

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
TRANSFER PETITION (CIVIL) NO. 3025 OF 2022**

**IN THE MATTER OF:**

Mr. Joydeep Sengupta & Ors.

... PETITIONERS

VERSUS

Union of India & Ors.

...RESPONDENTS

**AND  
TRANSFER PETITION (CIVIL) NO. 3007 OF 2022**

**AND IN THE MATTER OF:**

Mellissa Ferrier & Anr.

.....PETITIONERS

VERSUS

Union of India and Ors.

.....RESPONDENTS

**SUBMISSIONS DATED 26.4.2023**

**The present submissions are a summary of arguments to be presented by Karuna Nundy, Counsel for the Petitioners in both matters.** Petitioners seek a declaration that includes right of queer, non-heterosexual, and same-sex people to marry under the secular legislations: Special Marriage Act 1954 (“SMA”), Foreign Marriage Act 1969 (“FMA”) and provisions for OCI card holders under the Citizenship Act, 1955.

Act	Nationality	Location/registration	Summary of Submissions
SMA	Indian/ Indian	India	<ul style="list-style-type: none"> <li>• The Union’s own Transgender Act of 2019, mandates non discrimination (s3) against non- binary persons (s2(k)): <i>“persons with intersex variations, genderqueer and persons having such socio-cultural identities as kinnar, hijra, aravani and jogta”</i> (s2(k)).</li> </ul>
	Indian/ Foreign	India	<ul style="list-style-type: none"> <li>• The Union, per Transgender Rules, 2020, Rule 5, already recognises marriage of trans persons. ID form C-III, starts p. 3217/pdf.3223, @p. 3224/pdf. 3230]</li> <li>• This is pursuant to NALSA: <i>“Therefore gender identity becomes very essential component which is required for enjoying civil rights by this community...viz. the right to vote, the right to own property, the right to marry....”</i> (C-IV, Vol. I, starts p. 711/pdf. 742 @p. 777/pdf. 808, para 119)</li> </ul>
	Foreign/ Foreign	India	<ul style="list-style-type: none"> <li>• On workability of SMA:               <ol style="list-style-type: none"> <li>(i) may include “or third gender spouse” along with of “husband or wife” which includes trans husband or wife &amp;</li> <li>(ii) Asymmetric, protective provisions for women would remain unchanged; third-gender spouses would be equally protected because in line with Art 15(2)- 15(4), NALSA requires the Union to provide special provisions for transgenders and affirmative action as Social and Economic Backward Classes. (C-IV, Vol. I, starts p. 711/pdf. 742 @p. 761/pdf. 792 para 67 &amp; 68)</li> </ol> </li> </ul>

FMA	Indian/ Indian	<b>Solemnis ation:</b> Abroad  <b>Registrat ion:</b> India, Abroad	<ul style="list-style-type: none"> <li>● Should this Hon’ble Court <i>only</i> read SMA inclusively, an immediate Article 14 anomaly arises.</li> <li>● Statement of Objects and reasons makes FMA explicitly <i>in pari materia</i> to SMA. FMA applies when one party is an Indian citizen and the marriage is solemnized outside India.</li> <li>● However, the same Indian-foreign couple may come to India to marry under the SMA eg <i>Arushi Mehra v. State (NCT of Delhi)</i>, 2023 SCC OnLine Del 187 @ para 11 hold that even two foreigners - male &amp; female - can marry under the SMA because s. 4, uses the terms ‘<i>any two persons</i>’ and not ‘<i>citizens</i>’.</li> <li>● If the FMA does not follow the SMA, in being read in a gender inclusive manner – same-sex, queer &amp; transgender couples may marry in India (or at a consulate) but if they are already married on foreign soil they will not be able to have their marriage registered by Indian Marriage Officer under FMA u/ s. 17</li> </ul>
	Indian/ Foreign	<b>Solemnis ation:</b> Abroad  <b>Registrat ion:</b> India/Abr oad	<ul style="list-style-type: none"> <li>● Should s.4 of SMA be read inclusively, then corresponding s.4 of FMA must be read in the same manner and rest of the FMA including s. 12 &amp; s. 13 of the FMA will accordingly fall into place.</li> </ul>
Citiz enshi p Act provi sions deali ng with OCI status	Indian/ Foreign	<b>Solemnis ation:</b> Abroad  <b>Registrat ion:</b> India/ Abroad	<ul style="list-style-type: none"> <li>● Catch-22 situation married OCI persons, with families who choose to live here and those who have deep roots in the country.</li> <li>● They cannot marry under SMA due to Third Schedule which requires a declaration that one is not married. [C-III, SMA starts p.417/pdf.423@p.439/pdf.445]</li> <li>● Hon’ble Court had sought a “segregable” provision with “no prohibition in the enactment” certain things which can be done straight away without entering other arenas. In enactments where there is no express prohibition of the remedies sought”</li> <li>● s7A(1)(d) : <b>Registration of Overseas Citizen of India Cardholder: 7A. Registration of Overseas Citizen of India Cardholder.</b>—(d) <i>spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under this section.</i> <i>Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse</i></li> </ul>

OCI/ Foreign	<b>Solemnis ation:</b> Abroad  <b>Registrat ion:</b> India	<p><i>shall be subjected to prior security clearance by a competent authority in India: Provided further that no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder under this sub-section.”</i></p> <ul style="list-style-type: none"> <li>● <b>Ndidi Ezeh v UoI, 2019</b> [C-IV, Vol. III, starts p.455/pdf.465 @p.455-456/pdf. 465-466, para 2,4]</li> <li>● <b>Bahareh Bakshi v. UoI, 2021</b> [C-IV, Vol. III, starts p.114/pdf.124 @p.114-116/pdf. 124-126, para 2, 3, 5]</li> <li>● <b>Natalya Mamrenko v UoI, 2018</b> [C-IV, Vol. III, starts p.395/pdf.405 @p.395-396/pdf. 405-406, para 5-7, 11-12]</li> <li>● In <b>Yossi Ben-Ari’s case</b>, Israeli Supreme Court held: [C-IV, Vol. IV, starts p.3463/pdf.3471 @p. 3489/pdf.3497, para 17, 23]  <i>"17.... the registration official is not competent to determine whether there is a recognized “legal framework” or merely a “social framework with a certain legal significance”; the register provides statistical data with regard to personal events (such as birth, death, marriage and divorce), not legal constructions that have passed the discerning scrutiny of the registration official. ...</i>  <i>23. ...We are deciding that within the context of the status of the population registry as a recorder of statistics, and in view of the role of the registration official as a collector of statistical material for the purpose of managing the registry, the registration official should register in the population register what is implied by the public certificate that is presented to him by the petitioners, according to which the petitioners are married"</i></li> <li>● <b>Obergefell’s case</b> [C-IV, Vol. IV, starts p.2399/pdf.2407 @p. 2431/pdf.2439] <i>“The Court, in this decision, holds same-sex couples may exercise the fundamental right to marry in all States. It follows that the Court also must hold—and it now does hold—that there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.”</i></li> <li>● Plain words of statute require the doctrine of casus omissus (in line with inclusive constitutional reading)</li> <li>● Allow me to consecrate my love, to give security, dignity, physical unity to my family.</li> </ul>
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