconstitutional legacy of "*the order of nature*" formerly sanctioned under Section 377, Indian Penal Code, 1860, (IPC) which was conceptually not limited to non-procreative sex, but applied to all forms of intimacy which the social order finds 'disturbing'. This includes various forms of inter-caste and inter-religious relationships which are sought to be curbed by society, including natal families. The re-imagination of the 'order of nature' as being not only about prohibition of non-procreative sex but instead about limits imposed by structures such as gender, caste, class, religion and community necessitates the protection of the right to marry and removal of impugned barriers under SMA, not just for queer and trans individuals, but for all (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at para. 385*);

111. The principle that a facially neutral action of the state may disproportionately affect a protected class is accepted across jurisdictions in the world (*Madhu &Anr. v. Northern Railways &Ors., 2018 SCC Online Del 6660 at paras.21-28*);

112. A vast body of literature published by queer and trans persons provides evidence of the very real and imminent risk to life and liberty of individuals in relationships irrespective of gender identity and sexual orientation, who are very likely to face similar or worse consequences under the notice, domicile and objection framework of SMA. The authorisation for 'any person' to object and cause interference in solemnization and registration of marriages on the basis of gender identity and sexual orientation, directly infringes upon personal autonomy in organizing the most intimate aspects of one's lives. A declaration by this Hon'ble Court to affirm the fundamental right to marry and found a family, without dismantling the notice, domicile and objection framework under SMA, will perpetuate the cycle of queer and trans persons facing conflict from the law and natal families, and compel them to 'abscond' from one state to another in search of safe havens ('*The nature of violence faced by lesbian women in India, A Study by Bina Fernandes and Gomathy N.B.', Tata Institute of Social Sciences (2003), pgs. 40-46, 111-112, marked as* ***Annexure-P11 at Page 266-***

275*; 'Documenting and Mapping Violence and Rights Violations Taking Place in Lives of Sexually Marginalized Women to Chart Out Effective Advocacy Strategies', Sappho for Equality (2011), pgs. 30-42, marked as* **Annexure-P12 at Page 276-289***; 'Breaking the Binary: Understanding Concerns and Realities of Queer Persons Assigned Gender Female at Birth Across a Spectrum of Lived Gender Identities, A Study by LABIA' –A Queer Feminist LBT Collective (April 2013), pgs. 33-38, marked as* **Annexure-P13 at Page 290-296***; 'Beyond the Roof: An action-research study on women survivors of violence and shelter homes in Delhi', Action India, Jagori and Nazariya (2019), pgs. 16- 19, marked as* **Annexure-P14 at Page 297-301***; 'Progressive Realization of Rights: A Co-Traveller's Reflections on Crisis Intervention', Suchithra K K, Deeptha Rao V N &Sathyakala K K(2022), pgs. 5-15, marked as* ***Annexure-P15 at Page 302-313***);

113. Inter-caste and inter-religious couples have not only withstood pressure and violence from families and third parties for marrying beyond their communities, but they have also had to contend with unsupportive marriage officers who "counsel" women against entering such marriages under the pretext of enforcing the notice, domicile and objection framework. On the other hand, the lived experiences of queer and trans individuals suggest that sanction to their relationships in law will invite a social backlash in terms of heightened vulnerability on basis of caste, religion and community norms, thereby indicating that implementation of the notice, domicile and objection framework to deny inter-caste, inter-religious and queer and trans marriages will likely be aggravated in the event this Hon'ble Court grants the prayers of Petitioners herein to recognize queer and trans marriages (*Talking Marriage, Caste and Community: Voices from Within, SAHELI (2007) at pages 18, 65*);

114. Although the notice, domicile and objection framework is facially neutral, the adverse impact in implementation falls disproportionately on inter-caste and inter-religious couples, and especially on further marginalized couples, where one or both partners do not conform to the gender binary or have unconventional sexual orientation(s). Individuals in relationships across gender identity and sexual orientation are very likely to face worse consequences, on account of the ignominious history of violence and opposition from natal families, the police and third parties. When viewed in the backdrop of institutional or societal context in which the impugned framework operates, it is respectfully submitted this has effect of perpetuating systemic disadvantage in the shape of social, economic and political exclusion, psychological and physical harm by exposing minority communities to conflict inflicted by natal families. As per settled law, therefore, the impugned provisions of SMA are unconstitutional as they amount to indirect discrimination under Article 15. Moreover, the impugned framework is not saved by any justification, as the purported legitimate state interest discernible from the legislative debates is the prevention of ‘runaway marriages’, which predominantly consist of inter-caste and inter-religious couples who flee due to natal family violence and majoritarian opposition (*Lt. Col. Nitisha v. Union of India, 2021 SCC Online SC 261 at paras. 58-61, 64-97*);

115. This Hon’ble Court must bear in mind that the Petitioners herein fall within a protected class on basis of sexual orientation and gender identity. Article 15 recognizes the principle that certain groups have been historically disadvantaged and that post the enactment of the Constitution, actions of the state that discriminate against queer and trans persons are constitutionally untenable. The notice, domicile and objection framework does not operate in a vacuum; it’s implementation must be examined in the social context it operates and the effects that it creates in the real world. It is immaterial that the impugned framework does not intentionally inflict harm on inter-caste and inter-religious couples; the ultimate effect of its implementation has a disparate impact on the aforesaid protected groups by perpetuating the historic denial of agency that individuals have faced in India on the basis of caste, religion, sexual orientation and gender identity, and nullifies the fundamental right to marry and found a family *(Madhu &Anr. v. Northern Railways &Ors., 2018 SCC Online Del 6660 at paras. 16-17, 29-30);*

116. It is difficult to think about ‘one’ experience of queer and trans persons in regard to issues of violence and pleasure because this community, as with all communities in India, is divided by caste and class. The intersections of caste and class in the context of sexuality and gender are very complex. The structure of our social system is based on violence if there is any sort of non-conformity with norms of caste, class, religion, and gender and sexuality. Moreover cultures are different in various regions and this adds to complex structural violence especially against queer and trans persons. When an individual is located in multiple marginalized positions, they experience even more violence in their inability to question and pursue alternatives to the systems they have been forced into (*Towards Gender Inclusivity: A Study on Contemporary Concerns Around Gender, Alternative Law Forum and LesBIT, 2013, at pages 38-40*)

117. The doctrine of intersectionality presents a framework of analysis to review the implementation of the "notice, domicile and objection" framework under SMA, by focusing on the effects of natal family opposition to solemnization of marriages by the intersection of caste, religion, poverty, gender identity and sexual orientation which shape individual and collective experiences of inequality. A comprehensive appraisal of the distinct experience of powerlessness of queer and trans individuals belonging to religious or caste minority groups must translate into moulding appropriate relief (*M. SameehaBarvin v. Jt. Secy., Ministry of Youth and Sports Development,* *(2022) 1 Mad LJ 466 at paras. 14-20; Patan Jamal Vali v. State of Andhra Pradesh, AIR 2021 SC 2190 at paras. 15-30*);

118. It is necessary to consider the impact of SMA's "notice, domicile and objection" framework on marginalized groups, whose social and economic conditions heighten their vulnerability to discrimination, harassment and violence by natal families and third parties. The implementation of laws must not mirror the systemic discrimination prevalent in society but must be aimed at remedying this discrimination and ensuring substantive equality (*Devika Biswas v. Union of India AndOrs., (2016) 10 SCC 726 at para. 112*);

The Notice, Domicile and Objection Framework Violates the Guarantee of Due Process:

119. The "notice, domicile and objection" framework signals to natal families and local communities that third parties have a legitimate and vested right to cause interference and disruption in the most intimate and private aspects of lives of consenting adults, whether before or after marriage, resultantly depriving inter-caste, inter-faith and queer and trans couples the freedom from insecurity, interference and violence by state and non-state actors (*National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at para. 75*);

120. The fundamental right to marry and found a family under Article 21 is rendered futile by the "notice, domicile and objection" framework, as such provisions have the direct and inevitable effect of emboldening natal families and local communities in negating this fundamental right (*RC Cooper v Union of India (1970), 1 SCC 248*);

121. Article 21 guarantees both procedural as well as substantive due process. Therefore, the scheme of SMA must be applied in a manner that is fair, just and reasonable in order to guarantee the fundamental right to marry and found a family. The procedure with respect to inspection of the marriage notice book and opportunity for filing objections with respect to a notice of intended marriage by "any person" violates both the guarantees (*Mohd. Arif v. Registrar, Supreme Court of India, (2014) 9 SCC 737*);

122. The "notice, domicile and objection" framework is rendered unconstitutional on the ground of vagueness, as it lacks reasonable standards and clear guidance for citizens, authorities and courts, in so far as it allows "any person" to inspect records and cause interference between an intending couple. When a law uses vague expressions capable of misuse or abuse, it leaves affected parties in a boundless sea of uncertainty and has a chilling effect on the ability of individuals belonging to vulnerable groups to solemnize a marriage (*Shreya Singhal v. Union of India, (2015) 5 SCC 1 at paras. 56-71*);

123. The Law Commission of India has recommended the procedure with respect to notice, domicile and filing objections under SMA to be completely deleted in order to redress the harassment from natal families and third parties (*Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework. Report No.242 (2012) at para. 9.1*);

124. While intra-community marriage laws (Hindu, Muslim, Christian, Parsi personal laws) do not provide for "notice, domicile and objection" framework, the codification of the same under SMA is unconstitutional in so far as the impugned provisions are (a) disproportionate to the object of prevention of violations of the law and (b) there exists no legitimate state interest in regulating inter-religious marriages and inter-caste marriages when intra-community marriages are not subject to similar regulation (*Justice K.S. Puttaswamy v. Union of India (I), (2017) 10 SCC 1 at para. 325*)

125. While intra-community marriage laws (Hindu, Muslim, Christian, Parsi personal laws) do not provide for the "notice, domicile and objection" framework, the codification of the same under SMA is unconstitutional in so far as it casts a presumption of criminality on any two consenting adults who choose to marry beyond constraints of caste, religion,heteronormativity, gender identity and sexual orientation. The impugned framework treats all persons seeking solemnization and registration of marriages under SMA as potential criminals without even requiring the state to draw a reasonable belief that the individuals might be perpetrating a crime or violating conditions of a valid marriage under the law, therefore, it is completely disproportionate to the objective sought to be achieved by the state (*Justice K.S. Puttaswamy vs Union of India (II) (2019) 1 SCC 1 at paras. 1323-1324*);

126. The additional “notice and objection” framework under Sections 15-16 of SMA, meant for registration of marriages formerly solemnized as per personal laws, suffers from the same defects and violations as the “notice, domicile and objection” framework impugned herein, since it imposes an unconstitutional barrier in circumstances where one party to a marriage has transitioned to affirm their self-determined gender identity and both parties have mutually decided to continue the marriage and save it’s validity under Sections 15-16 of SMA;

V. Non-recognition of marriage between two consenting adults on basis of gender identity or sexual orientation under the scheme of solemnization and registration of marriages in Special Marriage Act, 1954 (SMA) violates Articles 14, 15, 19 and 21:

127. Queer and trans individuals need the layers of social, economic and legal protections which accrue as a direct incidence of marriage, in order to shield themselves from the opposition, interference, violence and violations by natal families;

128. As conflict with natal families is a recurring phenomenon in many queer and trans persons’ lives, the right to marry and found a family can substantially mitigate these circumstances by offering the immunity of state sanction to queer and trans marriages, and hence shield them against the misuse and abuse of law by natal families;

129. As conflict inflicted by natal families results in loss of social and economic rights accrued as members of such families, the benefits accruing as the direct incidence of marriage will offer a source of support to queer and trans couples in order to live with dignity;

130. The lack of legal recognition to queer and trans persons' relationships is historically a contributing factor emboldening natal families to force them to enter into 'heterosexual' marriages against their will ('*Less Than Gay, A Citizens Report on the Status of Homosexuality in India', AIDS Bhedbhav Virodhi Andolan (1991), pgs. 8-9, marked as* ***Annexure-P1 at Pages 83-85***);

131. Forced marriages have compelled many queer and trans people to run away in attempts to 'marry' a partner of their choice or die by suicide (*'Lesbian Suicides and the Kerala Women's Movement', Paper presented at Hyderabad Young South Indian Feminists Conference, Deepa Vasudevan, Sahayatrika, (2001), pgs. 1-6, marked as* ***Annexure-P2 at Page 86-98A*** *and 'Law like Love: Queer perspective on34 83-85 86-98A Law', Yoda Press (2011), pgs. 325-337, marked as* ***Annexure-P3 at Pages 99-105B***);

132. Lesbian couples have frequently sought to formalize their relationships under the device of *maitrikarar* (friendship agreements), however, the legal ambiguity of such arrangements has increased their vulnerability to interference by natal families and non-recognition in law. Such intimate relationships may not always be sexual or romantic, but are borne out of mutual care and respect, and allow gender non conforming individuals to exercise their right to choice of family (‘*Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women’s Rights and the Family’, Partners for Law in Development (2010), pgs. 66-72, marked as* ***Annexure-P4 at Pages 106-113***);

133. Several rural and urban queer and trans persons have historically undergone religious ceremonies to ‘marry’ in witness of their supporting families, local communities and officiated by priests, or died by suicide together, in cases where families and communities have violently opposed such relationships, often abetted by the local police force. Ironically, the earliest reported instance from 1987 concerned 2 police-women, Leela Namdeo and Urmila Shrivastav, who married each other at a temple in Bhopal. The formal law may not recognize such ‘marriages’, however, local customs keep evolving and sometimes gain social recognition after long duration of practice (*Love’s Rite: Same Sex Marriages in Modern India and the West, Ruth Vanita, Palgrave Macmillan (2005)*);

Legislative Intent in Recognizing Inter-Religious Marriages Must Guide the Recognition of Queer and Trans Marriages:

134. Queer and trans individuals' prayer for the right to marry and found a family under SMA must be adjudicated keeping in view the interpretive changes to the statute by the passage of time. This Hon'ble Court must take into consideration the progressive development of social and jurisprudential norms which have taken place since the passage of SMA. Although constitutional in 1954, the SMA's validity must be interpreted as per queer and trans individuals' aspirations and recognized rights in 2023 (*John Vallamattom v. Union of India, (2003) 6 SCC 611 at para. 33*);

135. The Statement of Objects and Reasons of SMA states that the Special Marriage Act, 1872 is being replaced in order to ensure that any two persons can marry irrespective of religious status. A brief legislative history and concerns to reform the 1872 law are presented in the statements of Shri Biswas during parliamentary debates on the 1954 law (*Lok Sabha Debates on Special Marriage Bill dated 19.05.1954 at pages 7797-7804*);

136. Members of Parliament were cognizant of the status of queer persons in Indian society in 1954. However, homosexuality and women "catamites" only featured in context of grounds of divorce in debates on the Special Marriage Bill (1952), on account of the pathological and criminological lens through which such lives were understood at the time (*Report of the Joint Committee of the Special Marriage Bill, 1952 (March 1954) at pages xvii, xxxvi*);

137. On 16.12.1953, Shrimati Renu Chakravarty's defense of legal recognition of inter-religious marriages as a necessary product of the evolution of social and cultural context in Indian history reads as such (*Lok Sabha Debates on the Special Marriage Bill dated 16.12.1953 at pages 2317-2318*):

"*But I would like to answer one general argument which is always brought forward by people who always oppose any new progressive laws, viz., that it goes against Hindu society, that it goes against Hindu religion. The face of society changes. We regard society as dynamic, and we recognize that through the ages society has changed and the super-structure of society, i.e., the customs have changed also.….. When we come in later ages to feudal times, we see that the means of production has gone into the hands of man, women automatically become subjected. We begin to see them becoming more and more akin to a commodity; they can be exchanged for money. We see such things as polygamy, dowry etc. These are things which emanated from the objective reality of society. Now a new society has come into being when there is need for free labour power which reflects itself in the growth of ideas about individual freedom, then certainly we must come to this question about free choice of marriage. It is no use saying that it is immoral, it is not right. We believe and we stand by this fact that there should be free choice of marriage, and therefore, this contractual* *marriage as enunciated in this Bill we support. We do not think that just because a person marries out of his or her free choice, it becomes unholy; that the bride and the bridegroom see into the soul of eachother only if they are married according to religion, and otherwise not…*"

138. On 17.12.1953, Shri D.C. Sharma supported legal recognition of inter-religious marriages for everyone on the basis of India's commitment to democracy, freedom and rule of law as such (*Lok Sabha Debates on Special Marriage Bill dated 17.12.1953 at pages 2370-2371*):

"*Democracy means freedom of choice. We can choose in marriage anybody we like. I think this Bill gives us that freedom of choice. This is a freedom which cannot be denied to men and women. It cannot be denied to persons when they receive high education, when they are brought up in a democratic atmosphere, and when they are taught they should love freedom. If they can have political freedom and freedom in other spheres of life, I do not see why they should not have freedom in the choice of their partners. I think this is only an extension of the liberty which we have granted in so many spheres of life…*"

139. On 19.05.1954, Dr. Rama Rao highlighted flaws in contentions against recognition of inter-religious marriages based on public morality as such (*Lok Sabha Debates on Special Marriage Bill dated 19.05.1954 at pages 7844-7845*):

"At the beginning of the past century, when we were burning our widows on the pyre and Raja Ram Mohan Roy and others started the movement against the Sati and William Bentinck helped them, our friends like N. L. Sharmas and Chatterjees—all those people—shouted "religion in danger". Even in our own life-time, the Sarda Act was brought in to prevent marriage of girls of ten, seven, five or even three years. Then also they said, "religion in danger". There has been a cry by wrongly shouting, "religion in danger". It was a step taken by the conservative mind, by the chains that they wanted to enforce, and not by the permissive and progressive step."

140. On 08.09.1954, Acharya Kripalani opposed the requirement under the proposed bill for parties to produce certificates of fitness in order to solemnize a marriage as it perpetuated a reductionist conception of marriage as a union between "healthy bodies". Notwithstanding that the para. 31 in *Mr. X v. Hospital Z, (1998) 8 SCC 296* stands overruled in an application for clarification in *Mr. X v. Hospital Z, (2003) 1 SCC 500*, whether two persons solemnize a marriage for procreation, sexual intimacy or companionship, such plural manifestations of the family unit are equally deserving of protection. In the words of Acharya Kripalani (*Lok Sabha Debates on Special Marriage Bill dated 08.09.1954 at pages 1298-1299*):

"A person may be willing to take a companion who is diseased in order to nurse her or him because there is affection, because there is intellectual affinity, because there is emotional affinity—all these things. Therefore, I think the Law Minister has committed a great blunder by producing before us this Bill without being scientific, without defining marriage, without saying what are the objects of marriage at the present time. If this is done, I think much of the confusion will disappear. I believe there are many people who marry simply tor companionship, simply for intellectual help to each other so that they may combine their labour and produce some creative work."

141. On 14.09.1954, Shri K.K. Basu supported the legal recognition of inter-religious marriages by placing reliance on Article 15's mandate of anti-discrimination as such (*Lok Sabha Debates on Special Marriage Bill dated 14.09.1954 at page 1849*):

"This is 1954 and we are bound by the Constitution where we have accepted that certain rights should be guaranteed to the citizens irrespect of sex, creed or religion. Therefore, we are here coming forward with legislations dealing with a form of marriage which is

<u>deemed to be progressive in consonance with the present day theories of the modern world</u>…"

142. Thereafter, Prime Minister Shri Jawaharlal Nehru made a plea with respect to forbidding the vagaries of personal law to interfere with intimate aspects of individuals as such (*Lok Sabha Debates on Special Marriage Bill dated 14.09.1954 at pages 1856-1857*):

"…<u>I do submit that this extreme reverence shown to what is called personal law seems to me completely misplaced, whether it is the Hindu personal law or the Muslim personal law or any other…if you admit that society changes—and I do not see how anybody can deny that society changes or that a social organisation changes—to tend to bind it down with a certain organisation which might have been exceedingly good at a certain time under certain circumstances but which does not fit in with the later age, is itself not wise, or certainly it comes in the way of any advance or progress. And ultimately you put this alternative before the people governed by that society, that if you do not allow them to grow into something different, the only way out for them is to break away from it…It would be wrong, of course, to compel it or to force it to develop in any other way. And my own reading of our history is that in the past, there was that capacity for adaptation, for change</u>…"

143. On 16.09.1954, Dr. N. B. Khare ironically suggested that marriages based on companionship can include queer marriages as such (*Lok Sabha Debates on Special Marriage Bill dated 16.09.1954 at page 2093*):

<u>*"There is no doubt that some reference was made to atmicvivah yesterday. I do not understand what the marriage for companionship means or atmicvivah means. Sir, as regards atmicvivah or 'soul marriage', if it is only a 'soul marriage', then why not males marry males and females marry females? Both have souls! This atmicvivah is nonsense."*</u>

144. The Statement of Objects and Reasons of the Special Marriage (Amendment) Act, 1963 states that the SMA is being amended to provide legal recognition to marriages involving any two persons who are within the prohibited degrees of relationship, provided such marriages are permitted by custom or usage of at least one party. The Parliament added a proviso to Section 4(d) to this effect on 22.09.1963;

145. On 26.08.1963, ShrimatiVimla Devi's support for the proposed amendment reads as such (*Lok Sabha Debates on Special Marriage (Amendment) Bill dated 26.08.1963 at pages 3230-3231, 3233*):

"*Scientifically it may be true, and it is true also, that marriages between closely-related persons have got evil consequences. But in spite of science, in spite of scientific knowledge, without spreading the scientific idea to the people, the people try to follow their customs, and without a scientific knowledge, the people practise these things...I support this amendment because such persons, not ruled by any Act or by any science, emotionally get involved by choice or by custom and they cannot be barred under the Special Marriage Act. So, for this reason, I support the amendment.*

...

Personally, I do not advocate such marriages…But there are customs and practices among the communities and they cannot be ignored. You cannot prohibit such marriages without taking the practices into consideration. If you prohibit, either by law or by new law, they will still lead a married life."

146. Subsequently, Shri D.C. Sharma's defense of the proposed amendment reads as such (*Lok Sabha Debates on Special Marriage (Amendment) Bill dated 26.08.1963 at page 3248*):

"Here custom has been given a rightful place in the marriage law of our country. It has been recognised in a very comprehensive way…There are customs which prevail amongst some communities; there are

customs which prevail among some members of one community, but not amongst other members of the community. There are certain social groups, ethnic groups, certain families - of course, a family does not mean a family of 5; it may mean a very large-size family - which have their own customs and think we are doing only something which is there, which is preservative of their life, which does not dislocate the orderliness already existing. How can this Bill be disruptive of our social organisation? How can it sabotage our social values? How can it destroy all the great values of the Hindus. It certainly cannot. It is only trying to put the seal upon those things which already exist."

147. The legislative debates on the 1954 law and the 1963 amendment are instructive of valuable lessons for the purposes of this Hon'ble Court's determination of prayers of Petitioners herein:

a. It is not the legitimate interest of the state to dictate value judgments on whether marriage as an institution must be entered into for procreation, sexual intimacy and/or companionship and disenfranchise persons for making choices with respect to private and intimate aspects of family life;

b. A purported naturalization of compulsory heterosexuality in the institution of marriage in order to deny legal recognition to queer and trans marriages and their families is a fallacy, in so far as the submission is only instructive of the "socially, culturally and legally ingrained concept of marriage" at a particular time of Indian history. Marriage has time and again evolved as a dynamic institution to respond to people's aspirations depending on the social, economic, cultural and political changes through time and has witnessed radical transformations in terms of abolition of sati (*Sati Regulation XVII A. D. 1829 of the Bengal Code*), widow remarriage (*The Widow Remarriage Act, 1850*), prohibition of caste (*Hindu Marriage Disabilities Removal Act, 1946* and *The Hindu Marriage Validity Act, 1949*) and religion (SMA, 1954) as barriers to marriage, prevention of child marriage (*The Child Marriage Restraint Act, 1929*), the introduction of monogamy (*Hindu Marriage Act, 1955*), introduction of divorce *(Indian Divorce Act, 1869*), introduction of adoption (*Hindu Adoptions and Maintenance Act, 1956*) and in many other aspects. The law has always intervened to rectify historical injustices within the institution of marriage and adapt it as per the constitutional norms of a developing society;

c. It is clearly borne out that SMA, 1954 was passed in order to meet the rigours of Article 15's guarantee of freedom from discrimination on basis of religion. It is respectfully submitted that, undoubtedly, SMA can be interpreted to recognize marriages involving queer and trans individuals on the basis of this Hon'ble

Court's landmark declarations on anti-discrimination in context of sexual orientation and gender identity under Article 15;

d. It is apparent on the face of the record that SMA has evolved inspite of objections on basis of scientific knowledge and/or public morality to recognize marriages involving persons who are within prohibited degrees of relationship, given that custom or usage governing one party allows it, which were previously deemed unfit for inclusion during passage of the statute in 1954;

e. SMA was passed explicitly to remove religious barriers and provide a civil law framework to solemnize and register inter-religious marriages. This has effectively de-linked the institution of marriage from compulsory religious affiliation. The recognition of queer and trans marriages, therefore, must only be determined within the framework of constitutional law and any social, cultural or religious objections are effectively foreclosed;

f. The striking feature of parliamentarians' support of the 1963 amendment is the experience of life of the law on the streets; that lived realities of people and communities with respect to intimate and private aspects of family life often live on regardless of law's dictates, and therefore, it is prudent that the law must recognize such marriages in order to protect rights of parties to the marriage and children;

g. There is no material on record to demonstrate that recognition of marriages among persons within prohibited relations has harmed the social fabric. Likewise, the recognition of queer and trans marriages must not be obstructed on grounds which are not supported by any evidence. The state's commitment to a plurality of lived experiences, and therefore, the recognition of diverse forms of marriages and families is a moral imperative in a democratic state;

h. The fundamental premise of the legislative debates which led to the passage of the 1963 amendment is a compelling defense of the triumph of personal autonomy;

i. The rationale that weighed with the Parliament during passage of the SMA, 1954 in recognition of inter-religious marriages is applicable *mutatis mutandis* to the pleas of Petitioners herein on recognition of queer and trans marriages;

148. The body of family law has been reviewed by the judiciary to ensure consistency with Part III of the Constitution which has re-shaped the different ways in which communities choose to organize a 'family unit'. From recognizing Scheduled Tribe women's right to intestate succession to agricultural land (*Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125*), affirming the status of the mother as the natural guardian of a child (*Githa Hariharan v. Reserve Bank of India, AIR 1999 SC*

1149), declaring triple talaaq unlawful (*Shayara Bano v. Union of India, (2017) 9 SCC 1*) and upholding the right to intestate succession for Syrian Christian women *(Mary Roy v. State of Kerala, 1986 2 SCC 209*), the common thread running through this Hon'ble Court's interventions is the constitutional imperative to rectify historical injustices of gender based inequality codified in law on the anvil of Article 15. Therefore, it is untenable to allow SMA to deny legal recognition to queer and trans marriages in 2023 on the misguided pretext that doing so would adversely impact the 'family unit';

Interpretation of Statutes Must Bridge the Gap between Law and Society:

149. The rule of purposive interpretation of statutes dictates that while interpreting the law, the court has a bounden duty to bridge the gap between law and society in order to advance the pursuit of social justice (*Deepika Singh v. Central Administrative Tribunal, 2022 SCC OnLine SC 1088 at para. 26*);

150. As per settled law, the provisions of SMA must not be frozen in the year it was legislated on basis of a literal interpretation, rather, the law must be treated as "always speaking" to respond to the claims of Petitioners herein as per the extant law applicable today. Since 1954, Indian society has vastly transformed in recognizing rights of queer and trans individuals, therefore, there can be no *a priori* assumption that

SMA must not apply to such individuals today because legislators were not deliberating the content of rights of the community in 1954. During the passage of SMA in 1954, queer and trans communities were both pathologized and criminalized, therefore, it was inconceivable to advocate for the fundamental right to marry and found a family in such a tyrannical context. Queer and trans individuals were struggling to survive and grappling with de-pathologizing and de-criminalizing their identities and lives as recently as the second decade of the 21st century when this Hon'ble Court recognized the fundamental rights of queer and trans individuals under Articles 14, 15, 19 and 21. As the language of SMA is wide enough to recognize marriages involving queer and trans persons, there is no reason why the law must not be interpreted in such manner (*Dharani Sugars and Chemicals Ltd. v. Union of India, (2019) 5 SCC 480 at paras. 34-38; Bostock v. Clayton County, Georgia, 590 U. S. ____ (2020) at pages 13-14*);

151. As per the doctrine of living constitutionalism, even written constitutions yield unwritten principles of law with the march of time. The necessity of seriously probing the validity of SMA's denial of recognition of marriages on basis of sexual orientation and gender identity in context of evolution of Part III of the Constitution cannot be ignored, in light of this Hon'ble Court's unanimous recognition of the fundamental right to privacy in Part III, despite the choice of members of the Constituent Assembly to not codify the same expressly under the

Constitution. This Hon’ble Court has progressively adopted the living constitutionalism approach which allows the Constitution to endure and adapt to the challenges and aspirations of the present and future (*J. KS Puttaswamy v. Union of India, (2017) 10 SCC 1 at paras. 251-262, 320-321, 344-351*);

152. On the basis of this Hon’ble Court’s recognition of self-determination of gender identity, there is judicial precedent under the HMA, MTP and IPC of expansive and inclusive interpretation of gendered categories, to include transgender women and intersex persons identifying as women in laws regulating private aspects of family life and impacting violation of sexual autonomy. Laws governing marriage and other aspects of family life too must keep pace with this jurisprudential advancement, and specifically under the SMA, categories such as, ‘woman/bride’ and ‘man/bridegroom’ need to be interpreted as including transgender persons and intersex persons self identifying as woman or man, and not be limited to cis women and men. The submission herein seeks that legal terms be read and interpreted in an expansive and inclusive manner to ensure the right to marry and found a family and attendant and consequential rights are available and accessible to persons of all sexual orientation and gender identity. This is without prejudice to the Petitioner’s prayer that the law be interpreted to recognize the right to marry and found a family with any person of one’s choice irrespective of sexual orientation or gender identity

(*Arunkumar and Sreeja v. Inspector General of Registration***,** *AIR 2019 Mad 265 at paras 4-15.; X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, 2022 SCC Online SC 1321 at para. 11; Anamika v. Union of India, W.P. (Crl) 2537/2018 before High Court of Delhi);*

153. The provisions of a statute must be applied in a manner consistent to settled constitutional principles in order to ensure social, economic and political justice for all individuals. Constitutional Courts do not defer to the Parliament to guarantee the constitutional right to seek abortion services for women, rather, they routinely and positively intervene under plenary powers in Articles 226 and 32 by reading-in non-lethal risk to women's physical and mental health within the statutory duty of registered medical practitioners to 'save the *life* of a woman' under the Medical Termination of Pregnancy Act, 1971 despite exceeding the statutory limits, by interpreting it consistently with the expansive meaning afforded to the 'right to life' with human dignity under Article 21. Likewise, it is humbly submitted that sex-related terms like 'woman/bride' and 'man/bridegroom' under SMA must be interpreted inclusively and purposively to cover LGBTI individuals seeking to solemnize and register a marriage as the term 'sex' under Article 15 includes sexual orientation and gender identity (*XYZ v. Union of India, (2019) 3 Bom CR 400*; *Meera Santosh Pal v. Union of India, (2017) 3 SCC 462; ABC v. State of Maharashtra, WP (ST) No.*

1357/2023, order dt. 20.01.2023; National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 62-66, 75-83);

Systemic Discrimination to Full Citizenship - Trans Persons and Right to Marry and Found a Family:

154. The denial of the right of transgender persons to marry and found a family under SMA bears striking resemblance to the dark history of systemic marginalization of transgender persons under the Criminal Tribes Act, 1871 ("CTA"). The CTA set the shameful precedent for the transphobic rhetoric of casting transgender persons as 'harmful' to the best interests of a child, in so far as the law policed transgender persons on fictitious allegations of kidnapping and castrating children (Section 26) and forbid transgender persons to act as guardians to any minor, making a gift or will or adoption (Section 29). With the Parliament having repealed CTA in 1949, there is no bar under any law on the right of transgender persons to found a family. It is impermissible for the state to resurrect the legacy of criminalization through the backdoor by denying recognition of transgender persons' right to marry and found a family, in light of this Hon'ble Courts landmark declarations on guaranteeing the fundamental rights of persons on basis of gender identity (*National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 18, 87*);

155. This Hon'ble Court noticed that non-recognition of self-determined gender identity leads to denial of social, economic, civil and political rights of transgender individuals, including unfair exclusion from marriage laws which are coded in the binary of "male/female" (*National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 53, 81)*;

156. The institution of marriage cannot be limited between biological men and women, as with the march of time, the law recognizes that self-determined gender identity is the appropriate basis for recognizing rights of individuals, (*National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 37, 62-66, 75-83*);

157. The provisions of *Transgender Persons (Protection of Rights) Act, 2019* ("TG Act") codify the rule of law on recognition of self-determination of gender identity and guarantee equality before law, and existing older laws must be revisited to ensure these statutory protections see the light of day and are implemented on the ground;

158. Section 3 of the TG Act provides that no person or establishment shall discriminate against transgender persons in terms of unfair treatment in employment, healthcare, purchasing or renting property and access to enjoyment of goods, services and facilities dedicated to the use of general public, among other areas. However, as extant law does not recognize marriages involving transgender persons, they face rampant discrimination with respect to nominating a representative for execution of advance directives during critical illness outside the parameters of ‘guardian, close relative or family members’, access to resources dedicated for survivors of gender based violence for categorical exclusion from the scope of ‘domestic relationship’, at-risk of eviction from rented premises or disabled from joint-ownership of residential property as the housing regulations only conceive of ‘family’ related by marriage, birth or adoption and disentitled from receipt of death benefits of the partner by virtue of the restrictive manner in which employment regulations are conceived, among others. It is humbly submitted that the TG Act mandates the recognition of marriages involving transgender persons by virtue of the inextricable linkages marital status has to the broader range of social and economic rights guaranteed as per law (*Happy Together: Law and Policy Concerns of LGBTQI Persons and Relationships in India’, Centre for Health Equity, Law and Policy, (2021), pgs. 47-52, 62-68*, marked as **Annexure-10**);

159. Section 20 of the TG Act provides that provisions of this law are in addition to, not in derogation, of existing laws in force. The sequitur follows that solemnization and registration of marriages under SMA must be performed in a manner consistent with the anti-discrimination mandate of the TG Act. As per settled law, this Hon’ble Court must recognize the fundamental right to marry and found a family for transgender persons by virtue of the anti-discrimination provisions of TG Act, a special statute on rights of transgender persons, which overrule the heterosexist underpinnings to the procedure of solemnization and registration of marriages under SMA, a general statute (*Sharat Babu Digumarti v. Government of NCT of Delhi, (2017) 2 SCC 18 at paras. 32-37; S. Vanitha v. Deputy Commissioner, (2020) SCC Online SC 1023 at paras. 35-40*);

160. In order to remedy systemic discrimination, the responsibility of constitutional courts is not limited to the negative duty of striking down discriminatory policy, criteria or practice (PCP) such as anti-sodomy laws and compensating the aggrieved for the harm, but includes the positive duty to affirm the right to choose a partner for marriage that can facilitate social redistribution by providing for entitlements that aim to negate the scope of future harm (*Lt. Col. Nitisha v. Union of India, 2021 SCC Online SC 261 at para. 90*);

Denial of the Right to Marry and Found a Family for Queer and Trans Persons Violates Part III of the Constitution:

161. It is respectfully submitted that the rationale of *Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755* in excluding queer and trans persons from the scope of ‘domestic relationship’ under the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) must be revisited in light of this Hon’ble Court’s declarations on fundamental rights of queer and trans persons as per Articles, 14, 15, 19 and 21 in *NALSA, Puttaswamy, Shafin Jahan,* and *Navtej Singh Johar*;

162. This Hon’ble Court is not precluded from determination of issues presented by the Petitioners herein, in so far as the observation “*When we say union, we do not mean marriage*…” in para. 155 of *Navtej Singh Johar v. Union of India, (2018) 10 SCC 1*is mere *obiter dicta* since the question of recognition of marriages irrespective of sexual orientation and gender identity under SMA and/or other personal laws did not arise for this Hon’ble Court’s deliberation in the matter;

163. Marriage is an expressive choice, therefore, it implicates the freedom of expression and association under Articles 19 and 21 of the Constitution. The ability to have public recognition of one’s intimate partner as a lawfully wedded partner without the fear of civil or criminal consequences by state or non-state actors is secured through expression and plays a dominant role in developing well-being with respect to one’s lived experiences and choices (*Asha Ranjan vs State of Bihar, (2017) 4 SCC 397; Shakti Vahini vs Union of India, (2018) 7 SCC 192);*

164. The purported justification of the “normative basis” in denying legal recognition of queer and trans marriages is an unreliable yardstick under the framework of rule of law, since norms are not static and they constantly evolve as informed by social, economic, cultural and political developments. The denial of recognition of marriages under SMA on basis of gender identity or sexual orientation are not based on any adequate determining principle, therefore, the impugned provisions are manifestly arbitrary. The thread of reasonableness runs through Articles 14, 15, 19 and 21 and thus the impugned provisions of SMA are interdicted by Part III of the Constitution for failure of the State to present reasonable grounds as per the rule of law for denying recognition of marriages involving queer and trans individuals. (*Shayara Bano v. Union of India, (2017) 9 SCC 1*);

165. The law can govern conditions of solemnizing a valid marriage and dissolution thereof, however, neither the State nor the law can dictate a choice of partners or limit the free ability of every person to decide on this aspect. Social approval for intimate personal decisions is not the basis for recognizing them. The Constitution guarantees the right of every individual to take decisions on matters central to the pursuit of happiness (*Shafin Jahan v. Asokan KM, 2018 SCC Online SC 343*);

166. The denial of recognition of marriages between two consenting adults, irrespective of gender identity or sexual orientation, embodies a stereotype which violates the guarantee of non-discrimination based on 'sex' under Article 15. The SMA is an instance of law where biological differences between sexes has devolved into oppressive cultural norms and therefore merits strict scrutiny in so far as the impugned law suffers from incurable fixations of stereotypical morality and conception of sexual roles (*Anuj Garg v Hotel Association of India, (2008) 3 SCC 1 at paras. 41, 46, 50*);

167. The exclusion of queer and trans individuals from the institution of marriage under SMA perpetuates a history of discrimination, prejudice and social exclusion against the group. Any form of stigmatization which leads to social exclusion violates the anti-exclusion principle as codified in Article 17 *(Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 at paras. 320-358);*

168. The recognition of the right to marry and found a family for queer and trans individuals under SMA would guarantee substantive equality for the community by breaking a cycle of disadvantage associated with status, promote dignity and thereby redress stigma, stereotyping, humiliation and violence because of membership of an identity group and facilitate full participation in society (*Lt. Col. Nitisha v. Union of India, 2021 SCC Online SC 261 at para. 56*);

169. The determination of constitutional validity of limiting the solemnization of marriages under SMA exclusively for heterosexual couples under the 'classification test' misses the true value of equality as a safeguard against arbitrariness. The exclusion of queer and trans individuals from the institution of marriage must be decided on the touchstone of the guarantee of substantive equality under Article 14, which in turn would inform and influence the classification test. Moreover, the Respondent's basis of intelligible differentia ("normative basis") is wiped out by this Hon'ble Court in barring such stereotypical views which have harmed queer and trans persons with the taint of "unnaturalness" through history (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at paras. 380, 399, 410*);

170. While Article 14 permits classification on the basis of intelligible differentia having a rational nexus to the legislative object, this Hon'ble Court has repeatedly held that the object of the legislation itself must be a legitimate state object and not one that is designed merely to discriminate against minorities. It is apparent on the face of the record, the Respondent's contention of "ensuring social stability via recognition of marriages", as the purported legislative object, is designed merely to discriminate against minorities on basis of sexual orientation and gender identity. It is not adequate for the Respondent to state the purported legislative object, but it is has the bounden duty to provide cogent reasons and materials to justify the same (*Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500*);

171. A formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. The state is prohibited from rejecting a claim of discrimination on the basis that the impugned act or law was based on sex *plus* grounds ("normative basis"), in order to bypass the proscription of Article 15. This fails to take into account the intersectional nature of discrimination on account of sex, sexual orientation and gender identity of Petitioners herein, whose communities are systemically marginalized by the "hetero-normative basis". Without prejudice, it is respectfully submitted that denial of recognition of marriages involving queer and trans persons also constitutes violation of the guarantee of non-discrimination *only* on the basis of sex in the formalistic view, in as much as the Respondent's justification for the same is based solely on the sex of the choice of partner (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at para. 389*);

172. The codification of the complete spectrum of marriage related laws on basis of the male/female binary in matters relating to maintenance, child custody, divorce proceedings and other aspects does not detain this Hon'ble Court from intervening on the limited aspect of solemnization of marriages by breaking the binary at this stage. SMA excludes queer and trans individuals from the institution of marriage for failing to conform to heterosexual expectations of society. In doing so, it perpetuates a symbiotic relationship between anti-queer and trans laws and traditional gender roles. One cannot separate the discrimination on the basis of sexual orientation and discrimination on the basis of sex because the former inherently proceeds on stereotypical notions of sex and gender roles. By attacking these gender roles, queer and trans individuals, in this move to build communities and relationships premised on care and reciprocity, lay challenge to the idea that relationships, and by extension society, must be divided along hierarchal sexual roles in order to function (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at paras. 397-406*);

173. It is humbly submitted that the legal recognition of the fundamental right to marry and found a family irrespective of sexual orientation and gender identity of parties under SMA must not be detained by the concern on implication on related statutory provisions, which are not agitated in the current batch of petitions. In *NALSA,* the legal validity of Section 377, IPC and impact on other statutory laws coded in the binary of “male/female” gender which implicated rights of transgender persons (foreg., service law, inheritance/succession law, criminal law, family law and others) did not detain this Hon’ble Court from issuing positive declarations on self-determination of gender identity, access to healthcare and grant of reservation in educational institutions and public appointments, among others, under Article 32. In fact, this Hon’ble Court’s wide-ranging positive directions have encouraged transgender persons to undertake legislative advocacy and judicial intervention for recognition of rights in service law, inheritance/succession law, criminal law, family law and other areas on a case by case basis (*National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at para. 53*);

174. The denial of the right to marry and found a family for queer and trans individuals under SMA fails to meet the material threshold of restriction of fundamental rights under Article 21. The Respondent’s claim with respect to “social stability via recognition of (heterosexual) marriages” is vague and does not serve as a legitimate state interest in denying rights accrued by a lawfully solemnized marriage to queer and trans persons. Any purported justification is outweighed by the detrimental effects of systemic discrimination and violence on the lives of queer and trans individuals due to exclusion from the institution of marriage (*Justice K.S. Puttaswamy vs Union of India (I), (2017) 10 SCC 1 at para. 325*);

175. The substantial questions of law as to the interpretation of SMA and the Constitution are within the powers of judicial review of this Hon'ble Court and do not merit deference to the Parliament. The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular. The guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion. The test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection. Discrete and insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life does not accord with the 'mainstream'. In a democratic Constitution founded on the rule of law, their rights are as sacred as those conferred on other citizens to protect their freedoms and liberties (*Justice K.S. Puttaswamy vs Union of India (I), (2017) 10 SCC 1 at paras.142-147, 292-295*);

A Commitment to Rights of Queer and Trans Persons under Constitutional Morality:

176. The mere fact that queer and trans marriages are considered "unconventional" by social norms does not justify depriving it of equal protection of law. The freedom of making a choice also encompasses the freedom to make an "unpopular" choice (*Joseph Shine v. Union of India, (2019) 3 SCC 39 at paras. 109, 143, 212)*;

177. The rule of law mandates that notions of public morality must give way to constitutional morality in a democratic state. As a result, the duty of this Hon'ble Court in acting as a counter-majoritarian institution is to interpret laws that codify inequality on prohibited grounds of discrimination in a manner that protect this guarantee (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at paras. 131-134, 499, 608; Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 at paras. 144.5, 422.2*);

178. The state must not use regressive labeling of despised sexualities and gender identities to deny recognition of marriages under the SMA. Our cultural prejudices must yield to constitutional principles of equality, empathy and respect. The Constitution is not a "mirror of perverse social discrimination", rather, it promises a mirror in which equality is reflected brightly. The Constitution contemplates an ever vigilant State, an ever effective State, and ever sensitive State, and measures the democratic index of the State in terms of capabilities of human beings to live without discrimination based on principles of equality and fulfillment of individual potential (*Report of Justice JS Verma Committee on Amendments to Criminal Law, 2013*);

179. The Constitution recognizes, protects and celebrates diversity, therefore, application of legislative provisions contrary to this ethos, and justified by invoking 'public morality', would nonetheless violate constitutional morality (*Naz Foundation v. Government of NCT of Delhi, 2009 (111) DRJ 1*);

180. Section 3(3) of the Mental Healthcare Act, 2017 ("MHCA") explicitly states that social status or non-conformity with moral, social, cultural, political or religious beliefs shall not form the basis of determination of mental illness. This Hon'ble Court has discarded the pathologization model and reframed the concerns relating to queer and trans individuals in a rights based discourse. The sequitur follows that queer and trans individuals must not be denied free and equal citizenship in the public sphere, including solemnization and registration of marriages under SMA, by virtue of their refusal to conform to such values (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at paras. 320-333; National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 117-118; Arunkumar and Sreeja v. Inspector General of Registration*, *AIR 2019 Mad 265 at paras. 16-20*);

181. Democratic nations across the world ascribe to commitment to constitutional morality in conducting affairs of the state, which includes shielding minority groups from public morality of the legislature or society. The Constitution is nothing if not a document founded on deep political morality. A central feature of the character and functioning of the state is the dictates of the morality it enforces and the limits to which it may go. While the Constitution tolerates the right of people to hold beliefs contrary to the Petitioners herein, it does not allow the state to weaponize those beliefs – even in moderate or gentle versions – into policy, criterion or practice imposed on the whole of society and defeat the rightful claims of the Petitioners herein. Moral disapproval or a bare desire to harm and disadvantage a minority group does not furnish a legitimate state interest in denial of recognition of marriages between two consenting adults irrespective or sexual orientation or gender identity (*National Coalition for Gay and Lesbian Equality vs The Minister of Justice, 1999 (1) SA 6 (CC);Norris vs Ireland, [1988] ECHR 22 (26 October 1988)*; *Lawrence vs Texas, 539 U.S. 558 (2003)*);

182. It is respectfully submitted that any ostensibly welfare-oriented submissions in defense of the “social, psychological and other impacts on society, children etc.” and the representation of Petitioner’s claims as “injurious of public health, order and morality”, barely disguise the Respondent’s contempt, vilification and attempts at delegitimization of the entire queer and trans community and are consistent with this Hon’ble Court’s conception of hate speech. The sanctity of the judicial proceedings before this Hon’ble Court must not be permitted to serve as a platform for the Respondent to air flagrantly transphobic and homophobic views cloaked as legal submissions, as this will have the effect of exposing members of the queer and trans community to harmful consequences like discrimination, marginalization and violence in the public sphere, which directly and inextricably follow hate speech. The moral panic sought to be generated by such rhetoric is aimed to shock and awe and divert the Petitioners herein from advocating the substantive issues raised for the consideration of this Hon'ble Court, thereby placing a serious barrier on their ability to fully participate in democratic institutions and processes (*PravasiBhalaiSangathan v. Union of India &Ors., (2014) 11 SCC 477 at paras. 7-8*);

183. The weaponization of "best interests of the child" narrative to undermine gender justice is a well-documented strategy to stoke moral panic from completely unfounded concerns and disinformation about the well-being of children who are raised by queer and trans parents, with the aim of translation into social, political and legal action towards restriction of human rights of queer and trans people. This campaign intentionally masks religious rhetoric to legitimize opposition to progressive realization of queer and trans rights through the appropriation of secular narratives of child protection (*Manufacturing Moral Panic: Weaponizing Children to Undermine Gender Justice and Human Rights, Elevate Children Funders Group and Global Philanthropy Project (2021) at pages. 10-13, 53-58)*;

International and Comparative Law on Queer and Trans Persons' Right to Found a Family:

184. It is respectfully submitted that the dispute on reliance over "western" jurisprudence is *res judicata* in light of this Hon'ble Court's unanimous recognition of the rich history of comparative constitutionalism embedded in the heart of the drafting of the Constitution (*Justice K.S. Puttaswamy vs Union of India (I), (2017) 10 SCC 1 at paras. 273-280*);

185. On a review of comparative law, including 'marriage equality' decisions of international jurisdictions, this Hon'ble Court has arrived at settled principles of law governing rights of queer and trans persons, namely (1) sexual orientation is an intrinsic element of liberty, dignity, privacy, individual autonomy and equality; (2) intimacy between consenting adults of the same-sex is beyond the legitimate interests of the state; (3) the right to love and to a partner, to find fulfillment in a same-sex relationship is essential to a society which believes in freedom under a constitutional order based on rights; (4) sexual orientation implicates negative and positive obligations on the state. It not only requires the state not to discriminate, but also calls for the state to recognize rights which bring true fulfillment to same-sex relationships; and (5)The constitutional principles which have led to decriminalization must continuously engage in a rights discourse to ensure that same-sex relationships find true fulfillment in every facet of life. The law cannot discriminate against same-sex relationships. It must also take positive steps to achieve equal protection (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at para. 478*);

186. As a corollary to the settled principles of law governing rights of queer and trans persons, this Hon'ble Court has observed that decriminalization is only the first step and the constitutional principles on which it is based have application to a broader range of entitlements, including the right to solemnize a marriage. The Indian Constitution is based on an abiding faith in those constitutional values. In the march of civilizations across the spectrum of a compassionate global order, India cannot be left behind (*Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 at para. 479*);

187. It is settled law that domestic statutes must be applied in a manner consistent with binding international human rights commitments (*Nisha Priya Bhatia v. Union of India, 2020 SCC Online SC 394 at para. 102; National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438 at paras. 57-60; Navtej Singh Johar v. Union of India, (2018) 10SCC 1 at paras. 338-342*);

188. Section 2(d) of the Protection of Human Rights Act, 1993 (PHRA) defines "human rights" to mean "*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the*

Constitution or embodied in the International Covenants and enforceable by Courts in India";

189. Article 10 of the ICESCR states that "*the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses*";

190. A key principle underlying the ICESCR is that all member states are mandated to take steps to achieving progressively the full realization of convention rights by all appropriate means. Hence, the Respondent is precluded from submitting that the arc of queer and trans rights stop at the threshold of decriminalization. The progressive realization of the right to marry and found a family means that member states have a binding, specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of rights coded in the ICESCR;

191. The inability of a member state in realizing convention rights is differentiated from the opposition of a member state in taking appropriate measures to realize the rights. In case of inability, a member state has a burden to justify that it has undertaken every effort in realizing the convention rights. In case of opposition, a member state's refusal to take appropriate measures will be a violation of convention rights and can be held accountable before domestic constitutional courts (*CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), adopted at the 22nd session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000 (document E/C.12/2000/4)*);

192. Democratic states across the world, including the global south, are increasingly arriving at the consensus that queer and trans marriages must be recognized and afforded equal protection in law as a constitutional imperative (*Suman Panta v. Ministry of Home Affairs et. al. (Case No. 073-WO-1054, Supreme Court of Nepal);JudicialYunan Interpretation No. 748 (Constitutional Court of Taiwan, 2017); Minister of Home Affairs v. Marie Adriaana Fourie et al (Case CCT 60/04, Constitution Court of South Africa); Advisory Opinion OC-24/17 Requested by Republic of Costa Rica, Inter-American Court of Human Rights, Obergefell et al v. Hodges, Director, Ohio Department of Health et al, 576 US 644 (2015);Relu Adrian Coman and Ors. v. Inspectoratul General PentruImigrari and MinisterulAfacerilor Interne, Case C-673/2016, Court of Justice of the European Union, 2018; Guide on Article 12 of the European Convention of Human Rights, Right to Marry (2021)*);

193. This Hon'ble Court must therefore interpret the impugned SMA provisions in light of India's duty to follow international human rights law as reflected in Principle 24 (Right to Found a Family) of the Yogyakarta

Principles, which mandates all states to adopt all necessary measures to ensure the right to found a family, without discrimination on basis of sexual orientation or gender identity;

Saving of Validity of pre-existing Marriages where one party has Transitioned to Affirm their Self-Determined Gender Identity in order to Protect Rights accrued under Articles 14, 15, 19 and 21 of the Constitution:

194. In cases of pre-existing marriages recognized under law, where one partner has transitioned to affirm their self-determined gender identity and parties mutually choose to continue the marriage, there exists uncertainty in terms of social, economic and legal consequences as to the status of the marriage thereafter. It is submitted that as long as parties to the marriage do not object to one partner transitioning to affirm their self-determined gender identity, the law must continue to recognize the validity of the marriage between the parties.

195. Sections 24-25 of SMA on void and voidable marriages respectively, in context of violation of a condition of a validly solemnized marriage under Section 4, provide for such declaration only at the instance of one party to the marriage, and no third party objection to the status of the marriage ought to be permissible in law.

196. The bouquet of rights which flow from marital and familial ties between parties to a marriage cannot be arbitrarily snatched from a family where a party to a marriage transitionsto affirm their self-determined gender identity. State institutions and service providers often deny services like banking, insurance, etc by raising dubious objections against the status of a marriage where either party to the marriage is a trans person or has transitioned into another gender identity. The law must recognize and protect such marriages from discrimination and moral policing which leads to a denial of fundamental rights (‘*Submissions by LBT Women’s Groups to the Law Commission of India (2018)’*, marked as **Annexure-12**)

197. Such marriages solemnized under personal laws can be saved by the device of registration under Sections 15-16 of SMA;

198. A *de minimis* rationale with respect to saving the validity of pre-existing marriages where one party has transitioned does not preclude this Hon’ble Court from intervening because the invasion of the fundamental right to marry and found a family is not rendered tolerable when a few, as opposed to a large number of persons, are subjected to hostile treatment merely for self-determination of gender identity. The reason why such acts of hostile discrimination are constitutionally impermissible is because of the chilling effect which they have on the free exercise of family affairs. The chilling effect on the exercise of the fundamental right poses a grave danger to the unhindered fulfillment of one’s gender identity, as an element of privacy, dignity and family life

(*Justice K.S. Puttaswamy v. Union of India (I), (2017) 10 SCC 1 at paras 142-147*);

199. This Hon'ble Court has passed directions to occupy the field of law in absence of statutory guidance in order to do complete justice under Article 142 of the Constitution (*Vishaka v State of Rajasthan* (1997) 6 SCC 241; *Common Cause v Union of India,* (2018) 5 SCC 1);

PRAYERS

It is therefore, most respectfully prayed that your Lordships may graciously be pleased to:

i. Issue an appropriate writ, order or direction to declare that the non-recognition of marriage between persons on the basis of sexual orientation and/or gender identity under SMA is illegal and unconstitutional;

ii. Issue an appropriate writ, order or direction to declare the usage of gender neutral terms like 'spouse' in the context of solemnization and registration of marriages between LGBTI persons, and all other corresponding provisions under SMA;

iii. Issue an appropriate writ, order or direction to declare that the provisions of law with respect to the "notice, domicile and objection" framework in Sections 5, 6, 7, 8, and 9 of SMA are illegal and unconstitutional;

iv. Issue an appropriate writ, order or direction to declare that the validity of marriages already solemnized or registered under the SMA would not de facto be jeopardized if one spouse transitions to their self-determined gender identity;

v. Issue an appropriate writ, order or direction to declare and recognise the constitutional right of members of the LGBTI community to have a "chosen family" in lieu of next of kin under all laws, as an intrinsic part of their right to a dignified life under Article 21;

vi. Issue an appropriate writ, order or direction to declare that an unmarried person can nominate 'any person(s)'to act as their nominee or next of kin, irrespective of whether such person is a 'guardian, close relative or family member', with respect to healthcare decisions in case of incapacity such as execution of Advance Directives and assigning any legal right, interest, title, claim or benefit accrued to the person;

vii. Issue an appropriate writ, order or direction to declare that State Governments must apply all preventive, remedial, protective and punitive measures, including establishment of safe houses similar to the *Garima Greh* welfare scheme, in order to guarantee safety and security of all individuals irrespective of gender identity and sexual orientation;

viii. Issue any other writ, order or direction as this Hon’ble Court may deem fit and proper to do complete justice in the circumstances of the case.

DRAWN BY:	**SETTLED BY:**
Suraj Sanap, Adv.	Vrinda Grover, Adv.

NEW DELHI

DATED: 06.04.2023