IN THE SUPREME COURT OF INDIA
CIVIL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO. 1142 OF 2022
(Under Article 32 of the Constitution of India)

Utkarsh Saxena and Anr. … Petitioners

Versus

Union of India … Respondent

Written Submissions on Behalf of the Petitioners

Senior Counsel on Behalf of the Petitioners: Dr. Abhishek Manu Singhvi
Time Sought for Oral Arguments: 4 Hours

1. These written submissions are being filed in compliance with the order of this Hon'ble Court dated 06.01.2023, in a batch of writ petitions concerning the legality of same-sex marriages in India [**Supriyo @ Supriya Chakraborty and Anr vs Union of India**, **WP (Civ) No. 1011/2022**]. Through this order, this Hon'ble Court directed the petitioners to file a common set of written submissions before the next date of hearing, i.e. 13th March 2023.

2. Petitioners' written submissions in the captioned matter are divided into three sections. *First*, Petitioners submit that the Special Marriage Act 1954 ["**SMA**"] and Foreign Marriage Act 1969 ["**FMA**"], when interpreted consistent with the Constitution, authorise the solemnisation of same-sex marriages [**A.**]; *secondly*, Petitioners submit that the notice-and-objections regimes under the SMA and the FMA, which require publicisation to the world at large of an intent to marry in advance of the marriage, are unconstitutional [**B.**]; and *thirdly*, Petitioners outline what relief this Hon'ble Court may consider granting in this matter [**C.**].

3. Petitioners seek the leave of this Hon'ble Court to file brief, additional written submissions on the conclusion of the hearing.

A. On the Interpretation of the Special Marriage Act

4. Secular marriages in India are governed by the SMA. Section 4 of the SMA - which regulates the conditions relating to solemnisation of special marriages - uses the gender-neutral terms "a marriage between two persons", and "spouse." In plain language, therefore, the Special Marriage Act applies both to marriages between same-sex couples, and opposite-sex couples.

5. However, a degree of ambiguity is introduced into the SMA by sections 4(c), and 4(d) read with section 2(b) and the First Schedule to the SMA. Section 4(c) introduces, as a condition for the solemnisation of a special marriage, the requirement that "the male has completed the age of twenty-one years *and* the female the age of eighteen years." Section 4(d) stipulates that the parties ought not to be "within the degrees of prohibited relationship." The term

"degrees of prohibited relationship" is defined in section 2(b), and refers to "*a man* and any of the persons mentioned in Part I of the First Schedule and *a woman* and any of the persons mentioned in Part II." Part I of the First Schedule consists exclusively of female family members, and Part II consists exclusively of male family members. Furthermore, the Second Schedule uses the words "widower" and "widow", the Third and Fourth Schedules "bride" and "bridegroom", and the Fifth Schedule "husband" and "wife".

6. Consequently, while the SMA is meant to solemnise a marriage between two *persons*, two of the pre-conditions for solemnisation appear to restrict its application to heterosexual couples, i.e., a man and a woman.

7. As a preliminary point, Petitioners respectfully submit that none of the other conditions under section 4 (for instance, there should be no living spouse, the parties should be able to give consent etc.) are based upon a person's ascriptive characteristics (such as race, caste, ethnicity, national origin *etc*). The term 'ascriptive' refers to attributes of an individual that are pre-determined or designated or ascribed by society or other external norms. The implied exclusion of LGBTQ+ relationships from the SMA, therefore, stands out as the *only* exclusion that is based on a marker of identity.

8. The forward march of progress has caused this exclusion to be legislatively or judicially removed in 32 jurisdictions that now legalise same-sex marriage, an illustrative list of which include jurisdictions as diverse as Argentina, Australia, Austria, Brazil, Canada, Chile, Colombia, Costa Rica, France, Germany, Mexico, South Africa, Spain, Switzerland, Taiwan, the United Kingdom, Uruguay, and the United States of America.

9. Petitioners respectfully submit that SMA is reasonably liable to be read down in a manner so as to validate and recognise same-sex marriage. Consequently, subsuming same-sex marriages under the SMA, does not require a finding of unconstitutionality.

10. In its counter-affidavit filed before this Hon'ble Court, Respondent objects to this reading of the SMA, primarily on the basis that the very concept of marriage "necessarily presupposes a union between two persons of the opposite sex", and that this definition is "socially, culturally, and legally ingrained into the very idea and concept of marriage." (**Respondent's Counter-Affidavit, para 5**). Notably, Respondent produces no evidence in support of this claim. Furthermore, Respondent does not address the statutory scheme regulating marriages in India, where the Special Marriage Act (as will be pointed out below) was enacted as an *alternative* to personal marriage laws, which were – indeed – based on a certain cultural understanding of the nature of marriage.

11. Without, therefore, conceding the point, Petitioner submits, in response, that marriage is a social institution (as argued below), and society is characterised by its capacity to *evolve*. There is, therefore, no timeless and immutable "concept" of marriage that exists outside and beyond society, and is immune to change. Indeed, as recently as one hundred years ago, child marriages were both legally and socially acceptable; now, we understand *consent* to be a cornerstone of marriage, and also understand that valid consent is predicated upon the attainment of majority.

12. Respondent suggests that if indeed the concept of marriage has evolved, the legislature is the only body that can bring about a change in the law to reflect that evolution (**Counter-Affidavit, para 9**). Petitioners disagree. The present case does not ask the Court to act as a substitute for the legislature, and alter the "concept of marriage." Rather, it asks the Court to find that the existing legislative definition excludes a group of people solely by virtue of their ascriptive characteristics, *and that this exclusion is unconstitutional*. Such an exercise is well within the jurisdiction and the domain of this Hon'ble Court.

13. To substantiate this submission, Petitioners will address their contentions under the following heads of argument: non-

discrimination (**I**); freedom of expression and association (**II**); dignity (**III**); and remedies (**IV**).

I. Discrimination

14. By prohibiting same-sex couples from solemnising their marriages, the SMA discriminates on grounds of sexual orientation. Sexual orientation is both a protected ground under Article 15(1) of the Constitution (subsumed within sex discrimination), and - as an ascriptive characteristic - attracts a higher standard of scrutiny under Article 14 of the Constitution (**Navtej Johar vs Union of India, (2018) 10 SCC 1, paras 316, 637.3, 637.5**). In other words, the Court will be facially more suspicious of, and more readily inclined to intervene with respect to, classifications that cause disadvantage based on sex or gender.

15. The *locus* of discrimination in the present case is the exclusion of same-sex couples from the social institution of marriage. The institution of marriage, in our society, serves the functions listed below. These are illustratively listed to show that marriage is not simply a privilege or benefit, but is deeply embedded in society, forming the very basis of a couple's ability to fully participate in it:
    a. For those who seek any form of marriage at all, it is a source of social and community validation for a relationship, expressed through official recognition by the State through its laws.
    b. Relatedly, the ability to marry - and the State and social recognition that comes along with it - often provides a sense of security to vulnerable couples, facing various forms of stigma or pressure. In that sense, the ability or choice to marry is needed *most* by those whose relationships are often subjected to familial or community disapproval.
    c. With respect to the partners themselves, marriage provides greater financial - and other forms of - security, especially to the more vulnerable partner.
    d. Marital status is a gateway to a range of other legal and civil benefits, in the domains of tax, inheritance, adoption, and others. [**see Appendix I**]

e. In our society, marriage - and marital status - is a source of dignity, fulfilment, and self-respect.
f. Marriage is an integral aspect of the ability to have, and enjoy, a family life.

16. This demonstrates that marriage is not simply a benefit conferred by the State, whose conditions it can therefore prescribe without any constitutional scrutiny. The fundamental, structural role that marriage plays in our society means that it is imbued with, and overlaps with, constitutional values. The exclusion of one set of people from accessing the institution, therefore, requires searching judicial scrutiny on the touchstone of anti-discrimination doctrine.

17. Notably, Respondent agrees (**Counter-Affidavit, paras 15-18**). In **par 17**, Respondent eloquently argues that "marriage and the family are important social institutions in India that provide for the security, support, and companionship of members of our society." Petitioners could not have put it better themselves. And that is why, it is respectfully submitted, *exclusion* of individuals from these valuable social institutions purely by virtue of their ascriptive characteristics is unconstitutional.

18. Specifically, Petitioners submit that the exclusion of same-sex couples from the SMA constitutes direct discrimination under Article 15(1), on grounds of sexual orientation, and is therefore *ex facie* unconstitutional. Respondent's submission that the discrimination is not *only* on grounds of sex is untenable (**Counter-affidavit, para 36**). Given that "sexual orientation" has been read into "sex", the moment that Respondent submits before this Court that it has defined marriage to mean a union between one *man* and one *woman*, it is – *ipso facto* – discrimination on grounds *only* of sexual orientation.

19. In any event, Petitioners respectfully submit that the exclusion fails the test of Article 14. While there exists an intelligible differentia (sexual orientation), there is no rational nexus with any legitimate State purpose.

20. *First*, it is important to reiterate that, in its origin and its evolution, the SMA is an avowedly *secular* law, which was meant to serve as an alternative for individuals who could not - or did not want to - solemnise their marriages under applicable *personal* (religious) law **(Rajnesh vs Neha and Ors., (2021) 2 SCC 324, paras 15, 19).** As per the statement of objects and reasons of the SMA, the Act was passed "to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess." Consequently, unlike legislation such as, for example, the Hindu Marriage Act, where the conditions for solemnisation of marriages must comply with Hindu religion, the SMA is an *areligious* or *non-religious* marriage-related legislation. This addresses a point that Respondent makes repeatedly in its **counter-affidavit**, namely, the cultural understanding of marriage as a union between two persons of the opposite sex.

21. Indeed, in **para 21,** Respondent concedes that it has designed and framed marriage laws as relatable to the *customs of various religious communities* (**Counter-affidavit, para 21**). However, as noted above, the question of how a - or any - religion defines marriage is *irrelevant* to the legislative purposes of the SMA. Without expressing any opinion on the place of same-sex marriages within religion(s), it is respectfully submitted that other than alleged invocations of culture and religion (which is the subject matter of other petitions in this batch), there is no other putative, constitutionally valid legislative purpose that justifies the exclusion of same-sex couples from the purview of the SMA. Notably, the Respondent does not attempt to provide one.

22. *Secondly*, the Respondent cannot argue – as it does in **paragraph 23 –** that it has simply *defined* marriage as a union between a man and a woman, and that that constitutes the legislative policy (**Counter-affidavit, para 23**). This would be circular and self-referential reasoning, which does nothing more than equate the classification *with* the legislative purpose. This,

obviously, cannot be a valid defence to an Article 14 challenge, as - in effect - *any* legislative classification can pass Article 14 scrutiny by the State simply declaring that the classification *is* the purpose.

23. As an analogy, one can imagine the State announcing a welfare benefit that it then declares off-limits for blue-eyed people. On being challenged, the State simply says that it has "defined" the welfare benefit as one that all persons *but* blue-eyed people are eligible for, and that the legislative purpose is to exclude blue-eyed people from accessing the said welfare benefit. It is respectfully submitted that just as this self-referential reasoning would not pass Article 14 scrutiny, so also the State's argument that it has simply "defined" marriage so as to exclude same-sex couples from accessing the institution, must also be rejected.

24. For example, in **Dipak Sibal vs Punjab University, 1989 2 SCR 145, paras 18-20,** when the State sought to justify legislative classification limiting enrolment in evening law classes to government employees by deploying the self-referential reasoning that the purpose *was* to provide legal education to government employees - in effect, equating the classification with the purpose - this Hon'ble Court struck down the classification on the basis, *inter alia*, that the legislative purpose was "illogical."

25. Therefore, it is not sufficient for the Union to state *simpliciter* that, since marriage is by legal definition only a union between a man and a woman, and since thus, the SMA's legislative purpose is to solemnise marriages fitting such definition, an otherwise suspect classification on the basis of sexual orientation and gender would be rendered constitutional.

26. In **para 24** of its counter-affidavit, Respondent tries to buttress this classification by referring to the "cultural ethos and societal values" of the country. This has already been addressed above; here, Petitioners respectfully add that the invocation of "societal values" (even where such societal values have been established, which is not the case here) cannot be used to defeat claims for *equal*

treatment and non-discrimination. By definition, equal treatment and non-discrimination *require* challenging majoritarian social norms (whether these norms exist in the domain of gender, caste, place of origin, and so on); if society was already minded to accord equal, non-discriminatory treatment to all, there would be no need for a constitutional *right* to equality. In **paragraph 35**, Respondent makes a faint reference to "social stability", but provides no argument for why the recognition of same-sex marriages under the SMA would adversely affect social stability.

27. *Thirdly*, this leaves the only remaining legislative purpose as *animus* against the LGBTQ+ community, and the refusal to treat them as equal moral members of society, by offering them the same range of rights and benefits as opposite-sex couples. It is clear that any such purpose needs only to be stated to be rejected: as held in **Navtej Johar vs Union of India, supra (para 353)**, legislative purpose cannot *itself* be discriminatory or unconstitutional. As noted by the South African Constitutional Court in ***Ministry of Home Affairs v Fourie* 2006 (1) SA 524 (CC), para 71,** the exclusion of same-sex couples from the legal institution of marriage conveys a message of unequal moral concern or respect of the Constitution:

> The exclusion of same-sex couples from the benefits and responsibilities of marriage, accordingly, is not a small and tangential inconvenience resulting from a few surviving relics of societal prejudice destined to evaporate like the morning dew. It represents a harsh if oblique statement by the law that same-sex couples are outsiders, and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples. It reinforces the wounding notion that they are to be treated as biological oddities, as failed or lapsed human beings who do not fit into normal society, and, as such, do not qualify for the full moral concern and respect that our Constitution seeks to secure for everyone. It signifies that their capacity for love, commitment and accepting responsibility is by definition less worthy of regard than that of heterosexual couples.

28. By sending a message of and perpetuating the subordination of a disadvantaged group of persons, the position that marriage is the preserve of the heterosexual couple breaches this Hon'ble Court's understanding of substantive equality. (***Joseph Shine v Union of India,* (2019) 3 SCC 39, para 172**).

29. In addition to failing the classification test, it is also submitted that the impugned exclusion is manifestly arbitrary. This is because it privileges one conception of the "family unit" - i.e., a man, a woman, and associated offspring - over other conceptions. However, the *Constitution* does not authorise - or sanction - a hierarchy between different conceptions of the family where unions between some kinds of persons are more equal than others for no reason other than their ascriptive characteristics.

30. Indeed, in **Deepika Singh vs Central Administrative Tribunal, 2022 SCC OnLine SC 1088, para 26**, this Hon'ble Court specifically held that "atypical family units" - specifically including queer relationships - are "equally deserving not only of protection under law but also of the benefits available under social welfare legislation."

31. It is therefore submitted that the legal privileging of the heterosexual marriage-based family unit over others lacks any "determining principles", and therefore fails the test of manifest arbitrariness. (see e.g. **Joseph Shine vs Union of India, (2019) 3 SCC 39, paras 26-27**).

32. For these reasons, it is respectfully submitted that insofar as the SMA prohibits same-sex couples from solemnising their marriages, it is directly discriminatory, and violates Articles 14 and 15(1) of the Constitution.

II. Freedom of Expression

33. The guarantee of freedom of speech and expression under Article 19(1)(a) is not limited to verbal or written expression, but extends to *symbolic speech and expression* (**Union of India vs**

Naveen Jindal, (2004) 2 SCC 510, para 90). Furthermore - and crucially - the right is not limited to speech-acts performed in isolation, but extends to participation in *socially valuable forms of expression, that are articulated in community*: for instance, in **NALSA vs Union of India, (2014) 5 SCC 438**, **paras 69-72**, with reference to the transgender community, dress and food habits were both considered to be protected forms of expression, by virtue of their *social salience* to the community in question. Separately, the act of casting a vote has also been held to be a protected expression, because of the social meaning that it carries (**Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294, para 46.7**).

34. Applying this doctrine, Petitioners respectfully submit that the act of entering into the marital relationship, because of the social and symbolic meaning that it carries, is protected expression under Article 19(1)(a) of the Constitution.

35. Deprivation of the right to marry, therefore, must comply with one of the eight sub-clauses under Article 19(2) of the Constitution. It is respectfully submitted that none of the sub-clauses are available to the State. In particular, the term “decency and morality” under Article 19(2) must be read to mean not *public* morality, but *constitutional* morality, i.e., morality infused by constitutional values. This rules out any restriction upon the right that is based purely on ascriptive characteristics, such as sexual orientation.

36. It is therefore submitted that the exclusion of same-sex couples from the ambit of the SMA violates Article 19(1)(a) (and, by extension, Article 19(1)(c)) of the Constitution, and is not saved by Articles 19(2) or 19(4).

III. Dignity

37. The right to dignity is at the core of Article 21 of the Constitution.

38. Dignity - in the context of the State's treatment of groups and communities - requires the State to treat everyone with equal concern and respect, and to not send a message that an individual, or a set of individuals, are less worthy by virtue of their ascriptive characteristics.

39. The central importance of marriage as a *social institution* - as outlined above - means that the ability to participate in it on equal terms is a question of dignity. When the State excludes a set of people from participation in a valuable social institution, by comparing their choice with the State proscribing what it considers noxious business activities, it communicates both to the excluded and to the rest of the society that these individuals are less than complete moral members of society: it is, therefore, a message of subordination.

40. There are many historical instances of the exclusion of a group of people from a social institution being used to send a public message about their worth as equal moral members of society: these include, for example, caste-based restrictions on temple entry (see **Shri Venkataramana Devaru vs State of Mysore, 1958 SCR 895**), rules that prohibited women from participating in certain "male" professions (see **Anuj Garg vs Hotel Association**, **AIR 2008 SC 663**) the refusal to accommodate disability in public examinations (**Vikash Kumar vs Union Public Service Commission, (2021) 5 SCC 370)**, and many others. Over time, laws - and the judgments of this Hon'ble Court - have removed these exclusions, *on the understanding* that the ability to participate in the making and remaking of social institutions is central to individual dignity. The exclusion of LGBTQ+ people from the social institution of marriage is one of the last remaining *legal* outposts that sanctions such exclusion; it is therefore respectfully submitted that the removal of this exclusion by this Hon'ble Court would advance the constitutional goal of guaranteeing the dignity of all.

41. Respondent submits that the right under Article 21 has been curtailed by virtue of a "legitimate state interest" (**Counter-affidavit,**

para 40), which – it reiterates – is the "the acceptance of Indian society based upon its own cultural and societal values (**Counter-affidavit, para 42**), and "societal morality" (**para 45**). This submission has been addressed in some detail above, and Petitioners shall not reiterate it here; it suffices to say that Respondent has neither established what societal morality is or requires, and has also failed to demonstrate how the version of societal morality that it articulates is in any way distinct from bare *animus* against the LGBTQ+ community.

IV. Remedies

42. Petitioners respectfully submit that the present case does not require a strike-down from this Hon'ble Court. It only requires a declaratory judgement that, in accordance with well-established principles of statutory interpretation and - when necessary - reading down:

a. The word "man" in section 2(b) includes "any person", and that correspondingly, the word "woman" includes "any person";

b. The words "man" and "woman" include trans-men and trans-women, intersex and non-binary individuals as the case may be; it is respectfully submitted that this would be in furtherance of the judgement of this Hon'ble Court in **NALSA vs Union of India, (2014) 5 SCC 1.** (The phrase 'non-binary' individuals above means persons having gender identities that do not conform to the traditional binary genders, i.e. male or female).

c. Section 4(c) enacts only an age-based exclusion for persons otherwise eligible to marry under the provisions of Section 4, and shall not be construed to impose any disabilities based on gender, sexual orientation, or sexual identity of the parties. For same sex couples, in particular, Section 4(c) can, without any violence to fundamentals, be read as a single age-restriction, be it 18 or 21;

d. The reference to "widow" and "widower" in Schedules II and III includes "widow or widower" and "widower or widow", as the case may be, and shall not be construed to impose any disabilities based on gender, sexual orientation, or sexual identity of the parties**.** (This phraseology is entirely consistent

with an interpretation which treats any surviving spouse in a same-sex marriage as a widow/widower.)

e. References to “bride” and “bridegroom” in Schedules III and IV includes “bride or bridegroom”, as the case may be, and shall not be construed to impose any disabilities based on gender, sexual orientation, or sexual identity of the parties. (This phraseology is entirely consistent with an interpretation which treats any spouse in a same-sex marriage as a bride/bridegroom.)

43. In the alternative, assuming without conceding, that at the time the SMA was passed, it was mainly, or possibly only, heterosexual couples that were within the contemplation of the framers, it is entirely permissible as an interpretive technique to expand the existing words of a statute from its original intent to subsume the evolutionary march of societal norms and contemporary realities (**State (through CBI) vs SJ Choudhary, (1996) 2 SCC 428; M/s Laxmi Theatre Video vs State of Haryana, (1993) 3 SCC 715).** In **State (through CBI) vs SJ Choudhary, supra**, the Supreme Court held that the word “handwriting” in Section 45 of the Evidence Expert (which deals with expert evidence) would be read to include “handwriting science”, thus bringing typewriting experts within its ambit. In doing so, the Supreme Court applied the principle of updating construction, quoting Francis Bennion on statutory interpretation for the proposition that “the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters.” (**para 10, emphasis supplied**) In **M/s Laxmi Theatre Video, supra**, **para 7,** similar logic was deployed to hold that the word “cinematograph” covered video cassette players.

44. It is respectfully submitted that this principle is followed the world over. In the specific context of marriage equality, the US Supreme Court in **Obergefell v Hodges 576 U.S. 644 (2015) p.20,** noted that “...in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.” In **Fitzpatrick vs**

Sterling Housing Association Ltd., [1999] UKHL 42, the UK House of Lords held that the word "family" under the Increase of Rent and Mortgage Interest (Restrictions) Act included same-sex couples, eloquently observing that "it is not the meaning which has changed but that those who are capable of falling within the words have changed." (**para 26**) Following on from this, in **Godin vs Ghaidan Mendoza, [2004] UKHL 30**, the House of Lords approved a Court of Appeal judgement that had interpreted the phrase "as his or her wife or husband" under the Rent Act of 1977 to mean "*as if they were* his wife or husband", so as to include same-sex couples (**para 51, speech of Lord Steyn)**.

45. It is therefore respectfully submitted that the original intent of the SMA notwithstanding, the principle of updating construction justifies the granting of the declaratory relief, prayed for in the terms above.

46. Respondent objects to this relief on the basis that it would make unworkable a range of other laws such as the Domestic Violence Act, the maintenance provisions of the Code of Criminal Procedure, the Dowry Prohibition Act, Indian Penal Code provisions pertaining to cruelty, and so on (**Counter-affidavit, para 27**), as these provisions are not gender neutral. It is respectfully submitted that all of Respondent's examples are of laws where gendered language exists in order to address structural imbalances of power between men and women within the family (such as, for example, dowry and maintenance). While there is a separate, ongoing debate about whether – and which – of these provisions should be made gender neutral, that has no bearing on the question of same-sex marriage. Respondent further submits that anomalies may be caused in Christian and Muslim marriage and divorce law (**Counter-affidavit, paragraph 28**); it is respectfully submitted that these anomalies have no bearing on the interpretation of the SMA, and in any event, if necessary, are easily resolved using the same interpretive technique: for example, the words "husband and wife" can be read to mean "as if they are husband and wife", as has been done by the UK House of Lords (**supra**).

B. On the Constitutionality of the Notice-and-Objections Regime

47. Sections 5 - 9 of the SMA stipulate a set of procedural pre-conditions to the solemnisation of special marriages [“the notice-and-objections regime”]. The “notice-and-objections regime” requires the following:

a. An intimation of the intended marriage to the Marriage Officer (in the district in which one of the parties has resided for at least thirty days prior to the notice), given **at least thirty days** before the solemnisation of the marriage [section 5].
b. The notice to be entered by the Marriage Officer in a Marriage Notice Book, which is open to inspection **by anyone**, and to be affixed in a “**conspicuous place**” in the Marriage Officer’s office [section 6].
c. A process by which **any person** may object to the intended marriage, on the ground that it contravenes one of the preconditions under section 4 of the SMA [section 7].
d. The Marriage Officer to look into - and adjudicate the validity of - the objection, within a further thirty days [sections 8 and 9]. It is important to note that the SMA does not define “objection”, and consequently, even if the said “objection” is frivolous, irrelevant, or outside the scope of Section 4, the Marriage Officer is still duty-bound to investigate it. This, indeed, is how the statute works on the ground.
e. Furthermore, if the marriage is not solemnised within three months, a new notice must be provided, with the process restarting. It is respectfully submitted that no other law places such a “ticking clock” for people to solemnise their marriage.

48. The notice-and-objections regime thus compels individuals to affirmatively publicise their **intention** to marry. This publicity is **ongoing and continuous**, for a period of at least thirty days before the solemnisation of the marriage. Furthermore, this compelled publicising is indiscriminate, and to the world at large.

49. Petitioners respectfully submit that the notice-and-objections regime is unconstitutional, as it violates Articles 14, 15, and 21 of the Constitution. Petitioners further submit that the grant of

declaratory relief - as prayed for in Section I of these written submissions - *without* adequately addressing the notice-and-objections regime - will render this Hon'ble Court's relief illusionary for queer couples who are already vulnerable to economic and social pressure from their immediate family or kinship structures. It is respectfully submitted that, for the reasons outlined below, the effective exercise of the constitutional rights to equality and intimate decision-making will be possible only if declaratory relief is accompanied by an invalidation or judicial modification of the notice-and-objections regime.

50. This is because, *first*, while *marriage* is undoubtedly a social institution and *arguably* carries with it a reasonable expectation of publicity (the precise contours of which may be debated), the notice-and-objections regime compels publicity of the *intention* to marry. The thirty-day notice period segregates the intention to marry and the solemnisation of the marriage. It therefore forces individuals to undergo public - and indiscriminate - scrutiny of their intimate choices, *for an extended period of time*, before their formal entry into the social institution of marriage. Thus, it constitutes a disproportionate invasion into an individual's right to privacy under Article 21 of the Constitution [**I**].

51. *Secondly*, it is respectfully submitted that, while examining the constitutionality of the notice-and-objections regime, this Hon'ble Court can - and indeed, must - take into account well-known and incontrovertible social realities. In large swathes of our society, non-State actors - backed by social and community forces - exert significant and - at times - debilitating pressure upon individual choice, especially in the context of marriage. This is especially the case when a marriage is deemed to violate social mores and transgress social boundaries, whether it is a queer marriage, an inter-caste marriage, or an inter-faith marriage. The notice-and-objections regime, therefore, *in effect*, acts as a barrier upon the effective exercise of decisional autonomy under Article 21 of the Constitution (**II**).

52. *Thirdly*, when examined in the context of social realities, the notice-and-objections regime is discriminatory. It disproportionately impacts vulnerable and marginalised couples, who do not have the resources to withstand social pressure (pressure that could take the form of blackmail, threats, social boycotts, and so on). These vulnerabilities exist at the intersection of caste, class, gender, religion, and sexual orientation, among others. In effect, therefore, the notice-and-objections regime violates Articles 14 and 15 of the Constitution. (**III**).

53. In a nutshell, the present case is indubitably more about choice, individual autonomy, privacy, and individual dignity, than any other constitutional value. Parodoxically, there is no greater intrusion into and no greater decimator of these core constitutional values than the 30 day pre-marriage notice period which *de facto* constitutes a dangerous invitation to society at large to disrupt, obstruct, and indeed nullify the core choices involved in the relatively bold decision of a same-sex marriage. Indeed, this is neither theoretical nor apocryphal: there are already diverse paradigms of physical intrusions and mental torture coupled with extreme family pressure, including destruction of life and liberty, in inter-faith marriages in India, including many that are solemnised under the SMA.

54. The only legitimate aim of the notice period under SMA would appear to be to bring to light potential breaches of the conditions of eligibility under Section 4 SMA. If that be so, *firstly,* that object is sufficiently subserved by mandatorily requiring prior to registration a comprehensive affidavit/declaration certifying or declaring that the parties meet each of the conditions stipulated under Section 4. *Secondly,* the possible benefit of a pre-marriage notice period of 30 days has to be weighed in the calculus of the humongous drawbacks which have been itemised in the previous paragraphs, and clearly in that comparative matrix, it is a disproportionate restriction. *Thirdly,* if for example, bigamous marriages or underage marriages are illegal, they are in any case invalid, voidable, or void, as the case may be, by the operation of law, and a notice period is

of relatively limited importance to something already declared by law to be illegal. The self-affidavit and declaration would constitute a sufficient substitute without the corresponding danger of physical and mental harassment of an extreme kind. Therefore, as will be argued below, there exist less restrictive means that can achieve the same goal, without compromising on privacy and equality (**IV**).

55. Petitioners also note that the Respondent's **Counter-affidavit** (as filed in March 2023) does not address these submissions.

I. Privacy

56. It has long been accepted that the protection of intimate decisions from non-consensual public scrutiny is at the heart of the right to privacy (**Gobind vs State of MP, (1975) 2 SCC 148**, **para 24** referring specifically to marriage; **Justice K.S. Puttaswamy vs Union of India (I), (2017) 10 SCC 1 ["Privacy"], paras 271, 297**).

57. The right to privacy is not limited to *private spaces* (such as the home). The right belongs to *persons* (see **District Registrar and Collector vs Canara Bank, (2005) 1 SCC 496, paras 37, 39**). On occasion, indeed, the right to privacy *must* be exercised in *public spaces*. In **Navtej Johar vs Union of India, supra,** Chandrachud J. - as he then was - observed that:

> The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference (**paragraph 62**).

58. It is respectfully submitted that the phrase "on their own terms" is crucial to understanding the contours of the right to privacy in the present case. In **Navtej Johar vs Union of India, supra**, Chandrachud J. was referring to how relegating same-sex relations to the putative "private" sphere or "behind closed doors", is insufficiently attentive to the interaction between the public and private, and would entrench the "ambient heterosexism of the public space" (**Navtej Johar, para 471, supra**, quoting **Saptashi Mandal,**

"'Right to Privacy in *Naz Foundation*: A Counter-Heteronormative Critique" (2009) 2 NUJS Law Review 553.). The context of **Navtej Johar**, therefore, required a critical interrogation of the public/private divide while applying the lens of privacy to same-sex *relations*.

59. The present case, it is respectfully submitted, is the mirror image of **Navtej Johar, supra**. While in **Navtej Johar, supra,** Chandrachud J.'s conception of privacy required building an environment in which consensual same-sex relations could be *expressed* in public spaces (free of harassment or State interference), the present case involves the ability of and individual to engage with a public institution (and a public space) while *preserving* their right to privacy.

60. It is submitted that the pivot upon which this mirror turns is "the right of persons of the LGTBQ+ community to navigate public places on their own terms." (**para 471, Navtej Johar, supra**) In one set of situations, this will entail articulation and expression. In another set of situations, it will require silence and anonymity. The vision of privacy - flowing from **Navtej Johar, supra** - accommodates both the mirror and its image.

61. It is respectfully submitted that a further facet of the right to privacy is the right to informational self-determination (**Justice K.S. Puttaswamy vs Union of India, supra, para 248**). The right to informational self-determination vests in each individual the ability to set the terms upon which intimate information about the self can be shared with the public. The notice-and-objections regime deprives individuals of informational self-determination in a domain where it is critical: the choice of a life-partner, and - in particular - the mutual decision of when - and if - a relationship is to crystallise into marriage and to whom, and at what stage, the *intent* of this crystallisation is to be communicated to.

62. Petitioners reiterate that this is not a case about *anonymous marriages,* i.e. the striking down of a 30-day notice period that the

marriage will not be in public domain. There would be an official certificate of registration and the marriage itself will be publicised amongst those the couple wishes to know. Shortly after marriage, the information will be further disseminated. Far from therefore desiring an anonymous/secretive alliance, the Petitioners' object is to prevent dangerous, illegal, unwarranted intrusion by meddlesome interlopers, over-aggressive family members, self-anointed protection groups, and society at large.

63. Without entering into the merits of the argument, Petitioners concede that slightly different considerations *might* apply at the *point of entry into the social institution* and afterwards. What is at stake here is the ability of individuals to exercise their right or privacy over their *intention* to marry - the *intimate decision* to enter the social institution - and their ability to control how they choose to share such deeply personal information with the world.

64. For the reasons advanced above, it is therefore submitted that the notice-and-objections regime violates the right to privacy under Article 21 of the Constitution.

II. Decisional Autonomy

65. It is respectfully submitted that this Hon'ble Court has long held that constitutional adjudication must take place with a keen awareness of the social context in which laws exist and operate. To this is allied the long-standing doctrine of this Hon'ble Court that when assessing a law's constitutionality, what matters is its *effect*, and not its intention or form (*see* Chandrachud, J. as he then was in **Navtej Johar, supra, para 34** specifically with respect to queer lives).

66. Chandrachud J. went on to note that a *facially neutral* law would nonetheless be unconstitutional if its *effect* was to target certain communities (**paragraph 42**). Relying upon on-ground evidence - brought before the Court through affidavits and personal testimony - Chandrachud J. held that it had been established that Section 377 of the IPC created "a systemic pattern of disadvantage,

exclusion and indignity for the LGBT community, and for individuals who indulge in non-heterosexual conduct." (**paragraph 42**) Chandrachud J. specifically referred to the "possibility of persecution" (**paragraph 48**), "blackmail" (**paragraph 48**), and - crucially - the impossibility of redress through law, even though these acts were illegal (**paragraph 48**). Summing up the position, it was then held that:

> While this behaviour is not sanctioned by Section 377, the existence of the provision nonetheless facilitates it by perpetuating homophobic attitudes and making it almost impossible for victims of abuse to access justice. (**paragraph 51**)

67. This Hon'ble Court has also recognised the possibility of systematic abuse of a rights-infringing measure, and read that into its assessment of such a measure's constitutionality under the doctrine of proportionality (***Gujarat Mazdoor Sabha v State of Gujarat* (2020) 10 SCC 459 *para* 11.5; *Ramesh Chandra Sharma v State of Uttar Pradesh,* Civil Appeal No. 8819/2022, *paras* 48-51).** Following the judgement of Chandrachud, CJI in *Gujarat Mazdoor Sabha* that welded safeguards against abuse into this Hon'ble Court's doctrine of proportionality, this Hon'ble Court in *Ramesh Chandra* summed up the position of law as follows:

> State action that leaves sufficient room for abuse, thereby acting as a threat against free exercise of fundamental rights, ought to necessarily be factored in in the delicate balancing act that the judiciary is called upon to do in determining the constitutionality of such state action - whether legislative, executive, administrative or otherwise. (**paragraph 51**)

68. Therefore, in view of this Hon'ble Court's authoritative holding, it is not open for the Respondents to defend the constitutionality of the notice-and-objections regime without regard to the on-ground evidence of its abuse by private actors.

69. Petitioners rely upon this insight, and respectfully submit that it applies squarely to the notice-and-objections regime. In the

accompanying writ petition, Petitioners have adduced detailed evidence to demonstrate how the notice-and-objections regime has enabled the persecution of individuals whose choice of a life partner is in conflict with the social expectations of their family and broader kinship and community structures. (*ref.* Annexures P2, P3, P4, **p.34-53,** containing news reports of such harassment; and Annexure P5, **p.57,** containing extracts from the 242nd Law Commission Report noticing this problem).

70. Adopting the language of **Navtej Johar, supra**, **para 458** Petitioners respectfully submit that the notice-and-objections regime does not *sanction* persecution, but *facilitates* it by its operation in a society and an environment in which the use of familiar, caste, and community power to override individual choice in matters of marriage is both normalised and widespread.

71. It is in this fashion, therefore, that the notice-and-objections regime violates the right to decisional autonomy under Article 21 of the Constitution. To be sure, the notice-and-objections regime does not, on its own terms, *stop* a marriage. However, to limit the analysis to just that would be to view this provision in vacuum. The jurisprudence of this Hon'ble Court is clear that *effect* and *context* are vital in interpreting a law from the perspective of fundamental rights violations. It is respectfully submitted that the *effect* of the notice-and-objections regime, *in context*, makes it pellucidly clear that it acts as a significant barrier between individuals and the effective exercise of their right to decisional autonomy.

III. Equality

72. Drawing from the submissions in the previous section, Petitioners respectfully submit that the notice-and-objections regime is discriminatory.

73. Different individuals have differing abilities to withstand familial, social, caste, and community pressure (as outlined above). However, this difference in ability is not random or arbitrary: it is directly linked to an individual's ascriptive identity (including, but not

limited to, their socio-economic status). For example, individuals who are economically dependent on their families will be less able to withstand familial pressure than individuals who are economically independent. Individuals who belong to contexts in which kinship and community structures are important sources of support, will be less able to withstand a threat of social boycott than individuals whose access to basic goods is not mediated through community. At an even simpler level, individuals belonging to dominant social groups (for example, dominant caste groups) will be more able to withstand pressure than individuals belonging to already vulnerable or marginalised groups.

74. Consequently, the harm wrought by the notice-and-objections regime lies at the interface of two (related) concepts of discrimination: *indirect discrimination* and *intersectional discrimination*.

75. Indirect discrimination refers to the phenomenon where a neutrally-worded statute is discriminatory in its *effect* (as argued in the previous section). (**Col. Nitisha vs Union of India, 2021 SCC OnLine SC 261, paras 61, 84, 97).**

76. It is respectfully submitted that the term “social *and* economic” is carefully chosen, and ought to be given full effect to.

77. Intersectional discrimination, on the other hand, is a more complex concept. It is based upon the insight that individuals habitually occupy multiple axes of oppression simultaneously, and in such circumstances, the discrimination that they experience does not come packaged separately by axis, and nor is it a simple sum of individual forms of discrimination. Intersectional discrimination is a unique experience that - as the term suggests - is located at the *intersection* of one or more ascriptive identities.

78. Intersectional discrimination has been recognised by this Hon’ble Court. In **Navtej Johar, supra**, Chandrachud J. (as he then was) held that it was important to take into account “the

intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context" (**paragraph 36**). (Also see **Patan Jamal Vali vs State of Andhra Pradesh, (2021) SCC OnLine SC 343, paras 22, 24).** Repeatedly, therefore, this Hon'ble Court has stressed upon "social *and* economic context" as prerequisites for understanding intersectional discrimination.

79. It is respectfully submitted that the (facially neutral) notice-and-objections regime is an instance of *indirect, intersectional discrimination*. The notice-and-objections regime operates unequally on individuals who occupy the intersection of ascriptive identities - gender, sexual orientation, caste, religion, and class - and places the benefits of the SMA beyond their reach. For these reasons, it is respectfully submitted that the SMA violates Articles 14 and 15 of the Constitution.

IV. Proportionality

80. It is well-settled that a law that violates Article 21 must conform to the five-pronged test of proportionality in order to pass muster. The five prongs are:

a. A legitimate state aim.
b. A rational nexus between the rights-infringing measure and the State aim ["**suitability**"].
c. The rights-infringing measure should be the least restrictive measure open to the State to achieve its goals ["**necessity"**].
d. There should be a balance between the extent and severity of the infringement, and the State aim ["**proportionality *stricto sensu***"].
e. There should be provided sufficient safeguards against the possibility of abuse of the rights-infringing measure ["**safeguards against abuse**"].

81. As submitted above, Petitioners do not dispute that there may exist a legitimate State aim, i.e., to prevent violations of the section 4 pre-conditions upon solemnisations of SMA marriages (such as bigamy, etc.). It is also correct that there exists a rational nexus

between the requirement of publicity, and the State aim of ensuring that SMA marriages are compliant with section 4.

82. Petitioners submit, however, that the notice-and-objections regime fails at the prong of necessity. Completely stripping away the right to privacy of individuals for a one-month period before the solemnisation of the marriage is not the "least restrictive alternative" open to the State. This is obvious from the fact that *for non-SMA marriages* - such as, for example, under Hindu customary law, or Christian personal law - *there is no requirement of State-mediated publicity* (under Christian personal law, for example, registration is mandatory, but publicity is not; under Hindu customary law, registration is not mandatory).

83. Relatedly, therefore, it is evident that *ex ante* compelled publicity is not the only way to check abuse. Indeed, *for most laws*, the State does not resort to *ex ante* prohibitions, but rather, achieves the goals of prevention, deterrence, and control through *prosecution and punishment* for law-breaking. It is open to the legislature to modulate the penalty in order to ensure maximum compliance, and should this Hon'ble Court hold the notice-and-objections regime to be unconstitutional, the legislature could well alter the punishment for violating section 4 in order to achieve deterrence and prevention. It is respectfully submitted, however, that *ex post* penalties are adequate - and less restrictive - methods of achieving the State aim, rather than an *ex ante* deprivation of privacy of *every* individual who wishes to get married under the SMA. Indeed, it is this mechanism that the State follows for ensuring compliance with pre-conditions for marriage under personal laws; consequently, not only does a less restrictive alternative exist in theory, but it also exists - and has been deployed - in practice.

84. It is further submitted that, for related reasons, the notice-and-objections regime fails the fourth prong of the proportionality standard. In order to catch the *few* individuals who might attempt to use the cloak of secrecy in order to get married in violation of section 4 conditions, the notice-and-objections regime strips *every*

individual of their privacy under the SMA. This - effectively - amounts to a *presumption of criminality*: the notice-and-objections regime assumes that every individual who wishes to get married under the SMA is a potential violator of section 4.

85. It is respectfully submitted that this jurisprudence of suspicion was held to fail the fourth prong of the proportionality standard by this Hon'ble Court in **Justice K.S. Puttaswamy vs Union of India, (2019) 1 SCC 1 (paras 491, 1323);** in that case, this Hon'ble Court held that the mandatory linking of Aadhaar with SIM cards was unconstitutional, as it presumed that *every* citizen was a potential terrorist, and was therefore a tool of prevention. It is respectfully submitted that the notice-and-objections regime is premised on the same assumption of general, potential criminality.

86. Finally, the notice-and-objections regime is vulnerable to and has in fact been the site of rampant abuse by various private actors. It is a well-known fact that couples marrying outside the bounds of conventional morality have been killed, attacked at their homes, and separated, by anti-social elements and their own family members using the device of the public notice required under the SMA. The fifth prong of the proportionality test does not leave it open for the Respondents to claim that abuse of a law is irrelevant to an assessment of its constitutionality, when the law itself does not safeguard against such abuse in any manner.

87. It is therefore submitted that the notice-and-objections regime constitutes a disproportionate invasion of Article 21, and ought to be struck down as unconstitutional by this Hon'ble Court.

C. On the Relief

88. In light of the above, this Hon'ble Court may be pleased to issue appropriate directions, writs, orders, directions, or other relief as set out below.

a. Declare, particularly, that same-sex marriages are covered under the ambit of marriages that may be solemnised and registered under the SMA;

b. Issue a writ of *mandamus,* or any other appropriate writ, order, or direction, declaring that the provisions of solemnization and registration under the SMA extend to *all* marriages between *any* persons otherwise eligible under the SMA, irrespective of the parties' gender, sexual orientation, and sexual identity. In particular, this Hon'ble Court may declare that the words "man" and "woman" u/s 2(b); "male" and "female" u/s 4(c); "wife" and "husband" u/s 12(2), 15(a), 22, 23, 25, 27, 36, 37, 44, and the Fifth Schedule; "widower" and "widow" under the Second Schedule; and "bride" and "bridegroom' under the Third and Fourth Schedules be interpreted as "any two persons", along the lines of S.4 of the Act.

89. In the alternative, the Court may strike down gendered words in the SMA that restrict marriage between persons of opposite gender as violative of Articles 14, 15, 19, and 21 of the Constitution of India. The gendered words in issue are listed separately for the convenience of this Hon'ble Court in **Appendix III**.

90. Similarly, issue a declaratory writ of *mandamus,* or any other appropriate writ, order, or direction, declaring that the provisions of solemnization and registration under the FMA extend to *all* marriages between *any* persons solemnised under the Act, irrespective of the parties' gender, sexual orientation, and sexual identity. An interpretation to the contrary, restricting marriage between persons of opposite gender would be violative of Articles 14, 15, 19, and 21 of the Constitution of India.

91. Issue a writ of mandamus or any other appropriate writ, order, or direction, declaring Sections 5, 6, 7, 8, 9, and 10 of the SMA as unconstitutional, illegal, and void for all persons.

92. Issue a writ of mandamus or any other appropriate writ, order, or direction, declaring Sections 5, 6, 7, 8, 9, and 10 of the FMA as unconstitutional, illegal, and void for all persons.

93. 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

DRAFTED BY:
Gautam Bhatia, Adv.
Shadan Farasat, Adv.
Hrishika Jain, Adv.
Utkarsh Saxena, Adv.
Abhinav Sekhri, Adv.
Aman Sharma, Adv.

FILED BY:
Shadan Farasat,
Advocate for the Petitioner

SETTLED BY:
Dr. Abhishek Manu Singhvi, Sr. Adv.

Place: New Delhi
Date: 12th March, 2023

Appendix-I

Vertical rights conferred or liabilities removed by the State itself for those enjoying the State-sanctioned status of marriage	
Adoption	Regulation 5, Adoption Regulations, 2022 enacted under the Juvenile Justice (Care and Protection of Child) Act, 2015, stipulates only a married couple or single individuals as eligible candidates for adoption.
Surrogacy	Section 2(1)(h) read with Section 4 of the Surrogation (Regulation) Act, 2021 allows only a married couple or a single widow/divorcee woman to avail surrogacy.
Intestate succession	Intestate succession under the Indian Succession Act, 1925, Hindu Succession Act, 1956, as well as Muslim personal law only covers relations by marriage, consanguinity, or adoption.
Tax exemption for gifts received from spouse	Under Section 56(2)(v) of the Income Tax Act, 1961, gifts made by a person to a spouse are exempt from income tax.
Tax deductions for diverse expenditures made for one's spouse	*For instance,* Section 80D of the Income Tax Act, 1961 allows an assessee to deduct expenditure on health premia made only for his spouse or dependent children. Similar provisions have also been enacted for other diverse expenditures.
Norms for compassionate appointments in government posts	*For instance,* the Scheme for Compassionate Appointment in the Registry of the Supreme Court of India, 2006 makes provisions for compassionate appointment of a spouse in case of the death of a Court Officer while in service. Similar provisions exist for numerous other posts in State institutions.
Compensation to dependents for death of kin under various legislations	*For instance,* under the Workmen's Compensation Act, 1923, only persons related by marriage or lineage are considered 'dependents' of the deceased entitled to compensation (*ref.* Section 2(1)(d), Workmen's Compensation Act, 1923).

Appointment of nominee for receipt of post-retirement benefits, pension, *etc.* after the death of a government employee	Rules 19, 21 of All India Services (Death-cum-Retirement) Benefit Rules, 1958 consider only persons related by marriage, blood, or adoption as eligible nominees for receipt of a deceased government employee's gratuity.
Privilege in spousal communication	Section 122 of the Indian Evidence Act, 1872 makes communication between a married couple made during the subsistence of the marriage, privileged.
Right to bodily remains of deceased kin	In case of death, police/other authorities are often reluctant to return the deceased's bodily remains to persons not in a 'legal' relationship (such as marriage or lineage) with the deceased.[1]
State protection from social harassment, violence, and 'honour killings' granted to couples *marrying* outside the pale of conventional morality	*For example,* the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019 was passed by the Rajasthan Legislative Assembly to protect couples who are married or who intend to marry, from harassment by community/families.
Spousal maintenance	Persons in a live-in or other long-term relationship without the stamp of marriage are not entitled to maintenance from their partner under Section 125, CrPC or under the diverse family legislations. Indeed, the Protection of Women from Domestic Violence Act, 2005 which recognises live-in relationships "*in the nature of marriage*" provides for maintenance only in cases of domestic violence. Even in such cases, the 2005 Act has no protection for couples who would not be otherwise eligible to marry (*D. Velusamy v D. Patchaiammal,* (2010) 10 SCC 469 para 31).
Protection of the law to victims of domestic violence	The special penal provision for domestic violence, i.e. Section 498A Indian Penal Code 1860 covers only violence within marriages. The Protection of Women from Domestic Violence Act, 2005, albeit covering live-in relationships in the nature of

[1] Datta, Sayantan (2017) "We Refuse to be Subjects of Experiment for Those who do not Understand us: Transgender Persons Bill." 52(49) Econ. Pol. Wkly.

	marriage, also seemingly applies only to heterosexual relationships.
Horizontal rights conferred or disabilities removed by private entities on those enjoying the State-sanctioned status of marriage	
Family insurance coverage	Most insurance companies cover only the legally married spouse (and other blood/adoptive relations) of a policy-holder under family floater insurance policies.
Renting homes	The housing market strongly prefers married couples and conventional families.
Opening of joint bank accounts	Most banks facilitate joint savings accounts for legally married couples and other recognised family types.
Bereavement or care-giving leave policies in private employment	For instance, bereavement leaves of many private companies only extend to death of loved ones recognised by the law as family, i.e. married spouse and other members of the immediate conventional family.[2]
Right to be involved in the partner's healthcare and right to make medical decisions in that regard	Hospitals and healthcare centres generally provide information about a patient's condition to, and consult in that regard with, only legally-recognised family members of the patient, including a married spouse and other relations by blood/adoption.

Appendix - II

Comparison of solemnisation, registration, and marriage validity provisions of HMA and SMA		
	Hindu Marriage Act, 1955	**Special Marriage Act, 1954**
Solemnization	HMA allows for the solemnization of a marriage without any notice, objection, or inspection requirements being completed.	SMA does not allow for the solemnization of a marriage unless notice, objection, and inspection requirements u/s 5-10 of the Act are met.

[2] VK, Vipashana & anr. (2017) "Firms give bereavement leave to help staff cope with loss." Times of India (Sep. 12, 2017).

	As per Section 7 of HMA, “a Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto” and “where such rites and ceremonies include the saptpadi, the marriage becomes complete and binding when the seventh step is taken”	These sections require that (i) a notice period of 30 days be provided to the Marriage Officer of the District where one of the parties has resided (S. 5), (ii) that such notice of intended marriage be affixed to a “conspicuous place”, (S.6 (3)) (iii) that the details of the parties giving such notice be entered in a Marriage Notice Book that is available for inspection to any person (S. 6(2)), and (iv) *any* person has the authority to object to the solemnization of the marriage during notice period (S. 7). In case of no objections, it may be solemnised only after the expiration of 30-day notice period In case of objections, the marriage officer cannot solemnise a marriage unless they have inquired into the objection and satisfied themselves that they “ought not to prevent the solemnization of the marriage” (8(1))
Registration	Even at the stage of registration, a marriage solemnised under the HMA is not subject to any notice and objection requirements Section 8 of HMA allows state governments to make rules related to marriage registration. For example, Delhi passed The Delhi (Compulsory Registration of	Registration of a marriage under SMA arises only *after* notice, objection, and inspection requirements are met for solemnization. U/s 13(1) of the SMA, “when the marriage has been solemnised” (after following notice, objection, and inspection requirements) the marriage officer issues a

	Marriage) Order, 2014 which does not have any notice, objection, or inspection requirements for the registration of marriages under the HMA. For such marriages to be registered, only a verification of documents and appearance before the SDM is necessary. The marriage certificate is issued on the same day the parties appear before the SDM. S. 8(1) and 8(4) of HMA require that a Hindu Marriage Register be maintained and be open to inspection at all reasonable times *after* the marriage is registered.	marriage certificate in the form specified in the Fourth Schedule. As per 13(2), this certificate is "deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnised" The Marriage Notice Book maintained u/s 6(1) of the SMA needs to be available for inspection *before* the marriage is solemnised or registered.
Validity	The lack of registration of a marriage does not strike at the validity of a marriage per S. 8(5) of HMA. Hence, a marriage is valid without meeting any notice and objection requirements under the HMA. Section 8(5) of the HMA opens with a non-obstante clause to hold: "notwithstanding anything in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry [in a Hindu Marriage Register]"	Marriages under the SMA cannot be solemnised (and are hence invalid) without adhering to the notice and objection prerequisites

Appendix III

***List of gendered words used in the Special Marriage Act 1954 that require reading down* to non-gendered terms such as 'spouse' or 'person'**	
Provision	**Extract**
Section 2(b) *Definitions* *read with* First Schedule	(b) "degrees of prohibited relationship"- a **man** and **any of the persons mentioned in Part I of the First Schedule** and a **woman** and any of the **persons mentioned in Part II of the said Schedule** are within the degrees of prohibited relationship. Explanation I.—Relationship includes,— (a) relationship by half or uterine blood as well as by full blood; (b) illegitimate blood relationship as well as legitimate; (c) relationship by adoption as well as by blood; and all terms of relationship in this Act shall be construed accordingly. Explanation II.—"Full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same **wife** and by half blood when they are descended from a common ancestor but by different **wives**. Explanation III.—"Uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common **ancestress** but by different **husbands**. Explanation IV.—In Explanations II and III, "ancestor" includes the father and "ancestress" the mother". Part I of the First Schedule mentions only female kin, while Part II of the First Schedule mentions only male kin. To that extent, the relationships may be read down to include their gender-neutral corresponding parts.
Sections 4(c), (d) *Conditions*	Notwithstanding anything contained in any other law for the time being in force relating to the

relating to solemnisation of special marriages	solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:— … (c) the male has completed the age of twenty-one years and the female the age of eighteen years; (d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship.
Section 12 *Place and form of solemnization*	(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed. (2) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—"I, (A), take the (B), to be my lawful **wife (or husband)".**
Section 15 *Registration of marriages celebrated in other forms*	Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:— (a) a ceremony of marriage has been performed between the parties and they have been living together as **husband and wife** ever since …
Section 22	When either **the husband or the wife** has, without

Restitution of Conjugal Rights	reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. …
Section 23 *Judicial Separation*	(1) A petition for judicial separation may be presented to the district court either by the **husband or the wife…**
Section 25 *Voidable marriages*	Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,— … (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872): … Provided further that in the case specified in clause (iii), the court shall not grant a decree if,— (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or (b) the petitioner has with his or her free consent lived with the other party to the marriage as **husband and wife** after the coercion had ceased or, as the case may be, the fraud had been discovered.
Section 27 *Divorce*	(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court **either by the husband or the wife** on the ground that the respondent— …
Section 44 *Punishment of Bigamy*	Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her **wife or husband**, contracts any other marriage

	shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (45 of 1860), for the offence of marrying again during the lifetime of a **husband or wife**, and the marriage so contracted shall be void.
Second Schedule *Notice of Intended Marriage*	May be read down to the extent that it uses 'widower' and 'widow'.
Third Schedule *Declaration to be Made by the Bridegroom Declaration to be Made by the Bride*	May be read down to the extent that it uses 'bridegroom', 'bride', 'widow', 'widower'.