

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

<u>S. NO.</u>	<u>PARTICULARS</u>	<u>PG. NO.</u>
1.	Notice of Motion	1-2
2.	Urgent Application	-3
3.	Memo of Parties	4-5
4.	Synopsis and List of Dates	6-20
5.	Writ Petition under Article 226 of the Constitution of India along with supporting affidavit	21-160
6.	<u>Annexure P-1</u> A scanned true copy of the certificate of registration of marriage along with apostille certificate of the Petitioner Nos. 1 and 2.	161TO 162

--	--	--

Mr. Joydeep Sengupta & Ors.

...PETITIONERS VERSUS

Union of India & Ors.

...RESPONDENTS

INDEX

7.	<u>Annexure P-2</u> True copies of photographs of the civil ceremony of the marriage of the Petitioner Nos. 1 and 2 at the City Hall in New York City.	163 TO 167
8.	<u>Annexure P-3</u> A scanned true copy of the passport of the Petitioner No. 1.	-168
9.	<u>Annexure P-4</u> A scanned true copy of the OCI card of the Petitioner No. 1.	169 TO 171
10.	<u>Annexure P-5</u> A scanned true copy of the passport of Petitioner No. 2.	-172
11.	<u>Annexure P-6 (COLLY)</u> Scanned true copies of the visas of Petitioner No. 2.	173TO 178
12.	<u>Annexure P- 7(COLLY)</u> True copies of the MHA notifications dated 11 th April, 2005., 22.05.2020, 21.10.2020 and 04.03.2021	179TO 190
13.	<u>Annexure P-8</u> True copies of some of the published articles written by the Petitioner No. 3 on issues faced by the LGBTQIA+ community and their rights.	191 TO 212

14.	<u>Annexure P-9</u> A true copy of the notification F. No. 26011/Misc./47/2019-OCI dated 15.11.2019 with Frequently Asked Questions (“FAQs”) and answers to the same issued by the Ministry of Home Affairs, Foreigners Division.	213 TO 230

15.	<u>Annexure P-10 (COLLY)</u> True copies of the RTIs dated 1 st March, 2021 filed by the Petitioner No. 3 on behalf of the Petitioner Nos. 1 and 2.	231TO 248
16.	<u>Annexure P-11 (COLLY)</u> True copies of the replies dated 10 th March, 2021 issued by the MEA CPV Division and the reply dated 16 th March, 2021 issued by the MHA, Foreigners Division to the RTI Applications.	249TO 258
17.	<u>Annexure P-12 (COLLY)</u> True copies of the replies dated 30 th March, 2021 issued by the MHA, Foreigners Division to the RTIs.	259 TO 262
18.	<u>Annexure P-13(colly)</u> True copies of the replies dated 30 th March, 2021 issued by the MHA, Foreigners Division to the RTIs	263TO 266
19	<u>ANNEXURE P-14</u> true copy of the reply dated 31 st March, 2021 issued by the MEA, CPV Division to the RTI Application	267 TO 268

20	<u>ANNEXURE P-15</u> True copy of The FAQs pertaining to eligibility in applying for OCI available on the website of the Ministry of External Affairs	269TO 277
21	<u>C.M.A.NO. OF 2021</u> Application for exemption from filing lengthy seeking permission for list of dates with affidavit	278 TO 282
22	<u>C.M.A.NO. OF 2021</u> Application for exemption from filing original/ certified/ dim/ legible true type copies of the annexures with affidavit	283TO 287
23	Vakalatnama	288TO 290
24	Court Fees	291
25	Proof of Service	292

THROUGH COUNSEL

PETITIONERS



Karuna Nundy

With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi

[Redacted]
[Redacted]

Date:05.07.2021 Place: New Delhi

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2021 IN THE

MATTER OF:

Mr. Joydeep Sengupta & Ors.

...PETITIONERS

VERSUS

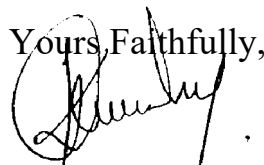
Union of India & Ors. ...RESPONDENTS **NOTICE OF MOTION**

To,
The Registrar, Delhi
High Court New
Delhi.

Please take notice that the accompanying Writ Petition (Civil) under Article 226 of the Constitution of India for issuance of appropriate directions has been filed by the Counsel for the Petitioners in the High Court of Delhi and the same is likely to be listed on **06.07.2021** before the Hon'ble Court. Kindly find enclosed herewith a copy of the writ petition. This is for your information. Thanking You.

Yours Faithfully,

THROUGH COUNSEL


Karuna Nundy

**With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi**

Date:05.07.2021 Place: New Delhi

To:

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

...PETITIONERS

VERSUS

Union of India & Ors.

...RESPONDENTS

URGENT APPLICATION

The Registrar,

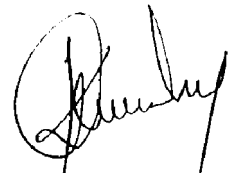
Hon'ble High Court of Delhi New
Delhi

Kindly treat this application as an urgent one as per High Court Rules.

An application for urgent listing was filed by the Petitioners on
05.07.2021. The same was allowed by the Registrar for tentative listing
on **06.07.2021**. (Reference No. _____) It is prayed accordingly.

Yours Faithfully,

THROUGH COUNSEL



Karuna Nundy

**With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi**

Date:05.07.2021 Place: New Delhi

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

...PETITIONERS

VERSUS

Union of India & Ors.

...RESPONDENTS

MEMO OF PARTIES

1. Mr. Joydeep Sengupta

R/o [REDACTED]

Petitioner No. 1

2. Mr. Russell Blaine Stephens

R/o [REDACTED]

... Petitioner No.

2

3. Mr. Mario Leslie Dpenha

R/o [REDACTED]
[REDACTED]
[REDACTED]

... Petitioner No. 3

VERSUS

1. Union of India

Ministry of Home Affairs,

Through Secretary,

North Block, New Delhi- 110001

... Respondent No. 1

2. Consulate General of India, New York

Through the Consul General

East, 64th Street (between 5th &

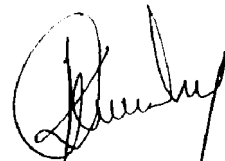
Madison Avenue), NY-10065

Respondent No. 2

3 Union of India
 Ministry of External Affairs,
 Through its Secretary,
 Consular, Passport and Visa Division,
 Room No. 3, Patiala House Annex,
 Tilak Marg, New Delhi- 110001 ... Respondent
 No. 3

ALL SERVED THROUGH THE STANDING COUNSEL (CIVIL)
 DELHI HIGH COURT
 NEW DELHI

THROUGH COUNSEL



Karuna Nundy

**With Ruchira Goel, Utsav Mukherjee,
 Ragini Nagpal and Abhay Chitravanshi
 Advocates for the Petitioners
 B-1/33A, Top Floor, Hauz Khas, New Delhi**

[Redacted]
 [Redacted]

Date:05.07.2021

Place: New Delhi

SYNOPSIS

The present Petition seeks inter alia, a declaration that a spouse of foreign origin of an Indian Citizen or Overseas Citizen of India ('OCI') cardholder is entitled to apply for registration as an Overseas Citizen of India under Section 7A(1)(d) of the Citizenship Act, 1955 regardless of

the gender, sex or sexual orientation of the applicant spouse . The Petitioners also seek legal recognition of all same-sex, queer or nonheterosexual marriages under secular legislations for marriage such as the Foreign Marriage Act 1969 and the Special Marriage Act 1954 in accordance .

Petitioner Nos. 1 and 2 in the present writ petition are a married same-sex couple resident in Paris, France. They met in New York in 2001 and have been in a loving relationship for nearly 20 years. Petitioners No. 1 and 2 got married in New York on August 6, 2012, and are recognized as a legally married couple in the U.S., France, and Canada – the three countries where they have primarily lived and worked in the last twenty years. They have a certificate of registration of marriage issued by the Office of the City Clerk of New York dated 6th August, 2012 and apostille certificate of the same date issued by the Special Deputy Secretary of State, New York.

Joydeep Sengupta and Blaine Stephens, Petitioners 1&2, are preparing for their new role as parents, and they are expecting their first child in July 2021.

The Petitioner No. 1, Joydeep Sengupta, was born in India and was an Indian citizen at birth. He grew up knowing he was gay, and that his right to love and marry was illegal. Education and work took Mr.

Sengupta abroad, he is now a lawyer admitted to the Bars of New York, Paris and Ontario, Canada. He specializes in cross-border investigations, compliance and regulatory matters for some of the world's largest financial institutions and global corporations. Mr. Sengupta is a Canadian Citizen now and since 2011 he has been an Overseas Citizen

of India (“OCI”). Mr. Sengupta’s parents and extended family all live in India, and he continues to maintain longstanding professional ties to India. He travels to his Indian home regularly.

Blaine Stephens is Mr. Sengupta’s husband and Petitioner No. 2. He is a U.S. citizen and currently a long term resident of France. The Petitioner No. 2 has no legal status in India and has only been able to visit India after qualifying for various temporary visitor or business visas. The Petitioner No. 2’s first trip to India was to meet the Petitioner No. 1’s extended family and friends in India in January 2002. Since then, the Petitioner No. 2 has had multiple visas and has visited India many times to see family and professionally. Petitioner No. 2 is an economist who specializes in microfinance and economic development. He has deep professional relationships with Indian business partners in microfinance, which have included the Reserve Bank of India. Indeed, he has worked as an advisor to the Central Banks of several countries, development institutions and financial institutions, including through the World Bank . He has also taught advanced courses at Columbia University, Georgetown University, Yale University, Sciences Po Paris, among others.

As the Petitioners are expecting their first child in July 2021, with one set of the child’s grandparents residing in India (Petitioner No.1’s parents), the Petitioner No.2 wishes to apply for OCI status under Section 7A(1)(d) of the Citizenship Act, as a spouse of an OCI Cardholder. As per the notification dated 22.05.2020 by the Ministry of Home Affairs (‘MHA’), due to visa and travel restrictions imposed to contain the spread of Covid 19, only certain categories of OCIs were

being allowed entry into India. However, later, MHA, Foreigners Division, vide its notifications dated 21.10.2020 and 04.03.2021 reallocated entry of all OCIs in India and said that OCIs shall be entitled to grant of multiple entry lifelong visa for visiting India for any purpose. This facility is not available to foreign nationals. The Petitioner No. 2 seeks to attain OCI status at the earliest in order to avail of this facility so that he can spend time in India – where the Petitioner no.1's family lives – with his spouse and the baby they are expecting. And indeed, to reach his husband and baby immediately in case of illness or other difficulty as needed during the pandemic .

Petitioner No.3, Mario Dpenha , is an Indian citizen, a queer rights academic and activist, currently pursuing a PhD at Rutgers University, USA on the history of hijras in eighteenth and early nineteenth century western India. He has worked in queer activism for over twenty years and is a founder of Anjuman, the first queer students' collective in Jawaharlal Nehru University, New Delhi in 2003. He was part of Voices Against 377, a party to the legal challenge to Section 377 of the IPC, which led to the eventual decriminalization of homosexuality in *Navtej Singh Johar v. Union of India* ('*Navtej Singh Johar*') (2018) 10 SCC 1. Petitioner No. 3 identifies as queer:

"Queer" in the present petition is used as an inclusive, umbrella term for people who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and other related identities (LGBTQIA+).

Such people:

- (i) may not conform to the fixed, socially prescribed categories of "male" and "female",

- (ii) may have gender identities that do not match their biological sex at birth, and/or
- (iii) may live outside the heterosexual norm.

OCI CARD FOR “SPOUSE” UNDER THE CITIZENSHIP ACT, 1955

Section 7A(1)(d) of the Citizenship Act, 1955 entitles a spouse of foreign origin of an OCI Cardholder, whose marriage has been registered and subsisting for at least two years to apply for OCI status. As per a notification issued by the MHA, Foreigners Division, in the case of a marriage solemnized in a foreign country, the spouse of an OCI or Indian citizen applying for OCI may present the said marriage certificate for such a marriage, which must be apostilled or certified by the concerned Indian mission or post. The Petitioner No. 2, being the spouse of an OCI cardholder, i.e. the Petitioner No. 1, is keen to apply for OCI status through this procedure.

This prompted the Petitioner Nos. 1 and 2 to ascertain the legal position on the eligibility of Petitioner No. 2 to apply for OCI status. Since they aren't citizens of India, they approached the Petitioner No.3, to file RTIs on the issue. Petitioner No.3 filed three RTIs, one with the MHA itself, one with the MHA Foreigners Division and one with the MEA,

Consular, Passport and Visa Division, all seeking the meaning of term “registered” marriage in Section 7A(1)(d) and the list of countries whose marriages are legally recognized by India. However, these RTIs were transferred back and forth by the Ministries, as a result of which the queries were never answered.

Further the Petitioner Nos. 1 and 2 came to know that there are a number of petitions pending before this Hon'ble Court on the issue of legal recognition of same sex marriages in India. One petition, available in the public domain, titled ***Mr. Vaibhav Jain & Anr. Vs. Union of India & Ors. W.P. (C) 7657 of 2020***, pertains to the refusal by the Consulate General of India, New York (also the Respondent No. 2 in the present case), to register the marriage of a same sex couple under the Foreign Marriage Act, 1969, even though the Petitioners in that case are already legally married in the United States and have a valid marriage certificate, like the Petitioners in the present case. The reason cited by the Consulate General of India, New York for non-registration, as per the petition by Mr. Vaibhav Jain and his husband, was that there are no extant laws and provisions for registration of such a marriage (a same sex marriage) in India.

The Respondent No. 2 is the concerned Indian mission/post which granted the Petitioner No. 2's last visa. It is also the Indian mission which granted Petitioner No. 1 his OCI card, in addition New York is the jurisdiction in which Petitioners 1 and 2 were married. Since the Respondent No. 2 has already denied registration of a same-sex marriage

in Mr. Vaibhav Jain's case, the Petitioner No. 2' legitimately fears that his application for OCI status as well as request for certification/apostillization of the marriage certificate which will be required in the application process, will not be accepted.

The Petitioners have thus approached this Hon'ble Court for relief. Consensual sexual acts between persons of the same sex have already been decriminalized by the Hon'ble Supreme Court of India in ***Navtej***

Singh Johar. It is submitted that even though Indian law is silent on the recognition of same sex marriages, it is a settled principle that where a marriage has been solemnized in a foreign jurisdiction, the law to be applied to such marriage or matrimonial disputes is the law of that jurisdiction. Thus, a marriage like that of Petitioners Nos.1 and 2, being validly registered under US law, must necessarily meet the requirements of the term ‘registered’ under Section 7A(1)(d) of the Citizenship Act.

It is an equally settled principle of law that the Court cannot supply a *casus omissus* into a statute by judicial interpretation, except in circumstances of clear necessity, when the reasons for the same are found within the four corners of the statute in question itself. It is submitted that in the case of Section 7A(1)(d) of the Citizenship Act, all that is required is that the marriage must be registered and subsisting for 2 years before the spouse can seek to apply for OCI status. There is no requirement that the marriage must be in accordance with Indian law, or that it must be registered under Indian law. In fact, all the Indian statutes pertaining to registration of marriages, require either the marriage to be performed in India (such as the Special marriage Act), or at least one party to be a citizen of India (such as the Foreign Marriage Act). There is no provision regarding registration of marriages between an OCI (non-citizen) card holder and a foreigner. Yet Section 7A(1)(d) of the Citizenship Act specifically allows for such a spouse of an OCI Card holder to apply for OCI status in India provided the marriage is registered and has subsisted for two years prior to the application. The only other proviso to the same is that the spouse shall be subjected to prior security clearance by a competent Authority in India.

In fact Section 7A(1)(d) was enacted in 2015, i.e. after the enactment of the Foreign Marriage Act, Special Marriage Act, and other marriage laws in India. Thus, it is submitted that the omission of any conditions qua the gender/sex/sexuality of the parties in the marriage between the OCI card holder and spouse of foreign origin is a *casus omissus* that cannot be supplied by judicial interpretative process, and even a same sex spouse of such an OCI Cardholder must be eligible to apply for OCI status.

RECOGNITION OF SAME-SEX AND/ OR QUEER MARRIAGE UNDER THE FOREIGN MARRIAGE ACT, 1969 AND THE SPECIAL MARRIAGE ACT 1954

It is also well settled that where there's a void in domestic law on an issue, the courts may rely on international law and foreign judgments to interpret the law in a manner that upholds and protects fundamental rights. It is submitted that across most jurisdictions that place a premium on the rights to equality, dignity, privacy and liberty, Courts have led the way in ensuring legal recognition of same sex marriages. Further, it may be noted that the starting point of such legal recognition, has been the obligation as interpreted by the Courts, of a State to recognize/ license/ register same sex marriages performed and validly recognized in other jurisdictions.

For instance, the US Supreme Court in *Obergefell v. Hodges, Director, Ohio Department of Health* 576 U.S. 644 (2015) ('*Obergefell*'), held that the equal protection clause of the US Constitution, i.e. the 14th Amendment, would require a State to license a marriage between a same-sex couple when the said marriage was lawfully performed and licensed out of the State in question. Significantly, even though same

sex marriages were not technically recognized in Israel, the Israeli Supreme Court in *Yossi Ben-Ari v. Director of Population Administration, Ministry of Interior, Interior* [2006] (2) IsrLR 283 ('*Yossi Ben-Ari*'), held that same sex marriages validly performed between Israeli citizens abroad, must be registered by the registration official at the population registry in Israel, who is not competent to examine whether the said marriage conforms to Israeli law. It is submitted that similarly, in the case of Section 7A(1)(d) of the Citizenship Act, there is no power to examine whether the marriage in question is in accordance with substantive Indian law or not – and as long as the marriage is validly registered in the jurisdiction where it was performed and the other conditions of the provision are met, the foreign origin spouse is entitled to apply of OCI status.

The right to equality and equal protection of laws under Article 14 as well as the right to life and personal liberty under Article 21 of the Constitution of India are guaranteed to all persons, including foreigners. The right to marry a person of one's choice as an essential component of the right to autonomy, privacy within Article 21 has been recognized by a catena of judgments in India as well as by foreign courts. Specifically, the right to legal recognition of same sex or nonheterosexual marriages has also been upheld as a fundamental right in a number of judgments by foreign courts, such as the Supreme Court of the United States and the Constitutional Court of South Africa. As per a catena of judgments, including those by the Hon'ble Supreme Court of India in the cases of *Navtej Singh Johar Vs. Union of India* (2018) 10 SCC 1 and the judgment in *Justice K.S.Puttaswamy vs. Union of India* (2017) 10 SCC 1, the Constitution is a transformative living

document that must adapt with changing times and the court must act as a Constitutional invigilator to ensure social justice. These judgments, as well as those by foreign courts prohibit the State from discriminating against persons on the basis of gender or sexual orientation. It is submitted that the right to legal recognition of marriage is the source for various other rights and privileges. For example,

(i) spousal privilege under Section 122 of the Evidence Act, 1872 protects married couples from being compelled to disclose communications between the spouses during the course of the marriage;

(ii) under the CCS (Pension) Rules, 1972 the spouse is entitled to a family pension after the death of their spouse who was working as a civil servant

(iii) the Pradhan Mantri Shram Yogi Maandhan Yojana, passed under the Unorganized Workers' Social Security Act, 2008 is a voluntary pension scheme for unorganised workers that gives minimum assured pension of Rs. 3000/- after a subscriber attains 60 years of age. The scheme allows the spouse of the beneficiary to receive half the pension as family pension if the beneficiary passes away.

(iv) Section 39(7) of the Insurance Laws (Amendment) Act, 2015, accords nominees who are immediate family members such as spouse, parents or children the status of beneficial nominee. If any of these persons are made a nominee, the death benefit will be paid to these persons and other legal heirs will have no claim over the money.

The right to OCI status of the Petitioner No. 2 is one such right. Deprivation of the right to legal recognition of marriage hinders

members of the queer, LGBTQIA+ community from exercising these other rights. In *Navtej Singh Johar*, the Hon'ble Supreme Court acknowledged that history owes an apology to the LGBT community for the tremendous suffering inflicted upon them.

Thus, it is most respectfully submitted that upholding the fundamental right to legal recognition of marriage for the queer, LGBTQIA+ community would ensure that they are not only allowed peaceful existence without interference by the State, but in furtherance of our transformative constitution, it would bring the Petitioners and the queer community closer to the rights of full personhood. It would thus be an inclusive and progressive realisation of their rights, in line with the landmark judgments by the Hon'ble Supreme Court of India in *NALSA*, *Navtej Singh Johar* and *Puttaswamy*.

In the words of Petitioner No.3, Mr. Mario Leslie Dpenha:

“As a queer person, I have grown up in an India where — for the greater part of my life — my sexuality was criminalized, my personhood was shamed, my choices were circumscribed and my citizenship was rendered second-class, because of Sec. 377. Being queer also made me realize that there were others far worse off than me, who also faced severe humiliation and daily violence because of their identities. Growing up, I learned about and was deeply saddened by the story of Leela Namdeo and Urmila Srivastava, two female police officers in Madhya Pradesh. In 1987, they exchanged garlands and began living together as spouses, an act that led to their dismissal from service. Their yearning to live unhindered lives of respect led these women into conflict with the laws and social conventions of their time. Their queerness, thus,

became the basis for their exclusion from the principle of “equal dignity in the eyes of the law.

This equal dignity before the law — either as the decriminalization of consensual sexual acts between adults, or the recognition of the fundamental right of citizens to choose their own gender to love or marry — has always been a cause close to my heart. There, however, still remain significant impediments to achieving such equality of dignity, especially in spheres related to intimate decisions involving one’s choice of partner. I yearn for a day when that is no longer the case, and every person of our country has the right to consensually choose the spouse of their choice, and enjoy the rights guaranteed by our Constitution”

05.07.2021 Hence the present petition.

LIST OF DATES AND EVENTS

<u>Date</u>	<u>Event</u>
2001	The Petitioner Nos. 1 and 2 met in New York, fell in love and entered into a relationship as a same sex couple.

January, 2002	The Petitioner No. 2 made his first trip to India, to meet with the Petitioner No. 1's extended family and friends. Since then, the Petitioner No. 2 has had multiple business visas and has visited India many times.
2005	The Petitioner No. 2's first business visa issued for 1 year in Washington, DC.
11 th April, 2005	MHA, vide its notification No. 25022/17/05-F.I. allowed multi entry, lifelong visa for journey to OCIs,
October, 2006	The Petitioner No. 2's multi-year visa issued in Washington DC for a five year period.
2011	The Petitioner No. 1, a Canadian citizen became an OCI Cardholder.
April, 2012	The Petitioner No. 2's second multi-year visa was issued in New York.
6 th August, 2012	The Petitioner No. 1 and 2 were married in New York. A certificate of registration of marriage dated 6 th August, 2012 was issued to them by the Office of the City Clerk, New York, and an apostille certificate of the same date was issued by the Special Deputy Secretary of State, New York.
3 rd September, 2018	The Supreme Court of India legalised the right to love and to a partner of choice by decriminalising consensual sexual acts between adult persons of the same sex vide its judgment in <i>Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1</i>

15 th November, 2019	The Ministry of Home Affairs, Foreigners Division released a notification F. No. 26011/Misc./47/2019-OCI dated 15.11.2019 with Frequently Asked Questions (“FAQs”) and answers to the same by the Ministry.
22 nd May, 2020	As per the notification dated 22.05.2020 by MHA, due to visa and travel restrictions imposed to contain the spread of Covid 19, only certain categories of OCIs were being allowed entry into India.
8 th October, 2020	This Hon’ble Court took up the petition of <i>Mr. Vaibhav Jain & Anr. Vs. Union of India & Ors. W.P. (C) 7657 of 2020</i> . A number of other petitions seeking legal recognition of same sex marriages under different Acts were also taken up by this Hon’ble Court around this time.
21 st October, 2020	The MHA had vide notification no. 25022/24/2020-F.V./F.I dated October 21, 2020 allowed, during the pandemic, entry inter alia of OCI and PIO cardholders by water routes or flights under bilateral travel arrangement schemes (e.g. Vande Bharat) or non-scheduled commercial flights as allowed by the Ministry of Civil Aviation. The MHA, then by another notification No. 26011/Misc./83/2020-OCI on the same date, i.e. October 21, 2020 re-allowed multiple entry
	lifelong visa granted for any purpose in terms of the earlier notification dated 11 th April, 2005 issued by the MHA.

1 st March, 2021	Petitioner No.3 filed RTIs with the MHA, MHA Foreigners Division and the MEA, Consular, Passport and Visa (“CPV”) Division to ascertain the legal position on the Petitioner No. 2’s (and others like him) eligibility to apply for OCI status.
4 th March, 2021	The MHA, Foreigners Division, vide Notification F. No. 26011/CC/05/2018-OCI declared that OCIs shall be entitled to grant of multiple entry lifelong visa for visiting India for any purpose.
10 th March, 2021	The MHA, Foreigners Division replied to the RTI by Petitioner No.3, Mr. Dpenha, transferring it to the MEA, CPV Division.
16 th March, 2021	The MEA, CPV Division replied to the RTI by Petitioner No.3, Mr. Dpenha, transferring it to the MHA, Foreigners Division.
30 th March, 2021	The MHA, Foreigners Division, reissued the same reply that it had on 16 th March, 2021, a second time vide replies dated 30 th March, 2021 to the RTI Application of Petitioner No.3, Mr. Dpenha, including the one which was transferred to it by the MEA, CPV Division.
31 st March, 2021	The MEA, CPV Division transferred the RTI of Petitioner No.3, Mr. Dpenha that was sent back to it by the MHA
	Foreigners Division, to the Legislative Department of the Ministry of Law and Justice.
05.07.2021	HENCE THIS WRIT PETITION

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors. PETITIONERS

VERSUS

Union of India & Ors. ... RESPONDENTS

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA SEEKING INTER ALIA,**

**(I) A DECLARATION THAT SECTION 7A(1)(D) OF THE
CITIZENSHIP ACT, 1955 APPLIES TO SAME-SEX OR QUEER
SPOUSES AND;**

(II) A DECLARATION THAT TO THE EXTENT THE FOREIGN MARRIAGE ACT, 1969 EXCLUDES SAME-SEX MARRIAGES OR QUEER MARRIAGES, IT VIOLATES ARTICLES 14, AND 21 OF THE CONSTITUTION OF INDIA AND; (III) A DECLARATION THAT TO THE EXTENT THE SPECIAL MARRIAGE ACT, 1954 EXCLUDES SAME-SEX MARRIAGES OR QUEER MARRIAGES, IT VIOLATES ARTICLES 14, 15, 19 AND 21 OF THE CONSTITUTION OF INDIA AND; (IV) A DECLARATION THAT THE RIGHT TO LEGAL RECOGNITION OF A SAME SEX MARRIAGE OR QUEER MARRIAGE IS A FUNDAMENTAL RIGHT UNDER ARTICLES 14, 15, 19 AND 21 IRRESPECTIVE OF A PERSON'S GENDER, SEX OR SEXUAL ORIENTATION

MOST RESPECTFULLY SHOWETH:

1. The present Petition seeks inter alia, a declaration that a same-sex or queer spouse of foreign origin of an Overseas Citizen of India ('OCI') cardholder is entitled to apply for registration as an Overseas Citizen of India under Section 7A(1)(d) of the Citizenship Act, 1955, and the legal recognition of all same-sex or non-heterosexual marriages under the applicable secular statutes in India. The Petition is being filed by (i) a same sex couple (Petitioners No. 1 and 2) married in New York, with Petitioner No.1 being an Overseas Citizen of India, and Petitioner No.2 being his American husband and (ii) Petitioner No.3, an Indian citizen and queer rights activist. Through the present Petition the parties seek marriage equality as an essential part of

the fundamental rights to equality, life and freedom to love and commit to one's person of choice.

2. The Respondent No. 1 is the Union of India through the Ministry of Home Affairs. The Foreigners Division of the Respondent No. 1 is the nodal authority re: Overseas Citizenship of India. The Respondent No. 2 is the Consulate General of India, New York, and is the concerned Indian mission/post which granted the Petitioner No. 2's last visa. It is also the Indian mission which granted Petitioner No. 1 his OCI card. It is the authority which can grant OCI status to the Petitioner No. 2. The Respondent No. 3 is the Union of India through the Ministry of External Affairs, Consular, Passports and Visa Division which is the authority that holds charge over the consulates and embassies of the Government of India across the world including the Consulate General of India, New York, USA.

3. **FACTS:**

- (i) The Petitioner Nos. 1 (Indian born Canadian citizen and OCI card holder) and 2 (American citizen) are a married same-sex couple resident in Paris, France. The Petitioner Nos. 1 and 2 met and fell in love in New York in 2001 and have been in a loving relationship for nearly 20 years. The Petitioner Nos. 1 and 2 got married in New York on August 6, 2012. The Petitioner Nos. 1 and 2 are recognized as a legally married couple in the U.S., France, and Canada – the three countries where they have primarily lived and worked in the last twenty years. A certificate of registration

of marriage dated 6th August, 2012 was issued to them by the Office of the City Clerk, New York, and an apostille certificate of the same date was issued by the Special Deputy Secretary of State, New York. The Petitioner Nos. 1 and 2 also had a civil ceremony of their marriage at the City Hall in New York City. A scanned true copy of the certificate of registration of marriage along with apostille certificate of the Petitioner Nos. 1 and 2 is annexed herewith as **Annexure P-1 (Colly)**. True copies of photographs of the civil ceremony of the marriage of the Petitioner Nos. 1 and 2 at the City Hall in New York City are annexed herewith as **Annexure P-2 (Colly)**.

- (ii) The Petitioner No. 1 is a Canadian citizen and an Overseas Citizen of India (“OCI”). He was an Indian citizen at birth and he grew up knowing he was gay, and that his right to love and marry was illegal. Education and work took Petitioner No. 1 abroad. He became an OCI cardholder in 2011. The Petitioner No. 1 is currently a resident of France. In addition to India, he has lived in multiple countries, including Canada, the United States, Spain, and France. Petitioner No. 1’s parents and extended family all live in India. He continues to maintain longstanding family and professional ties to India, and has visited his Indian home regularly as an OCI holder since 2011. A scanned true copy of extract of the passport of the Petitioner No. 1 is annexed herewith as **Annexure P-3**. A scanned true copy of the OCI

card of the Petitioner No. 1 is annexed herewith as **Annexure P-4.**

The Petitioner No. 1 is a lawyer admitted to the Bars of New York, Paris and Ontario, Canada. He specializes in cross-border investigations, compliance and regulatory matters for some of the world's largest financial institutions and global corporations. He has worked for two of the world's largest law firms in New York, Washington DC and Paris, as well as the Organisation for Economic Cooperation and Development (OECD) in Paris, and the Court of Appeal for Ontario in Toronto. He also serves as a member of the Corporate Social Responsibility committee of the American Chamber of Commerce in Paris, a member of the board of advisors of a French Legaltech, and a member of the Board of Directors of United World Colleges France, a non-profit organization promoting educational exchange.

- (iii) The Petitioner No. 2 is Petitioner No. 1's husband. He is a U.S. citizen, and a long-term resident of France. The Petitioner No. 2 has no legal status in India and has only been able to visit India after qualifying for various temporary visitor or business visas. The Petitioner No. 2's first trip to India was to meet with the Petitioner No. 1's extended family and friends in India in January 2002. Since then, the Petitioner No. 2 has also fostered professional ties in India, and has had multiple business visas and has visited India many times. His first business visa was issued in 2005, in Washington, DC. His first multi-year visa was

issued October 2006, in Washington DC for 5 years. His second multi-year visa was from April 2012, issued in New York. In the last few years, the Petitioner No. 2 has used online e-visas for multiple professional and family visits to India. He has had long term professional relationships with business partners in the microfinance field, which have included financial institutions, the Indian government and non-governmental organizations. Indeed if the Petitioner No. 2's application for OCI status is rejected, he reasonably apprehends being caused serious prejudice to his professional work and family obligations through rejection of visas. This, at a time he is expecting a baby in July 2021 and will need to spend time in India with family and reach them at short notice if required.

A scanned true copy of the passport of Petitioner No. 2 is annexed herewith as **Annexure P-5**. Scanned true copies of the Visas of the Petitioner No. 2 are annexed herewith as **Annexure P-6 (Colly)**.

- (iv) The Petitioner No. 2 is an economist who specializes in microfinance and economic development. He has worked as an advisor to the Central Banks of several countries, development institutions and financial institutions both in his personal capacity as well as through his prior professional engagements as the Chief Operating Officer of Microfinance Information Exchange, a project initially developed at the World Bank in Washington DC. The Petitioner No. 2 has worked as an expert consultant in

countries around the world. He has also taught advanced courses at Columbia University, Georgetown University, Yale University, Sciences Po Paris, among others.

- (v) As such both Petitioners No.1 and 2 have longstanding relationships and connections in India. They are expecting a baby, their first child in July 2021 and would like their child to have regular relationship with his grandparents, one set of which (Petitioner No.1's parents), reside in India, for which they wish to apply for OCI status for Petitioner No.2 under Section 7A(1)(d) of the Indian Citizenship Act.
- (vi) As per the notification dated 22.05.2020 issued by MHA, visa and travel restrictions were imposed to contain the spread of Covid 19, and only certain categories of OCIs were being allowed entry into India.
- (vii) However, later, the MHA vide notification no. 25022/24/2020-F.V./F.I dated October 21, 2020 re-allowed entry of all OCI and PIO cardholders holding passports of any country as well as foreign nationals intending to visit India for any purpose (except those on tourist visas) by water routes or flights under bilateral travel arrangement schemes (e.g. Vande Bharat) or non-scheduled commercial flights as allowed by the Ministry of Civil Aviation. On the same date, the MHA, vide notification No. 26011/Misc./83/2020-OCI re-allowed multiple entry lifelong visa granted for any purpose in terms of the earlier

notification dated 11th April, 2005. Thereafter, the MHA, Foreigners Division, vide Notification F. No. 26011/CC/05/2018-OCI dated 4th March, 2021 reiterated that OCIs shall be entitled to grant of multiple entry lifelong visa for visiting India for any purpose.

True copies of the MHA notifications dated 11th April, 2005, 22.05.2020, 21.10.2020 and 04.03.2021 are annexed herewith as **Annexure P-7 (COLLY)**

(viii) Hence, the Petitioner No. 2, can at this time, get a multiple entry lifelong visa for visiting India for any purpose only by attaining OCI status. The Petitioner No. 2 requires this facility at the earliest so that he is able to travel freely to India where the Petitioner no.1's family lives – and is able to spend time with them with his spouse and the baby they are expecting

(ix) The Petitioner No. 3, Mr. Mario Dpenha, is an Indian citizen and queer rights activist. In his own words: *“I, Mario Leslie Dpenha, am an Indian citizen and proud queer man, passionate about our country, its history, and its Constitution. I am a PhD candidate at Rutgers University, NJ, USA, writing a dissertation on the history of hijras in eighteenth and early nineteenth century western India. I have worked in queer activism for over twenty years. I cofounded Anjuman, the first queer students' collective in Jawaharlal Nehru University, New Delhi in 2003. I was part of Voices Against 377, a coalition of NGOs*

and progressive groups which was party to the challenge to Sec. 377 in the Delhi High Court and Supreme Court. I am also a Fellow of the All India Professionals Congress, a department of the Indian National Congress. I lead its Committee for LGBTQIA+ Affairs in Maharashtra.

As a queer person, I have grown up in an India where — for the greater part of my life — my sexuality was criminalized, my personhood was shamed, my choices were circumscribed and my citizenship was rendered second-class, because of Sec. 377. Being queer also made me realize that there were others far worse off than me, who also faced severe humiliation and daily violence because of their identities. Growing up, I read about and was saddened by the story of Leela Namdeo and Urmila Srivastava, two female police officers in Madhya Pradesh. In 1987, they exchanged garlands and began living together as spouses, an act that led to their dismissal from service. Their yearning to live unhindered lives of respect led these women into conflict with the laws and social conventions of their time. Their queerness, thus, became the basis for their exclusion from the principle of “equal dignity in the eyes of the law.”

This equal dignity before the law — either as the decriminalization of consensual sexual acts between adults, or the recognition of the fundamental right of

citizens to choose their own gender — has always been a cause close to my heart. There, however, still remain significant impediments to achieving such equality of dignity, especially in spheres related to intimate decisions involving one's choice of partner. I yearn for a day when that is no longer the case, and every person has the right to consensually choose the spouse of their choice, and enjoy the rights guaranteed by our Constitution"

- (x) Petitioner No. 3 identifies as queer: "Queer" in the present petition, is used as an inclusive, umbrella term for Lesbian, Gay, Bisexual, Transgender, Intersex, Genderqueer, Asexual, and other persons who do not conform to the binary categories of "male" and "female", whose gender identity may not match their sex assigned at birth, and/or those who live outside the heterosexual norm prescribed by society.
- (xi) Various articles written by the Petitioner No. 3 on the issues faced by the LGBTQIA+ community and their rights have been published. True copies of some of the published articles written by the Petitioner No. 3 on issues faced by the LGBTQIA+ community and their rights are annexed herewith as **Annexure P-8(Colly)**.
- (xii) The genesis of the present Petition lies in the Petitioner No.

2's desire to seek OCI status as the spouse of an OCI Card holder, in accordance with Section 7A(1)(d) of the Citizenship Act which reads as follows:

“7A. Registration of Overseas Citizen of India Cardholder.—

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India

Cardholder—

...

(d) 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:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse 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”

A true copy of the Citizenship Act, 1955 is annexed herewith and marked as “**Annexure P- 9**”.

- (xiii) The MHA, Foreigners Division has issued a notification with FAQs pertaining to OCI registration. At page 5, in Clause (7) of the answer to Question 7, the Ministry has laid down the evidence to be given by a spouse of foreign origin of an OCI Cardholder, while applying for OCI, namely, that the spouse must provide a registered marriage certificate. It further notes the guidelines that are applicable to the marriage certificate being submitted. If the marriage is solemnized in India, the marriage certificate issued by the Marriage Registrar is required; if the marriage is solemnized in a foreign country, it should be apostilled/ certified by the concerned Indian mission or post. A true copy of relevant extracts of the notification F. No. 26011/Misc./47/2019-OCI dated 15.11.2019 with Frequently Asked Questions (“FAQs”) and answers to the same issued by the Ministry of Home Affairs, Foreigners Division is annexed herewith as **Annexure P-10**.

- (xiv) Before applying for OCI status, the Petitioner Nos. 1 and 2 came to know of various petitions pending before this Hon'ble Court and other courts on the issue of legal recognition of same sex marriages in India. One of the petitions, which was available in the public domain, ***Mr. Vaibhav Jain & Anr. Vs. Union of India & Ors. W.P. (C) 7657 of 2020***, first taken up by this Hon'ble Court on 8th October, 2020 pertains to a refusal by the Consulate General of India, New York (also the Respondent No. 2 in the present case) to register the marriage of a same sex couple under the Foreign Marriage Act, 1969, even though the Petitioners in that case were already legally married in the United States and had a valid marriage certificate. The reason cited by the Respondent No. 2 for non-registration, as per the petition by Mr. Vaibhav Jain and his partner was that there are no extant laws and provisions for registration of such a marriage (a same sex marriage) in India.
- (xv) It is submitted that the Foreign Marriage Act, 1969 applies only to marriages where at least one of the parties is an Indian citizen. Hence, it does not apply to the marriage of the Petitioner Nos. 1 and 2. As per the MHA, Foreigners Division, a registered marriage certificate of a marriage solemnized in a foreign country is on its own sufficient to enable an OCI cardholder's spouse of foreign origin to apply for OCI status, as long as the Indian mission/post certifies/apostles the marriage certificate. Without

prejudice to the same, it is pertinent to note that Section 23 of the Foreign Marriage Act, 1969 provides that the Central government may declare, vide notification in the official gazette that the marriages solemnized under the law in force in a foreign country shall be recognized by courts in India as valid if the law in such a foreign country contains provisions similar to those contained in the Foreign Marriage Act, 1969.

- (xvi) In order to ascertain the legal position on the issue of eligibility of the Petitioner No. 2 to apply for OCI, the Petitioner Nos. 1 and 2 contemplated filing RTIs. Since neither of them is an Indian citizen, they approached the Petitioner No. 3, a citizen of India, to file the RTIs on their behalf. Thus Petitioner No.3 filed three RTIs dated 1st March, 2021. One RTI was filed with the Ministry of Home Affairs (“MHA”), one with the Ministry of Home Affairs, Foreigners Division and one with the Ministry of External Affairs (“MEA”), Consular Passport and Visa (“CPV”) Division. RTIs were filed with the MHA and MHA Foreigners Division since they are the nodal authorities for OCI. An RTI was also filed with the MEA CPV Division as the “Guide to Consular Services” available on the website of Ministry of External Affairs states that the CPV division of the MEA can assist OCI Cardholders under special circumstances. True copies of the RTIs dated 1st March, 2021 filed by the Petitioner No. 3 on behalf of the

Petitioner Nos. 1 and 2 are annexed herewith as **Annexure P-11 (Colly)**.

(xvii) The Information sought was common in all three RTIs, which was as follows

“4. Information Sought :

(1) A spouse of foreign origin of an OCI card Holder is qualified to apply for an OCI card under Clause (d) of Section 7A of the Citizenship Act, 1955 if the marriage has been registered and has subsisted for a continuous period of at least two years preceding the presentation of the application. I request you to provide information on what is meant by ‘registered’ under Section 7A(d) of the Citizenship Act, i.e:

- (i) Whether the marriage between the OCI card holder and spouse of foreign origin must be validly registered under the law in force of the country where the marriage was solemnized? or*
- (ii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under Section 4 or Section 17 of the Foreign Marriage Act, 1969? (Prima facie, marriages under the Foreign Marriage Act appear to require atleast one party to be an Indian citizen, and I seek information on a fact situation*

where one party is an OCI Card Holder and the other is a foreigner); or

- (iii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under any other law for the time being in force in India, and if so, which law?*

...

- (2) Under Section 23 of the Foreign Marriage Act, the Central Government is empowered to declare that marriages solemnized under the law in force in a particular foreign country as a valid marriage in India if it is satisfied that the law in the said foreign country contains provisions similar to those contained in the Foreign Marriage Act. In this regard, I request you to provide information on whether the Central Government has declared the marriage laws of any such foreign country as valid under Indian law under Section 23? If so, which foreign countries' marriages laws and marriages solemnized thereunder, have been recognized as valid under Indian law?"*

(xviii) The MEA, CPV Division issued a reply dated 10th March, 2021 to the RTI filed with it, stating that the RTI application

was being transferred to the MHA since the subject matter pertained to the MHA. In this regard, the reply stated, *“The RTI application is being transferred to Ministry of Home Affairs under Section 6 (3) (ii) of the RTI Act, 2005 as the subject matter pertains to them. You are requested to contact MHA for further correspondence in the matter.”*

Thereafter, the MHA, Foreigners Division issued a reply dated 16th March, 2021 stating:

“2. For the information sought in Point No. 1, it is intimated that Information sought by you is in the form of query/ seeking opinion, clarification and hence it does not constitute information as defined in section 2(f) of the RTI Act, 2005. However, you may refer to the OCI cardholder brochure, which may be accessed through the website link: https://www.mha.gov.in/sites/default/files//Brochure_OCI_15112019.pdf.

3. For the information sought in Point No. 2, it is intimated that the information sought closely relates to the Ministry of External Affairs. Therefore, it is being transferred to Ministry of External Affairs under Section 6(3) of the RTI Act, 2005.

True copies of the reply dated 10th March, 2021 issued by the MEA CPV Division and the reply dated 16th March, 2021 issued by the MHA Foreigners-Division to the RTI Applications are annexed herewith as **Annexure P-12(Colly)**.

xix. Thereafter, the Petitioner No. 3 received two responses from the MHA, Foreigners Division, both dated 30th March 2021. It appears that one of the replies from the MHA, Foreigners division was in response to Petitioner No. 3's RTI application addressed to it, while the other was a response to the RTI application transferred to the MHA, Foreigners Division from the MEA. The content of both these responses was identical. The RTI responses dated 30th March 2021 from the MHA, Foreigners Division stated,

"2. For the information sought in Point No. 1, it is intimated that Information sought by you is in the form of query/ seeking opinion, clarification and hence it does not constitute information as defined in section 2(f) of the RTI Act, 2005. However, you may refer to the OCI cardholder brochure, which may be accessed through the website link: https://www.mha.gov.in/sites/default/files/Brochure_OCI_15112019.pdf.

3. For the information sought in Point No. 2, it is intimated that the information sought closely relates to the Ministry of External Affairs.

Therefore, it is being transferred to Ministry of External Affairs under Section 6(3) of the RTI Act, 2005."

True copies of the replies dated 30th March, 2021 issued by the MHA, Foreigners Division to the RTIs are annexed herewith as **Annexure P13 (Colly)**.

- xx. The Petitioner No. 3 received a reply dated 31st March, 2021 from the MEA, CPV Division, in response to the RTI applications that had been re-transferred to the MEA from the MHA, Foreigners Division. The said reply dated 31.03.2021 stated that the information sought was not available with it and transferred the RTI to the Legislative Department of the Ministry of Law and Justice.

A true copy of the reply dated 31st March, 2021 issued by the MEA, CPV Division to the RTI Application is annexed herewith as **Annexure P-14**

- xxi. Therefore, no effective response has been received to the Petitioners' queries – and the Ministries kept transferring the RTIs back and forth. The answers to the queries in the RTI are also not available in the brochure on OCI available on the MHA website that the MHA, Foreigners Division has asked Petitioner No.3 to refer to in its replies to his RTI.
- xxii. The Respondent No. 2 is the authority which issues visas to the Petitioner No. 2 in the present petition. The Respondent No. 2 has already categorically refused to register a same sex marriage in Mr. Vaibhav Jain's case on the ground that there are no extant laws and provisions pertaining to such a marriage in India. The law in India is silent on the legal recognition of same sex marriages, and a number of petitions on the issue are pending before this Hon'ble Court itself and before other courts in India. Therefore, if the Petitioner No. 2 applies to the Respondent No. 2 for OCI as Petitioner No. 1's spouse, under Section 7A(1)(d) of the Citizenship Act, 1955, he fears

rejection of the same. The Respondent No. 2 may also refuse to apostle/certify the registered marriage certificate of the Petitioner Nos. 1 and 2, as was done in the case of Mr. Vaibhav Jain. Rejection of the application for OCI status may further create problems for issuance of visas to him by Respondent No. 2 in the future.

4. Thus, the Petitioners Nos. 1 and 2 have no other choice but to approach this Hon'ble Court for relief. Petitioner No. 3 seeks the said reliefs as a proud queer rights activist deeply embedded in the movement to secure equal rights and personhood for all LGBTQIA+ persons in India. The reliefs sought by the present petition from this Hon'ble Court would not only be in the interest of the Petitioner Nos. 1 and 2 by rendering the Petitioner No. 2 officially eligible to apply for OCI, they would also ensure the protection of the fundamental right of marriage within the ambit of Article 21 of the Constitution of India, to LGBTQIA+ persons and would secure various other rights stemming from a legally recognized marriage for them. Not granting these rights to same sex or non-heterosexual couples, which are otherwise available to heterosexual couples is discriminatory. The terms same-sex marriage or non-heterosexual marriages used throughout this Petition are meant to be analogous to each other and include any marriage between two persons of the same sex, two transgender persons, between a man and a transgender person or between a woman and a transgender person ("transgender" here refers to the term granted legal recognition by the NALSA judgment, which

includes non-binary persons, intersex persons etc.) Thus, this Petition is also in public interest.

5. **GROUND:**

SECTION 7A(1)(d) OF THE CITIZENSHIP ACT, 1955 MAKES ALL FOREIGNER SPOUSES OF OCI CARDHOLDERS ELIGIBLE FOR OCI CARDS

A. Because the Citizenship Act, 1955 does not specify that only heterosexual spouses of different sex and gender will be eligible for OCI cards under Section 7A(1)(d):

7A. Registration of Overseas Citizen of India

Cardholder.—

(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India

Cardholder—

.....

(d) 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:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse 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.

- B. Because it is a settled principle of law that the Court cannot supply a *casus omissus* into a statute by judicial interpretation, except in circumstances of clear necessity, when the reasons for the same are found within the four corners of the statute in question itself. It is submitted that in the case of Section 7A(1)(d) of the

Citizenship Act, all that is required is that the marriage must be registered and subsisting for 2 years before the spouse can seek to apply for OCI status. There is no requirement that the marriage must be in accordance with substantive Indian law, or that it must be registered under Indian law. In fact, all the Indian statutes pertaining to registration of marriages, require either the marriage to be performed in India (such as the Special marriage Act), or atleast one party to be a citizen of India (such as the Foreign Marriage Act). There is no provision regarding registration of marriages between an OCI (non-citizen) card holder and a foreigner. Yet Section 7A(1)(d) of the Citizenship Act specifically allows for such a spouse of an OCI Card holder

to apply for OCI status in India provided the marriage is registered and has subsisted for two years prior to the application. The only other proviso to the same is that the spouse shall be subjected to prior security clearance by a competent Authority in India. Section 7A(1)(d) was enacted in 2015, i.e. after the enactment of the Foreign Marriage Act, Special Marriage Act, and other marriage laws in India. Thus, it is submitted that the omission of any conditions qua the gender/sex/sexuality of the parties in the marriage between the OCI card holder and spouse of foreign origin is a *casus omissus* that cannot be supplied by judicial interpretative process, and even a same sex spouse of such an OCI Cardholder must be eligible to apply for OCI status.

- C. Because the Foreign Marriage Act ('FMA') applies to marriages of Indian citizens outside India, and does not apply to OCI card holders (like the Petitioner No.1 herein) marrying foreigners (like the Petitioner No.2) abroad. The FMA distinguishes between spouses on the basis of their gender. Chapter 2 concerns solemnization of foreign marriages – Section 4 pertains to the solemnisation of a marriage by an Indian citizen before a Marriage Officer, where registration is sought at the first instance. One of the conditions for such marriages, under Section 4(1)(c) specifically requires the parties to be a 'bride' and a 'bridegroom', i.e., to be female and male.
- D. Because Section 17 of the FMA (Foreign Marriage Act) pertains to marriages duly solemnized in a foreign country in accordance with the law of that country between parties of whom at least one was a citizen of India (Section 17(1)(a)). Under Section 17, such

parties can seek to have their marriage registered by the Marriage Officer. It is explicit however, as stated in section 17(2), that "No marriage shall be registered under the section unless at the time of registration it satisfies the conditions mentioned in section 4."

E. F. Because FMA hence unconstitutionally mandates that the parties to a foreign marriage , one of them is an Indian citizen, must be

(i) Male and female, and hence of binary gender and

(ii) Heterosexual

F. G. Because the Hon'ble Supreme Court in *NALSA* has held that there is a positive judicial obligation to further the rights of "nonbinary" genders and indeed all genders, and the FMA militates against the same.

G. H. Because the FAQs pertaining to eligibility in applying for OCI available on the website of the Ministry of External Affairs ("MEA") and the answers to them do not bar a spouse of an OCI cardholder who is applying for OCI on the basis of gender, sex or sexuality. The relevant FAQs and the answers to them given by the MEA are as follows:

"4. Can the spouse of the eligible person apply for OCI?"

Ans. Yes, if he/she is eligible in his/her own capacity.

...

6. In what form should a person apply for an OCI and where are the forms available?

Ans. A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX, which can filed online

or downloaded from our website
<http://mha.nic.in/ForeigDiv/ForeigHome.html>.”

True copy of The FAQs pertaining to eligibility in applying for OCI available on the website of the Ministry of External Affairs (“MEA”) and the answers to them are annexed herewith as **Annexure P-15.**

- H. I. This Hon’ble court in order dated 10.04.2020 in *Vaibhav Jain v. Union of India*, held that in its prima facie view, the provisions of the Special Marriage Act, 1954 distinguish in terms of gender identity and sexual orientation. They found that the provisions relating to solemnisation of marriage and degrees of prohibited relationships in the Special Marriage Act, 1954 referenced males and females. This is under Section 2(b), Schedule I and Section 4(c). Sections 12, 15, 22, 23, 25 and 27 also use the terms “husband” and “wife” when providing for the solemnisation, registration and nullity of marriage. Section 27(1)(1A) and 31 provide special conditions for the “wife” while Sections 36 and 37 only provide for alimony to be given to a “wife” by a “husband”. Section 44 which provides for punishment for bigamy uses the words “wife” and “husband”. Schedules I, II, III, IV and V refer to, “widow”, “widower” “bride”, “bridegroom”, “husband” and “wife”. In the context of the Foreign Marriage Act, 1969 the division bench observed that “bride” and “bridegroom” in their prima facie view referred to women and men. This, if applied to the provisions of the Special Marriage Act, 1954 would also restrict the applicability of this act to just

males and females. Petitioner No. 3 in the present petition, who identifies as queer will not be able to register their marriage under the Special Marriage Act, 1954 which restricts its applicability only to heterosexual marriages.

- I. J. Because it is also well settled that where there's a void in domestic law on an issue, the courts may rely on international law and foreign judgments to interpret the law in a manner that upholds and protects fundamental rights. It is submitted that across most jurisdictions that place a premium on the rights to equality, dignity, privacy and liberty, Courts have led the way in ensuring legal recognition of same sex marriages.

“WHOSE MARRIAGE HAS BEEN REGISTERED”: A MARRIAGE SOLEMNIZED AND REGISTERED IN A FOREIGN JURISDICTION IS ENTITLED TO BE LEGALLY RECOGNIZED IN INDIA :

- J. K. Because it may be noted that the starting point of such legal recognition, has been the obligation as interpreted by the Courts, of a State to recognize/ license/ register same sex marriages performed and validly recognized in other jurisdictions. For instance, the US Supreme Court in *Obergefell v. Hodges, Director, Ohio Department of Health 576 U.S. 644 (2015)* (*Obergefell*), held that the equal protection clause of the US Constitution, i.e. the 14th Amendment, would require a State to

license a marriage between a same-sex couple when the said marriage was lawfully performed and licensed out of that State.

- K. L. Because even though same sex marriages were not technically recognized in Israel, the Israeli Supreme Court in *Yossi Ben-Ari v. Director of Population Administration, Ministry of Interior, [2006] (2) IsrLR 283* ('Yossi Ben-Ari'), held that same sex marriages validly performed between Israeli citizens abroad, must be registered by the registration official at the population registry in Israel, who is not competent to examine whether the said marriage conforms to Israeli law. The petitioners in this case were five queer couples, all Israeli citizens who got married in Canada in accordance with Canadian law. Upon returning to Israel, they applied to the population registry to be registered as married. Their application was refused. They petitioned the court. The court allowed the petition and held that the purpose of the registry is merely statistical and that the registration official at the population registry is not competent to examine the validity of a marriage. The court held that when the registry official is presented with a marriage certificate, they are obliged to register

the applicants as married, unless such a registration would be manifestly incorrect. The court held that the "manifestly incorrect" exception did not apply in that case. The court did not accept the argument of the state that the registration of a homosexual couple as married is a registration tainted from manifest incorrectness. The court in this case did not rule upon the legal status of non-heterosexual marriages in Israel. However, it

held that the purpose of the population registry was to record statistics and the role of the registration official was to collect statistical material for the purpose of managing the registry. The court held that the registration official should register in the population register what is implied by the public certificate that was presented to him by the petitioners, according to which the petitioners were married. The court accordingly directed the respondent to register the petitioners as married in the population register. Without prejudice to the submission that same-sex marriages should be granted legal recognition by Indian law, it is submitted that even in the present case, there is no reason for the state or its agencies to deny legal recognition of marriage to same-sex couples who are legally married in foreign jurisdictions and have valid marriage certificates. The Hon'ble Israeli Court held:

- L. M. *“23. Before we conclude, let us reemphasize what it is that we are deciding today, and what it is that we are not deciding today. 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. We are not deciding that marriage between persons of the same sex is recognized in Israel; we are not recognizing a new status of such*

marriages; we are not adopting any position with regard to recognition in Israel of marriages between persons of the same sex that take place outside Israel (whether between Israeli residents or between persons who are not Israeli residents). The answer to these questions, to which we're giving no answer today, is difficult and complex. It is to be hoped that the Knesset can direct its attention to these, or some of them. The result is that we are making the order nisi absolute. The respondent shall register the petitioners as married in item 2(a)(7) of the population register."Because it is submitted that similarly, in the case of Section 7A(1)(d) of the Citizenship Act, there is no power to examine whether the marriage in question is in accordance with Indian law or not – and as long as the marriage is validly registered in the jurisdiction where it was performed and the other conditions of the provision are met, the foreign origin spouse is entitled to apply of OCI status. Thus, the Consulate General of India, being the authority to apostle the Petitioner Nos.1 and 2's marriage certificate, should have no discretion or power to refuse such certification.

- M. N. Because consensual sexual acts between persons of the same sex have already been decriminalized by the Hon'ble Supreme Court of India in *Navtej Singh Johar Vs. Union of India (2018) 10 SCC*
- N. I. It is submitted that even though Indian law is silent on the recognition of same sex marriages, it is a settled principle that where a marriage has been solemnized in a foreign jurisdiction, the substantive law to be applied to such marriage or matrimonial disputes is the law of that jurisdiction. Hence, inter alia, the

requirement in Section 7A(1)(d) that the marriage of the spouse of the OCI cardholder be registered refers to legal registration in the jurisdiction the parties were married in, and the substantive law of that jurisdiction is the only relevant law in this regard.

Some of the judgments of the Hon'ble Supreme Court on this issue are as follows:

(i) **Y Narasimha Rao V. Y Venkata Lakshmi 1991 SCC (3) 451:**

“20. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

21. The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by subterfuges as in the present case. The rule also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the Private International Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence-permanent or temporary or ad hoc forum, proper law etc. and ensuring certainty in the most vital field of national life and conformity with public policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case.”

- (ii) **Surinder Kaur Sandhu v. Harbax Singh Sandhu, AIR 1984 SC 1224**

“10...The modern theory of Conflict of Laws recognises and, in any event, prefers the jurisdiction of the State

which has the most intimate contact with the issues arising in the case. The jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstances as to when the child, whose custody is in issue, is brought or for the time being lodged. To allow the assumption of jurisdiction by another State in such circumstances will only result encouraging forumshopping. Ordinarily, jurisdiction must follow upon functional lines. That is to say, for example, that in matters relating to matrimony and custody, the law of that place must govern which has the closest concern with the wellbeing of the spouses and the welfare of the offsprings of marriage.”

- O. A. Because therefore, a marriage like that of Petitioners Nos.1 and 2, being validly registered under US law, must necessarily meet the requirements of the term ‘registered’ under Section 7A(1)(d) of the Citizenship Act.

FUNDAMENTAL RIGHTS UNDER ARTICLES 14 AND 21
ARE AVAILABLE TO ALL PERSONS INCLUDING
FOREIGNERS- LEGAL POSITION IN INDIA- RIGHT TO CHOICE OF
PARTNER IN MARRIAGE AND RIGHTS OF LGBTQIA+ PERSONS-

- P. B. Because the fundamental rights guaranteed by Articles 14 and 21

are available to all persons including foreigners. A catena of judgments affirm the fundamental right to choice of partner in marriage as

well as the rights of LGBTQIA+ persons, which must be read together and consistently:

- (i) Per the judgment of Indu Malhotra, J in ***Navtej Singh Johar***, the LGBTQIA+ community has already suffered grave injustice for centuries, due to delay in providing redressal for the ignominy they have suffered, stemming from society's ignorance in understanding that homosexuality is after all, a natural condition. This has resulted in a denial of fundamental rights to the community. It is most respectfully submitted that this Hon'ble Court, by granting legal recognition to same sex marriages would thus be taking a significant step towards remedying the injustice that LGBTQIA+ persons have long suffered. As has been held by the Hon'ble Supreme Court:

“644. History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognise that homosexuality is a completely natural condition, part of a range of human sexuality. The misapplication of this provision denied them the Fundamental Right to equality guaranteed by Article 14. It infringed the Fundamental Right to

nondiscrimination under Article 15, and the Fundamental Right to live a life of dignity and privacy guaranteed by Article 21. ”

- (ii) The Hon’ble Supreme Court of India, in the case of ***Shafin Jahan vs. Asokan K.M. and Ors (2018) 16 SCC 368***, held that the right to marry a person of one's choice was integral and fell within Article 21 of the Constitution of India.

*“84. A marriage can be dissolved at the behest of parties to it, by a competent court of law. Marital status is conferred through legislation or, as the case may be, custom. Deprivation of marital status is a matter of serious import and must be strictly in accordance with law. The High Court in the exercise of its jurisdiction under Article 226 ought not to have embarked on the course of annulling the marriage. The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define one’s personhood and identity. **The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.** The Constitution guarantees to each individual the right freely to practise, profess and propagate religion.*

Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. The law prescribes conditions for a valid marriage. It provides remedies when relationships run aground. Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution. In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences.”

- (iii) The Supreme Court also held the right to choose and marry a person of one's choice as a component of the right to dignity within Article 21 and that any infringement of this right would be a constitutional violation. In ***Shakti Vahini Vs. Union of India (2018) 7 SCC 192*** it was held:

“45. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to

express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their appearance as if they are the monarchs of some indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law."

- (iv) The Supreme Court, in the case of **Navtej Singh Johar**, while relying on **Justice K.S. Puttaswamy**, held that individual autonomy is a component of the right to privacy and that sexual orientation is a reflection of autonomy, which is a part of an individual's identity. It is most respectfully submitted that in the present case, by granting

legal recognition to same sex marriages, this Hon'ble Court would facilitate expression of sexual orientation for same sex couples. It would thus uphold their fundamental right to dignity, autonomy and human rights. As held in *Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1* :

“136. While testing the constitutional validity of Section 377 IPC, due regard must be given to the elevated right to privacy as has been recently proclaimed in Puttaswamy (supra). We shall not delve in detail upon the concept of the right to privacy as the same has been delineated at length in Puttaswamy (supra). In the case at hand, our focus is limited to dealing with the right to privacy vis-à-vis Section 377 IPC and other facets such as right to choice as part of the freedom of expression and sexual orientation. That apart, within the compartment of privacy, individual autonomy has a significant space. Autonomy is individualistic. It is expressive of self-determination and such selfdetermination includes sexual orientation and declaration of sexual identity. Such an orientation or choice that reflects an individual's autonomy is innate to him/her. It is an inalienable part of his/her identity. The said identity under the constitutional scheme does not accept any interference as long as its expression is not against decency or morality. And the morality that is

conceived of under the Constitution is constitutional morality. Under the autonomy principle, the individual has sovereignty over his/her body. He/she can surrender his/her autonomy wilfully to another individual and their intimacy in privacy is a matter of their choice. Such concept of identity is not only sacred but is also in recognition of the quintessential facet of humanity in a person's nature. The autonomy establishes identity and the said identity, in the ultimate eventuate, becomes a part of dignity in an individual. This dignity is special to the man/woman who has a right to enjoy his/her life as per the constitutional norms and should not be allowed to wither and perish like a mushroom. It is a directional shift from conceptual macrocosm to cognizable microcosm. When such culture grows, there is an affirmative move towards a more inclusive and egalitarian society. Nonacceptance of the same would tantamount to denial of human rights to people and one cannot be oblivious of the saying of Nelson Mandela — —to deny people their human rights is to challenge their very humanity.”

(v) ...

“245. The sexual autonomy of an individual to choose his/her sexual partner is an important pillar and an insegregable facet of individual liberty. When

the liberty of even a single person of the society is smothered under some vague and archival stipulation that it is against the order of nature or under the perception that the majority population is peeved when such an individual exercises his/her liberty despite the fact that the exercise of such liberty is within the confines of his/her private space, then the signature of life melts and living becomes a bare subsistence and resultantly, the fundamental right of liberty of such an individual is abridged.”

- (vi) H.M.J. D.Y. Chandrachud’s opinion in ***Navtej Singh Johar*** has categorically held that members of the LGBTQIA+ Community are entitled to the full range of constitutional rights and liberties protected by the Constitution, choice of whom to partner with, not be discriminated against on the basis of sexual orientation, benefits of equal citizenship and equal protection of law. It is most respectfully submitted that the right to legal recognition of marriage falls within the ambit of these rights. The relevant para of the judgment is as follows:

“618 We hold and declare that:

618.1 Section 377 of the Penal Code, in so far as it criminalises consensual sexual conduct between adults of the same sex, is unconstitutional;

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

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

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

618.5 The decision in Koushal stands overruled.”

- (v) The Madurai Bench of the Hon’ble High Court of Madras, in the case of ***Arun Kumar & Sreeja vs. The Inspector General of Registration, Chennai & Ors. WP(MD)No.4125 of 2019 and WMP(MD)No.3220 of 2019***, vide order dated 22.04.2019, held that a marriage between a man and a transwoman, both professing the Hindu religion was valid under the Hindu Marriage Act, 1955.

The court expanded the expression “bride” in Section 5 of the Hindu Marriage Act, 1955 holding that the statute cannot have static meaning and must be interpreted in light of the existing legal system. The Ld. single judge affirmed the right of marriage of a

male and transgender person to marry, under Articles 14, 19(1)(a), 21 and 25 of the Constitution. The relevant para of the order is as follows:

“8. Sex and gender are not one and the same. A person's sex is biologically determined at the time of birth. Not so in the case of gender. That is why after making an exhaustive reference to the human rights jurisprudence worldwide in this regard, the Hon'ble Supreme Court held that Article 14 of the Constitution of India which affirms that the State shall not deny to “any person” equality before the law or the equal protection of the laws within the territory of India would apply to transgenders also. Transgender persons who are neither male/female fall within the expression “person” and hence entitled to legal protection of laws in all spheres of State activity as enjoyed by any other citizen of this country. Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India. (Vide Para Nos.61 and 62 of the NLSA case). Article 19(1)(a) and Article 21 were expansively interpreted so as to encompass one's gender identity also.

- (vi) The Hon’ble High Court of Madras, vide a recent order dated 7th June, 2021 in the case of ***Ms. S. Sushma & Anr. Vs.***

Commissioner of Police, Greater Chennai Police & Ors. W.P. No. 7284 of 2021, held that after the judgment by the Supreme Court in *Navtej Singh Johar v. Union of India 2018 (1) SCC 791*, there was no doubt that the fundamental right to life and personal liberty under Article 21 of the Constitution protects and guarantees to all individuals, complete autonomy over the most intimate decisions to their personal life, including their choice of partners. The court further held that the right to life and liberty encompasses the right to sexual autonomy and freedom of expression and that sexual autonomy is an essential aspect of the right of privacy under Article 21. The relevant para of the order by the Madras High Court is as follows:

“38. After the decision in Navtej Singh Johar (cited supra), it is no longer open to doubt that Article 21 of the Constitution protects and guarantees to all individuals, complete autonomy over the most intimate decisions to their personal life, including their choice of partners. Such choices are protected by Article 21 of the Constitution as the right to life and liberty encompasses the right to sexual autonomy and freedom of expression. That apart, sexual autonomy is an essential aspect of the right of privacy which is another right recognised and protected under Article 21 of the Constitution. LGBTQIA+ persons, like cis persons, are entitled to their privacy and have a right to lead a dignified existence, which includes their choice of sexual

orientation, gender identity, gender presentation, gender expression and choice of partner thereof. This right and the manner of its exercise are constitutionally protected under Article 21 of the Constitution. Furthermore, the enactment of the Transgender Persons (Protection of Rights) Act, 2019 is a clear pointer that Parliament has recognized varying forms of sexual identity. This is clear from the definition of transgender in Section 2(k) which is defined to mean “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or transwoman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta. Under these circumstances, this Court, as the sentinel on the qui vive, must exercise its jurisdiction to protect the rights of the petitioners, which are constitutionally guaranteed under Articles 14, 15 and 21.”

RIGHT TO MARRIAGE OF QUEER PERSONS

Q. A. Because queer persons’ experiences and rights have been historically overlooked and denied legal recognition, but are in

fact central to their exercise of rights under Articles 14,15,19 and 21.

"Queer" in the present petition is used as an inclusive, umbrella term for people who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and other related identities (LGBTQIA+).

Such people may:

- (i) may not conform to the fixed, socially prescribed categories of "male" and "female",
- (ii) may have gender identities that do not match their biological sex at birth,

and/or

- (iii) may live outside the heterosexual norm.

R. B. Because after the judgements of the Hon'ble Supreme Court in *NALSA v. Union of India and Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, the normativity of cisgender identities and heterosexuality has been rejected by law, and there is legal recognition of gender identities and sexualities that exist on a spectrum. The denial of full citizenship rights, particularly the right to marriage goes against such legal recognition of identities outside the binary and heterosexuality. The Hon'ble Supreme Court recognised the inherent rights of such marginalised identities and the denial of such rights will amount to treating them as third-class citizens.

- S. C. Because the Hon'ble Supreme Court of India in the ***NALSA v. Union of India*** made clear that the rights of queer persons are to be recognised and as zealously protected as the rights of others as follows:

46. We have referred exhaustively to the various judicial pronouncements and legislations on the international arena to highlight the fact that the recognition of “sex identity gender” of persons, and “guarantee to equality and non-discrimination” on the ground of gender identity or expression is increasing and gaining acceptance in international law and, therefore, be applied in India as well.

....

“INDIA TO FOLLOW INTERNATIONAL CONVENTIONS

...

53. Indian Law, on the whole, only recognizes the paradigm of binary genders of male and female, based on a person's sex assigned by birth, which permits gender system, including the law relating to marriage, adoption, inheritance, succession and taxation and welfare legislations. We have exhaustively referred to various articles contained in the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, the International Covenant on Civil and Political Rights, 1966 as well as the Yogyakarta

*principles. Reference was also made to legislations enacted in other countries dealing with rights of persons of transgender community. Unfortunately we have no legislation in this country dealing with the rights of transgender community. Due to the absence of suitable legislation protecting the rights of the members of the transgender community, they are facing discrimination in various areas and hence the necessity to follow the International Conventions to which India is a party and to give due respect to other non-binding International Conventions and principles. Constitution makers could not have envisaged that each and every human activity be guided, controlled, recognized or safeguarded by laws made by the legislature. **Article 21** has been incorporated to safeguard those rights and a constitutional Court cannot be a mute spectator when those rights are violated, but is expected to safeguard those rights knowing the pulse and feeling of that community, though a minority, especially when their rights have gained universal recognition and acceptance.*

....

*55. In the United States, however, it is open to the courts to supersede or modify international law in its application or it may be controlled by the treaties entered into by the United States. But, till an Act of Congress is passed, the Court is bound by the law of nations, which is part of the law of the land. Such a 'supremacy clause' is absent in our Constitution. **Courts in India would apply the rules of International law according to the principles of comity of Nations, unless they are overridden by clear rules of***

domestic law. See: Gramophone Company of India Ltd. v. Birendra Bahadur Pandey (1984) 2 SCC 534 and Tractor Export v. Tarapore & Co. (1969) 3 SCC 562, Mirza Ali Akbar Kashani v. United Arab Republic (1966) 1 SCR 391. In the case of Jolly George Varghese v. Bank of Cochin (1980) 2 SCC 360, the Court applied the above principle in respect of the International Covenant on Civil and Political Rights, 1966 as well as in connection with the Universal Declaration of Human Rights. India has ratified the above mentioned covenants, hence, those covenants can be used by the municipal courts as an aid to the Interpretation of Statutes by applying the Doctrine of Harmonization. But, certainly, if the Indian law is not in conflict with the International covenants, particularly pertaining to human rights, to which India is a party, the domestic court can apply those principles in the Indian conditions. The Interpretation of International Conventions is governed by Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969.

58. Article 51, as already indicated, has to be read along with Article 253 of the Constitution. If parliament has made any legislation which is in conflict with the international law, then Indian Courts are bound to give effect to the Indian Law, rather than the international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. In His Holiness Kesavananda Bharati Sripadavalvaru v. State of Kerala (1973) 4 SCC 225, it was stated

that in view of Article 51 of the Constitution, the Court must interpret language of the Constitution, if not intractable, in the light of United Nations Charter and the solemn declaration subscribed to it by India. In Apparel Export Promotion Council v. A. K. Chopra (1999) 1 SCC 759, it was pointed out that domestic courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. Reference may also be made to the Judgments of this Court in Githa Hariharan (Ms) and another v. Reserve Bank of India and another (1999) 2 SCC 228, R.D. Upadhyay v. State of Andhra Pradesh and others (2007) 15 SCC 337 and People's Union for Civil Liberties v. Union of India and another (2005) 2 SCC 436.

59. In Vishaka and others v. State of Rajasthan and Others (1997) 6 SCC 241, this Court under Article 141 laid down various guidelines to prevent sexual harassment of women in working places, and to enable gender equality relying on Articles 11, 24 and general recommendations 22, 23 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into those provisions, e.g., Articles 14, 15, 19 and 21 of the Constitution to enlarge the meaning and content thereof and to promote the object of constitutional guarantee.

60. *The Principles discussed hereinbefore on TGs and the International Conventions, including Yogyakarta principles, which we have found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country.”*

“Article 14 and Transgenders

61. *Article 14 of the Constitution of India states that the State shall not deny to “any person” equality before the law or the equal protection of the laws within the territory of India. Equality includes the full and equal enjoyment of all rights and freedom. Right to equality has been declared as the basic feature of the Constitution and treatment of equals as unequals or unequals as equals will be violative of the basic structure of the Constitution. Article 14 of the Constitution also ensures equal protection and hence a positive obligation on the State to ensure equal protection of laws by bringing in necessary social and economic changes, so that everyone including TGs may enjoy equal protection of laws and nobody is denied such protection. Article 14 does not restrict the word ‘person’ and its application only to male or female. Hijras/transgender persons who are neither male/female fall within the expression ‘person’ and, hence, entitled to legal protection of laws in all spheres of State activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country.”*

- T. D. Because the Hon'ble Supreme Court in *NALASA* (supra) referred to its judgment in *Anuj Garg v. Hotel Association of India (2008) 3 SCC 1 (paragraphs 34-35)*, wherein the court had held that personal autonomy includes both the negative right to not be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in, as follows:

“Article 21 and Transgenders

73. Article 21 of the Constitution of India reads as follows:

“21. Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.” Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans. In Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608 (paras 7 and 8), this Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development

and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”.

...

75. Article 21, as already indicated, guarantees the protection of “personal autonomy” of an individual. In Anuj Garg v. Hotel Association of India (2008) 3 SCC 1 (paragraphs 34-35), this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. Selfdetermination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.”

- U. E. Because the Hon’ble Supreme Court, in the NALSA judgment, held that

“83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

- V. F. Because A.K. Sikri J of the Hon'ble Supreme Court, in his concurring opinion in the NALSA judgment, held that nonrecognition deprived transgenders of various valuable rights and privileges otherwise available to citizens of India. It is submitted that the same rationale should apply to the present issue, since non-recognition of same-sex marriages deprives same-sex couples of various rights and privileges. The relevant para of the NALSA judgment is as follows:

“87. Indubitably, the issue of choice of gender identify has all the trappings of a human rights. That apart, as it becomes clear from the reading of the judgment of my esteemed Brother Radhakrishnan, J., the issue is not limited to the exercise of choice of gender/sex. Many rights which flow from this choice also come into play, inasmuch not giving them the status of a third gender results in depriving the community of TGs of many of their valuable rights and privileges which other persons enjoy as citizens of this Country. There is also deprivation of social and cultural participation which results into eclipsing their access to education and health services. Radhakrishnan, J. has exhaustively described the term ‘Transgender’ as an umbrella term which embraces within itself a wide range of identities and experiences including but not limited to pre- operative/post-operative trans sexual people who strongly identify with the gender opposite to their biological sex i.e. male/ female. Therein, the history of transgenders in India is also traced and while doing so, there is mention of upon the draconian legislation enacted during the

British Rule, known as Criminal Tribes Act, 1871 which treated, per se, the entire community of Hizra persons as innately ‘criminals’, ‘addicted to the systematic commission of nonbailable offences’.”

- W. G. Because the Hon’ble Supreme Court, in the NALSA judgment, held that human rights, being universally recognized exist irrespective of whether they are granted or recognized by the legal and social system within which we live. These are thus “pre-legal rights”, which are neither granted by people nor taken away by them. The court further delved into international human rights law and the two complementary principles that equality is founded upon within it, being non-discrimination and reasonable differentiation, as follows:

94. There is thus a universal recognition that human rights are rights that “belong” to every person, and do not depend on the specifics of the individual or the relationship between the rightholder and the right- grantor. Moreover, human rights exist irrespective of the question whether they are granted or recognized by the legal and social system within which we live. They are devices to evaluate these existing arrangements: ideally, these arrangements should not violate human rights. In other words, human rights are moral, pre-legal rights. They are not granted by people nor can they be taken away by them.

95. In international human rights law, equality is found upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to

ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of the TGs, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti- discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”

MARRIAGE AS A RIGHT TO LIFE: UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA

- X. A. Because the right to life guaranteed under Article 21 includes the right to autonomy and individual choice. The choice of a marital partner are part of an individual’s autonomy. The constitution guarantees the right to lead a dignified life. J. Chandrachud in *Navtej Singh Johar v. Union of India (2018) 10 SCC 1* spoke of the need of the State to recognise the capacity of an individuals to make exercise their autonomy removed from the expectations of society or stereotypes of immorality. This also affirms the right to exercise choices that may not be accepted by society. The relevant para of the judgment is as follows:

“474. The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State’s respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them. (...)”

- Y. B. Because the right to life guaranteed under Article 21 includes the right to privacy and dignity. This privacy allows an individual sovereignty over their own body. As acknowledged in *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1, family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. The intimate choice of an individual to enter into marriage with a queer or non-heterosexual partner is within their right to privacy and right to live with dignity. Justice Nariman in *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 citing the Hon’ble Supreme Court’s judgement in *Justice K.S. Puttaswamy v. Union of India* recognised the right to make intimate choices within the right to privacy and right to live with dignity. The relevant para of the judgment is as follows:

“350. Given our judgment in *Puttaswamy* (*supra*), in particular, the right of every citizen of India to live with dignity and the right to privacy including the right to make intimate choices regarding the manner in which such individual wishes to live being protected by Articles 14, 19 and 21. it is clear that Section 377, insofar as it applies to same-sex consenting adults, demeans them by having them prosecuted instead of understanding their sexual orientation and attempting to correct centuries of the stigma associated with such persons.”

Z. C. In *Justice K.S. Puttaswamy v. Union of India*, J.

Chandrachud speaking for the majority held:

“271. We need also emphasise the lack of substance in the submission that privacy is a privilege for the few. Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects. It is privacy as an intrinsic and core feature of life and personal liberty which enables an individual to stand up against a programme of forced sterilization. Then again, it is privacy which is a powerful guarantee if the State were to introduce compulsory drug trials of non-consenting men or women. The sanctity of marriage, the liberty of procreation, the choice of a family life and the dignity of being are matters which

concern every individual irrespective of social strata or economic well being. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individual.”

AA. D. Because the right to privacy under Article 21 encompasses privacy with respect to family life. The right to marry of queer or non-heterosexual persons as recognised as part of the law in the

United States was cited in the judgement of the Hon’ble Supreme Court in *Justice K.S. Puttaswamy v. Union of India*, wherein the decision to marry someone forms part of the foundation of family and consequently is within the right to privacy in matters of family life. The relevant para of the judgment is as follows:

*“194. In Obergefell v. Hodges 576 US - (2015), the Court held in a 5:4 decision that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Justice Kennedy authored the majority opinion (joined by Justices Ginsburg, Breyer, Sotomayor and Kagan): **Indeed, the Court has noted it would be contradictory to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society.**”*

- BB. E. Because the recognition of the right to marry for queer persons under Article 21 does not violate the foundation of family unit in the country, but in fact re-enforces it. Currently, the framework of marriage denies the right to marry to persons of non-heterosexual orientations. The right to companionship and sexual intimacy of non-heterosexual persons under Article 21 was recognised in *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*. Marriage is only the social and legal recognition of this companionship and sexual intimacy. Legal recognition of this relationship invites rights and liabilities for both parties. Indian courts have found similar rights and liabilities to exist even in live-in relationships that in the nature of marriages, recognising that it is the social circumstances that make a marriage. To deny non-heterosexuals the right to marriage, but recognise their right to intimacy, prevents them from having families and allows such relationships to exist like marriages without rights and liabilities.
- CC. F. Because several high courts including this Hon'ble court have recognised the legitimacy of non-heterosexual relationships and marital partners after *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, and accorded them protection under habeus corpus jurisdiction. The following is an illustrative list of such cases-
- (i) Hon'ble Delhi High Court order dated 1.10.2018 in *Sadhana Sinsinwar & Anr. v. State & Ors W.P. (Crl) 3005/2018*.

- (ii) Hon'ble High Court of Punjab and Haryana order dated 22.07.2020 in *Paramjit Kaur & Anr. v. State of Punjab* C.R.W.P. No. 5024 of 2020.
- (iii) Hon'ble High Court of Gujarat, Ahmedabad order dated 23.07.2020 in *Vanitaben Damjibhai Solanki v. State of Gujarat* in Special Criminal Application No. 3011 of 2020.
- (iv) Hon'ble Delhi High Court order dated 12.04.2019 in *Bhawna & Ors v State* W.P.(Crl) 1075/2019.
- (v) Hon'ble Orissa High Court order dated 24.8.2020 in *Chinmayee Jena @ Sonu Krishna Jena v State of Odisha & other.* W.P.(Crl) 57/2020.

DD. G. Because when live-in relationships in the nature of marriage are recognised and live in relationships between queer partners have been recognised, the jurisprudence of the courts is leading towards the recognition of the inherent right to marriage of nonheterosexual persons. In order dated 12.6.2020 in *Madhubala v. State of Uttarakhand & Ors Paramjit Kaur* Habeas Corpus petition No. 8 of 2020, the Hon'ble High Court of Uttarakhand recognised that an individual has the right to choose with whom they share companionship and a home. The single judge held that consensual co-habitation between two individuals of the same gender identity is a right under Article 21 of the Constitution and it is the court's duty to protect the right to self-determination and freedom to choose their sexual orientation and partner.

“3. Incidentally the question, which arises in this writ petition filed for seeking a writ of habeas corpus

is to the effect that whether two adult persons of same gender can be permitted to be in a relationship and further whether they can be permitted to live together, which is a wider a question already raised before various High Courts of the country involving a consideration of a question as to whether the liberty of a person, who had attained majority can be curtailed and one of the leading judgments on this aspect is that of as reported in AIR 2018 SC 346

‘Soni Gerry vs. Gerry Douglas’, wherein, the Hon’ble Apex Court has observed that “it needs no special emphasis to state that attaining the age of majority in an individual’s life has its own significance. He or she is entitled to make his or her choice. The court can, so long as the choice remains, assume the role of parris patriae. The daughter is entitled to enjoy her freedom as the law permits and the courts shall not assume the role of a super guardian being moved by any kind of sentiments of the mother or egotism of the father. We say so without any reservations.”

4. *In view of the aforesaid dictum of the Hon’ble Apex Court it provides that even if the parties, who are living together though they are belonging to the same gender; **they are not competent to enter into a wedlock, but still they have got a right to live together even outside the wedlock. It would further***

be not out of pretext to mention that a live-in relationship has now being recognized by the legislature itself, which has found its place under the provisions of protection of women from Domestic Violence Act.

5. The question is that, as to whether a person, who is alleged to be a detenue and produced before the court, if it is found by his or her independent choice and it is seen that the person seeking the release from the illegal confinement, which is being imposed by the private persons therein, if in the proceedings of a writ, it is essential to remember that the song of liberty is to be sung with sincerity and at the exclusive choice of an individual is appropriately respected and conferred its esteemed status as the constitution guarantees, it was found that the social values and morals they do have their space, but they are not above the constitutional guarantee of freedom assigned to a citizen of a country. This freedom is both a constitutional as well as a human right. Hence, the said freedom and the exercise of jurisdiction in a writ courts should not transgress into an area of determining the suitability of a partner to a marital life, that decision exclusively rests with the individual themselves that the State, society or even the court cannot intrude into the domain and that is the strength provided by our

constitution, which lies in its acceptance of plurality and diversity of the culture. Intimacy of marriage, including the choice of partner, which individual make, on whether or not to marry and whom to marry are the aspects which exclusively lies outside the control of the State or the Society. The court as an upholder of the constitutional freedom has to safeguard that such a relationship where there is a choice exclusively vested with a major person has to be honoured by the courts depending upon the statements recorded by the individual before the court.

6. *In view of the above concept, this Court is in agreement that the consensual cohabitation between two adults of the same sex cannot in our understanding be illegal far or less a crime because its a fundamental right which is being guaranteed to the person under article 21 of the Constitution of India, which inheres within its ambit and it is wide enough in its amplitude to protect an inherent right of self determination with regards to one's identity and freedom of choice with regards to the sexual orientation of choice of the partner. In such type of circumstances it is exclusively the statement recorded of the detenue, who is said to be wrongfully/illegally confined and who is said to be having a consensual or a lesbian relationship with*

the petitioner, which becomes of a prime importance, to be considered while parting with the judgment. Since initially the parties were not present, hence, the detenue was directed to appear in person in the custody of the respondent police official and, hence, she was directed to be produced on the date fixed.”

In *Chinmayee Jena @ Sonu Krishna Jena v State of Odisha & other.*, a transman and a woman sought protection from the court from interference with their live-in relationship. They argued that even if they are not allowed to enter in wedlock, they have the right to live together outside the wedlock. The Hon’ble Orissa High Court after quoting relevant parts from *Navtej Singh Johar v. Union of India (2018) 10 SCC 1* and *NALSA v. Union of India* held that;

*13. Thus, taking into consideration the aforesaid authoritative pronouncements of the Hon’ble Supreme Court, there is hardly any scope to take a view other than holding that **the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner.***

14. Therefore, we allow the writ application (criminal) and direct that the petitioner and the

daughter of the Opposite Party No.5 have the right to decide their sexual preferences including the right to stay as live-in partners. The State shall provide all kind of protection to them, which are enshrined in Part-III of the Constitution of India, which includes the right to life, right to equality before law and equal protection of law. Hence, we direct the Opposite Party No.2 to clear the way by taking appropriate administrative/police action to facilitate Rashmi to join the society of the petitioner. However, we are also alive to the apprehensions of the Opposite Party No.5, mother of the girl. Hence, we further direct that the petitioner shall take all good care of the lady as long as she is residing with him and that the Opposite Party Nos. 5 and 6 and the sister of the lady would be allowed to have a communication with her both over phone or otherwise. They have the right to visit the lady in the residence of the petitioner. The lady shall have all the rights of a woman as enshrined under the Protection of Women from Domestic Violence Act, 2005. The Opposite Party No.3, Inspector In-Charge of the Khandagiri Police Station, Khandagiri, Bhubaneswar shall obtain a written undertaking (to that effect) from the petitioner and shall keep a copy thereof in his office and send the original to this Court to form a part of this record. It should be sent in the address of the Registrar General of this Court.

EE. H. Because an individual's rights under Article 21 cannot be fully realized unless an integral right like the right to marry is not restricted by the state. In *NALSA v. Union of India* (2014) 5 SCC

438, J. a two judge bench of the Hon'ble Supreme Court recognised the importance of civil rights being available to all persons. A denial of the basic civil right to marriage to nonheterosexual persons denies them the right to life and liberty under Article 21.

“119. Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as ‘third gender’ would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver’s license, the right to education, employment, health so on.

120. Further, there seems to be no reason why a transgender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its

duty of providing rights to transgenders. Now it's time for us to recognize this and to extend and interpret the Constitution in such a manner to ensure a dignified life of transgender people. All this can be achieved if the beginning is made with the recognition that TG as third gender."

FF. I. Because marriage as a social institution has developed over time and heteronormative, cisgender and patriarchal norms that uphold only heterosexual marriages as valid marriages are outside the purview of the Constitution. In *Joseph Sine v. Union of India* (2019) 3 SCC 39, a constitution bench of the Hon'ble Supreme Court recognised the change in the social institution of marriage and opined that law regulating this institution must reflect the right to privacy and dignity of citizens under the Constitution.

*"200. Marriage as a social institution has undergone changes. Propelled by access to education and by economic and social progress, women have found greater freedom to assert their choices and preferences. The law must also reflect their status as equals in a marriage, entitled to the constitutional guarantees of privacy and dignity. The opinion delivered on behalf of four judges in *Puttaswamy* held thus:*

"130...As society evolves, so must constitutional doctrine. The institutions which the Constitution has created must

adapt flexibly to meet the challenges in a rapidly growing knowledge economy. Above all, constitutional interpretation is but a process in achieving justice, liberty and dignity to every citizen.”

MARRIAGE AS A RIGHT TO FREE EXPRESSION UNDER ARTICLE 19 (1)(a)

GG. J. Because disallowing non-heterosexual individuals from marriage is discrimination against individuals on the basis of their sexual orientation and is violative of Article 19(1)(a). In *Navtej Singh Johar v. Union of India (2018) 10 SCC 1* the Hon’ble Supreme Court has recognised that the expression of an individual’s sexuality or sexual orientation or right to choose a partner is protected under Article 19(1)(a) and any discrimination on the basis of sexual orientation would violative Article 19(1)(a).

“268.7. Sexual orientation is one of the many biological phenomena which is natural and inherent in an individual and is controlled by neurological and biological factors. The science of sexuality has theorized that an individual exerts little or no control over who he/she gets attracted to. Any discrimination on the basis of one’s sexual orientation would entail a violation of the fundamental right of freedom of expression.”

HH. K. Because even non-heterosexuals have the right to express their intimacies, companionship and personality to the world and the law through marriage and restriction of such right would fall foul of Article 19(1)(a). The choice of a marital partner is an expression of choice and exercise of freedom under Article 19(1)(a). In *Shakti Vahini v. Union of India* (2018) 7 SCC 192, *Vikas Yadav v. State of UP* (2016) 9 SCC 541 and *Asha Ranjan v.*

State of Bihar (2017) 4 SCC 397, the Hon'ble Supreme Court has recognised that the right to marry of two consenting adults is protected under Article 19 and cannot be restricted due to group thinking or class honour. in *NALSA v. Union of India*, the Hon'ble Supreme Court recognised that an individual's gender identity is a reflection of their personality and is part of Article 19(1)(a). The state is bound to protect and recognise these rights.

*“72. Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behaviour and presentation. State cannot prohibit, restrict or 42 interfere with a transgender's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. **We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights***

guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognise those rights.”

- II. L. Because the violation of Article 19(1)(a) due to non-recognition of non-heterosexual marriages is an unreasonable restriction and not protected by Article 19(2). The Hon’ble Supreme Court has held that reasonable restrictions cannot be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The restrictions on non-heterosexual marriages, denying a

whole community of people the right to marriage only on the basis of their gender identity or sexual orientation are excessive and arbitrary. In *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, the Hon’ble Supreme Court found that Section 377 of the Indian Penal Code 1860 was violative of Article 19(1)(a) as it was an unreasonable restriction and did not harm public decency or morality.

“261. That apart, any display of affection amongst the members of the LGBT community towards their partners in the public so long as it does not amount to indecency or has the potentiality to disturb public order cannot be bogged down by majority perception. Section 377 IPC amounts to unreasonable restriction as it makes carnal intercourse between consenting adults within their castle a criminal offence which is manifestly not

only overboard and vague but also has a chilling effect on an individual's freedom of choice.

262. In view of the test laid down in the aforesaid authorities, Section 377 IPC does not meet the criteria of proportionality and is violative of the fundamental right of freedom of expression including the right to choose a sexual partner. Section 377 IPC also assumes the characteristic of unreasonableness, for it becomes a weapon in the hands of the majority to seclude, exploit and harass the LGBT community. It shrouds the lives of the LGBT community in criminality and constant fear mars their joy of life. They constantly face social prejudice, disdain and are subjected to the shame of being their very natural selves. Thus, an archaic law which is incompatible with constitutional values cannot be allowed to be preserved."

- JJ. M. Because the violation of Article 19(1)(a) due to non-recognition of queer marriages is not protected by allowances of restrictions on the basis of decency or morality in Article 19(2). Although non-heterosexual marriages may be seen as unnatural or indecent to certain communities or individuals, this cannot be extended to restrict the right to marry of non-heterosexual persons. In *S. Khushboo v. Kanniammal and another* (2010) 5 SCC 600, the Hon'ble Supreme Court held that while decency and morality may be grounds on which reasonable restrictions can be imposed, this should not be beyond a

rational or logical limit and must be tolerant of unpopular social views.

“45. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as ‘decency and morality’ among others, we must lay stress on the need to tolerate unpopular views in the sociocultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.

46. Admittedly, the appellant's remarks did provoke a controversy since the acceptance of premarital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be

sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive.

*47. In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. **The law should not be used in a manner that has chilling effects on the freedom of speech and expression.**"*

KK. N. Because one's right to marry an individual of their choice is a freedom accorded to every person under Article 19, and read with

Article 21, their right to privacy allows them the inviolable right to determine how this freedom is exercised. An individual has the right to enter into a non-heterosexual marriage if they so choose in exercise of their freedom and rights under Article 19 and 21 of the Constitution. In *Justice K.S. Puttaswamy v. Union of India*, J. Chandrachud, speaking for the majority held,

“298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is

understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. **The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised.** An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies

within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. **The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind.**

The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of

the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.”

THE RIGHT TO MARRIAGE UNDER ARTICLES 14 AND 15

(1)

- LL. O. Because Article 14 requires equal treatment of equally situated individuals and the state cannot deny queer persons the legal right to marriage, while similarly allowing heterosexual individuals the legal right to marriage. In *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, the then CJI Dipak Mishra recognised the need to treat individuals belonging to the LGBT community equally with the same human, fundamental and constitutional rights that other citizens have.

“255. The LGBT community possess the same human, fundamental and constitutional rights as other citizens do since these rights in here in individuals as natural and human rights. We must remember that equality is the edifice on which the entire non-discrimination jurisprudence rests. Respect for individual choice is the very essence of liberty under law and, thus, criminalizing carnal intercourse under Section 377 IPC is irrational, indefensible and manifestly arbitrary.”

MM. P. Because in *NALSA v. Union of India*, the Hon’ble Supreme Court concluded that discrimination on the basis of gender identity or sexual orientation includes restrictions that deny equal protection of the law to such persons and directed compliance with constitutional rights of members of the transgender community. Persons with non-heterosexual sexual orientations deserve equal protection of the law and the state must ensure that the law provides for a framework for them to exercise their right to marriage.

“83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.”

NN. Q. Because there is no reasonable classification due to which nonheterosexual persons can be treated differently in relation to marriage. What distinguishes most queer marriages from heterosexual marriages is the ability for a heterosexual couple to reproduce. Marriage is a social relationship and also a legal relationship, for which reproduction is not *sine qua non*. All heterosexual marriages are valid regardless of the ability to have

biological children, nor does having the ability to have biological children act as a qualification for registration of a marriage. In

NALSA v. Union of India, the Hon'ble Supreme Court accord legal recognition to transgender persons who are neither men or women and do not have reproductive capacities. The Hon'ble Supreme Court also recognised that such persons have issues with marriage and adoption and found that it was essential for the state to accord full civil rights including the right to marriage to them.

- OO. R. Because there is no constitutionally permissible intelligible differentia which can justify treating non-heterosexuals and heterosexuals differently for the right to marriage.

Heterosexuality is an accepted form of union in both religious and formal law on which other rights such as divorce, maintenance, inheritance and other similar frameworks are dependent. No such framework exists for non-heterosexual couples. The non-existence of frameworks for regulation cannot act as a bar to legal recognition and accordance of constitutionally mandated rights. In *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, it was argued that there will be a cascading effect on other laws such as marriage laws, divorce laws, sexual crimes and open a floodgate of social issues. Despite this, the right of LGBTQIA+ persons to have sexual relationships was recognised and Section 377 of the Indian Penal Code 1860 was decriminalised. In *NALSA v. Union of India* for example, persons who did not come within the current framework of law were given space under the law and all consequent civil rights. As society develops, so should the law.

Laws that do not fulfil rights under the Constitution should be changed to bring them in compliance with the Constitution and where there is a lacunae, such law should be created.

- PP. S. Because denial of the right to marry to non-heterosexuals is discrimination under Article 15(1). “Sex” under Article 15 includes gender and sexual orientation, as decided in *NALSA v. Union of India* and *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*. Discrimination against non-heterosexuals is discrimination on the basis of both gender or sex and sexual orientation. The right to marry of sex or gender identities outside the binary are is not recognised under the present legislation. An individual’s sexual orientation being non-heterosexual directly prevents them from registering a marriage in the country. In *Navtej Singh Johar v. Union of India (2018) 10 SCC 1*, Chandrachud J re-iterated that equality demands equal protection of the sexual orientation of every individual citing *Justice K.S.Puttaswamy v. Union of India*. The relevant para of the Supreme Court’s judgment by J. Chandrachud in *Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1* is as follows:

“464. Puttaswamy rejected the "test of popular acceptance" employed by this Court in Koushal and affirmed that sexual orientation is a constitutionally guaranteed freedom: (Puttaswamy case, SCC pp. 421-22, para 144)

144. 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 do not accord with the "mainstream". Yet 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. Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution."

Rejecting the notion that the rights of the LGBT community can be construed as illusory, the Court

held that the right to privacy claimed by sexual minorities is a constitutionally entrenched right (Puttoswamy case?, SCC p. 422, para 145)

“145. The rights of the lesbian, gay, bisexual and transgender population cannot be construed to be "so-called rights". The expression "so-called" seems to suggest the exercise of a liberty in the garb of a right which is illusory. This is an inappropriate construction of the privacy-based claims of the LGBT population. Their rights are not "socalled" but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination."

Kaul, J. concurring with the recognition of sexual orientation as an aspect of privacy, noted that: (Puttaswamy cases, SCC p. 635, para 647)

"647... The sexual orientation even within the four walls of the house thus became an aspect of debate. I am in agreement with the view of Dr. D.Y.

Chandrachud, J. who in paras 144 to 146 of his judgment, states that the right of privacy cannot be denied, even if there is a miniscule fraction of the population which is affected. The majoritarian concept does not apply to constitutional rights and the courts are often called up on to take what may be categorised as a non-majoritarian view, in the check and balance of power envisaged under the Constitution of India. One's sexual orientation is undoubtedly an attribute of privacy."

With these observations by five of the nine Judges in Puttaswamy, the basis on which Koushal upheld the validity of Section 377 stands eroded and even disapproved. dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution"

**RIGHT OF QUEER PERSONS NOT TO SUFFER DISABILITIES
UNDER ARTICLE 15(2) DUE TO THE DENIAL OF THE RIGHT
TO MARRIAGE**

- QQ. A. Because without legal recognition of their marriage, queer persons are also denied access to commercial establishments and public

spaces and there is a violation of their rights under Article 15(2). They do not have the entitlements of a marital partner in privately accessed necessities and activities like insurance, hospitalisation and booking of hotels. The legal recognition of non-heterosexual marriages is imperative for them to access these entitlements and ensure non-discrimination in all areas of life.

RR. B. The legal recognition of non-heterosexual marriages is imperative for them to access the entitlements of other spouses and ensure non-discrimination in all areas of life. The following list has examples of benefits which are available to married partners, as simply a result of being married, which will never be available to non-heterosexual individuals. For example Section 39(7) of the Insurance Laws (Amendment) Act, 2015, accords nominees who are immediate family members such as spouse, parents or children the status of beneficial nominee. If any of these persons are made

a nominee, the death benefit will be paid to these persons and other legal heirs will have no claim over the money. Similarly, Section 10A(4) of the Employees' Compensation Act, 1923 allows the Commissioner under the Act to inform the dependents of a deceased workman about the possibility of claiming compensation. Section 2(1)(d) of the Employees' Compensation Act, 1923 defines "dependent" to include the surviving spouse.

SS. C. Further, discrimination of queer couples by private establishments providing services should be held violative of rights under Article 15(2) of the Constitution. In *Indian Medical Association v Union of India* (2011) 7 SCC 179, the Supreme Court

on an examination of Constituent Assembly debates held that “shops” under Article 15(2) should be interpreted broadly to not just refer to physical shops, but also any provision of goods or services in the market. The Supreme Court further held that the private sector cannot conduct services in a manner that is discriminatory. Article 15(2) can be interpreted to mean that such establishments do not have to just refrain from discrimination, but also make sure that their rules of access do not perpetuate social disadvantages.

“186. The purport of Article 15 (2) can be gathered from the Constituent Assembly debates. Babasaheb Ambedkar elucidated on the same saying that: (CAD, Vol. 7, p.661)

*“...To define the word ‘shop’ in the most generic term one can think of is to state that ‘shop’ is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. Certainly it will include anybody who offers his services. **I am using it in a generic sense. I should like to point out therefore that the word ‘shop’ used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.**”*

187. In as much as education, pursuant to TMA Pai, is an occupation under sub-clause (g) of clause (1) of Article 19, and it is a service that is offered for a fee that takes care of all the expenses of the educational institution in rendering that service, plus a reasonable surplus, and is offered to all those amongst the general public, who are otherwise qualified, then such

educational institutions would also be subject to the discipline of clause (2) of Article 15. In this regard, the purport of the above exposition of clause (2) of Article 15, when read in the context of egalitarian jurisprudence inherent in Articles 14, 15, 16 and Article 38, and read with our national aspirations of establishing a society in which Equality of status and opportunity, and Justice, social, economic and political, would imply that the private sector which offers such facilities ought not to be conducting their affairs in a manner which promote existing discriminations and disadvantages.

188. There are two potential interpretations of the use of the word "only" in clause (2) of Article 1540. One could be an interpretation that suggests that the particular private establishment not discriminate on the basis of enumerated grounds and not be worried about the consequences. Another interpretation could be that the private establishment not just refrain from the particular form of overt discrimination but also ensure that the consequences of rules of access to such private establishments do not contribute to the perpetration of the unwarranted social disadvantages associated with the functioning of the social, cultural and economic order. Whether sub-clause (a) of clause (2) of Article 15 is self-executory or not is irrelevant in the context of reservations. If the State does enact "special provisions" for the advancement of socially and educationally backward classes, it does so in order to prevent the perpetuation of social and educational backwardness in certain classes of people generation after generation.

189. *If a publicly offered service follows a particular rule that achieves the same or similar consequences as the proscribed discrimination, and tends to perpetuate the effects of such discrimination, then it would violate the principle of substantive equality.* In the case of admissions to colleges, it is an acknowledged fact, in both *TMA Pai*, and in fact even by *Bhandari J.*, in his opinion in *Ashoka Kumar Thakur*, that the test of merit, based on some qualifying examinations or a common entrance test, actually is particularly prone to rewarding an individual who has had access to better schools, family lives, social exposure and means to coaching classes. This would mean that many of the youngsters, who hail from disadvantaged backgrounds are severely handicapped in demonstrating their actual talents. This would be even more so in the case of Scheduled Castes and Scheduled Tribes. Given that social and educational, background of the parents, and of general community members, has an important bearing on how well the youngsters learn and advance, it would only mean that complete dependence on such tests which do not discriminate and grade, in terms of real merit relative to peers in similar circumstances, but on the basis of so called absolute abilities, we would end up selecting more students from better social and educational backgrounds, thereby foreclosing or substantially truncating the possibility of individuals in such disadvantaged groups from being able to gain access to a vital element of modern life that grants dignity to the individuals, and thereby to the group as a whole, both in this generation, and in future generations.”

- TT. D. In *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, private and public employers were held to the constitutional obligation of providing a framework for protection against sexual harassment. The state was recognised to have the constitutional duty to protect individuals from sexual harassment in the workplace and due to the void of legislation, the Supreme Court issued guidelines for both private and public workplaces.
- UU. E. To fulfil the guarantee of substantive equality under Article 15(2) of the Constitution of India, queer individuals cannot be discriminated in the provision of goods and services. The state has the obligation to ensure that they are not excluded or socially disadvantaged due to their gender or sexual orientation. In the absence of any laws to enforce this protection, the court may consider issuing guidelines to prevent such discrimination.

FOREIGN JUDGMENTS ON SAME SEX AND QUEER MARRIAGES

- VV. C. Because same-sex marriages have been granted legal recognition by courts in various jurisdictions around the world. The Hon'ble Supreme Court of India, in the case of *NALSA Vs. Union of India & Ors* (2014) 5 SCC 438 (hereinafter referred to as the "*NALSA judgment*") relied upon various foreign judgments to highlight that the principle of guarantee to equality and non-discrimination on the basis of gender is gaining prominence in international law and thus may be applied in India. The Hon'ble Supreme Court, in

the **NALSA judgment**, categorically stated that “...46. *We have referred exhaustively to the various judicial pronouncements and legislations on the international arena to highlight the fact that the recognition of “sex identity gender” of persons, and “guarantee to equality and non-discrimination” on the ground of gender identity or expression is increasing and gaining acceptance in international law and, therefore, be applied in India as well.*”

(i) The Supreme Court of the United States, in the case of ***Obergefell vs. Hodges* 576 U.S. 644 (2015)** granted legal recognition to same sex marriages. As per the judgment, all states in the US are now required to issue marriage licenses to same sex couples and recognize same sex marriages validly performed in other jurisdictions. While doing so, it upheld several relevant principles which can be applied in the context of India. Some of the principles, along with the relevant excerpts from the judgment are as follows:

(a) The US Supreme Court held that the right to personal choice regarding marriage is inherent in the concept of individual autonomy and the right to privacy with respect to this matter must be recognized as it is for other family matters. The right to privacy has been held to be a fundamental right by the Supreme Court of India in ***Justice K.S. Puttaswamy vs. Union of India* (2017) 10 SCC 1**, wherein this US judgment was also referred to and the application of the right to privacy with respect

to marriage was emphasized upon. The relevant excerpt of the judgment by the US Supreme Court is as follows:

“A first premise of the Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why Loving invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12; see also Zablocki, supra, at 384 (observing Loving held “the right to marry is of fundamental importance for all individuals”). Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make. See Lawrence, supra. Indeed, the Court has noted it would be contradictory “to recognize a right of privacy with respect to other matters of family life and not with respect to the decision to enter the relationship that is the foundation of the family in our society.” Zablocki, supra, at 386.”

- (b) The US Supreme Court held that although it had already invalidated laws which criminalized same sex intimacy in one of its previous judgments, freedom did not end there and that on its own did not achieve the full promise

of liberty. It is most respectfully submitted that on the same premise, even though the Supreme Court of India has decriminalized sexual intercourse between queer persons and/ or those of the same sex, the fundamental right to life and personal liberty guaranteed by Article 21 will be enforced in its completeness when all the rights available to heterosexual couples are available to queer couples, including the right to legal recognition of marriage. The relevant para of the US Supreme Court judgment is as follows:

“As this Court held in Lawrence, same-sex couples have the same right as opposite-sex couples to enjoy intimate association. Lawrence invalidated laws that made samesex intimacy a criminal act. And it acknowledged that “when sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring.” 539 U. S., at 567. But while Lawrence confirmed a dimension of freedom that allows individuals to engage in intimate association without criminal liability, it does not follow that freedom stops there. Outlaw to outcast may be a step forward, but it does not achieve the full promise of liberty.”

- (c) The US Supreme Court held that a legally recognized marriage was the source for various other rights and

privileges and that non-recognition of same-sex marriages was resulted in denial of these rights to that community. It is submitted that this applies to India as well, since same-sex couples such as the Petitioner Nos. 1 and 2 are being denied of various rights due to nonrecognition of their marriages. The relevant para of the judgment by the US Supreme Court held that:

“For that reason, just as a couple vows to support each other, so does society pledge to support the couple, offering symbolic recognition and material benefits to protect and nourish the union. Indeed, while the States are in general free to vary the benefits they confer on all married couples, they have throughout our history made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities. These aspects of marital status include: taxation; inheritance and property rights; rules of intestate succession; spousal privilege in the law of evidence; hospital access; medical decision making authority; adoption rights; the rights and benefits of survivors; birth and death certificates; professional ethics rules; campaign finance restrictions; workers’ compensation benefits; health insurance; and child custody, support, and visitation rules. See Brief for United States as Amicus Curiae 6–9; Brief for American Bar Association as Amicus Curiae 8–29.

Valid marriage under state law is also a significant status for over a thousand provisions of federal law. See Windsor, 570 U. S., at ____ – ____ (slip op., at 15–16). The States have contributed to the fundamental character of the marriage right by placing that institution at the center of so many facets of the legal and social order.”

- (d) The US Supreme Court in ***Obergefell v. Hodges* 576 US - (2015)** stated that in its previous judgment in ***Lawrence v. Texas* 539 U.S. 558 (2003)**, it had drawn upon principles of liberty and equality to decriminalise private sexual conduct between gays and lesbians. The court held that the same rationale as applied in the ***Lawrence*** judgment would apply to same-sex marriages and that the challenged laws abridged the central precepts of equality and that the right to marry was a fundamental right inherent in the liberty of the person. The court then relied upon the Due Process and Equal protection clauses of the fourteenth amendment to the US Constitution and held that the state laws under challenge were invalid to the extent that they excluded same-sex couples from civil marriage on the same terms and conditions as opposite sex couples. The Hon’ble Supreme Court of India had also drawn upon the fundamental rights to life and personal liberty and that of equality to decriminalise sexual acts between persons of the same sex, in ***Navtej Singh Johar Vs. Union of***

India (2018) 10 SCC 1, just like the US Supreme Court did in the *Lawrence* judgment. Hence, it is most respectfully submitted that just as the US Supreme Court in the case of *Obergefell v. Hodges*, drew a parallel to its application of the rights to liberty and equality in the *Lawrence* judgment to uphold legality of same sex marriages on the basis of these rights, this Hon'ble Court may draw a parallel to the application of the fundamental rights of life and personal liberty and right to equality by the Supreme Court in the *Navtej Singh Johar* judgment and grant legal recognition to same sex marriages in India to uphold these fundamental rights, which are available to all persons under Articles 14 and 21 of the Constitution of India. It is pertinent to note that the right to marry a person of one's choice has been held to fall within the ambit of Article 21 by the Hon'ble Supreme Court of India in a catena of decisions (*Shafin Jahan vs. Asokan K.M. and Ors (2018) 16 SCC 368; Shakti Vahini Vs. Union of India*). The relevant paras of the judgment by the US Supreme Court in *Obergefell v. Hodges* are as follows:

“In Lawrence the Court acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See 539 U. S., at 575. Although Lawrence elaborated its holding under the Due Process Clause, it acknowledged, and sought to

remedy, the continuing inequality that resulted from laws making intimacy in the lives of gays and lesbians a crime against the State. See ibid. Lawrence therefore drew upon principles of liberty and equality to define and protect the rights of gays and lesbians, holding the State “cannot demean their existence or control their destiny by making their private sexual conduct a crime.” Id., at 578. This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry. See, e.g., Zablocki, supra, at 383–388; Skinner, 316 U. S., at 541. These considerations lead to the conclusion that the right

to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as oppositesex couples.”

- (e) The US Supreme Court, in ***Obergefell v. Hodges* 576 US - (2015)**, held that the dynamic of the American constitutional system was such that individuals need not await legislative action before asserting a fundamental right and that an individual could invoke a right to constitutional protection when he or she was harmed, even if the broader public disagreed and even if the legislature refused to act. It is submitted that the same principle applies to India, as there are a catena of judgments where fundamental rights of individuals have been upheld despite lack of legislation or majority consensus on an issue and that the protection of

fundamental rights lies at the very core of the Constitution. The relevant para of the judgment by the US Supreme Court is as follows:

“The dynamic of our constitutional system is that individuals need not await legislative action before asserting a fundamental right. The Nation’s courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act. The idea of the Constitution “was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.” West Virginia Bd. of Ed. v. Barnette, 319

U. S. 624, 638 (1943). This is why “fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.”

- (ii) The Constitutional Court of South Africa, in the case of ***Minister of Home Affairs & Anr. vs. Fourie & Anr. with Doctors For Life International (first amicus curiae), John Jackson Smyth (second amicus curiae) and Marriage Alliance of South Africa (third amicus curiae) CCT 60/04***, declared that the common law definition of marriage was inconsistent with the Constitution and invalid to the extent

that it did not permit queer couples to enjoy the status and the benefits coupled with responsibilities available to heterosexual couples. The court further declared that the omission of the words “or spouse” after the words “or husband” in Section 30(1) of the Marriage Act, in South Africa was inconsistent with the Constitution. The Marriage Act was declared invalid to the extent of this inconsistency. The court directed the Parliament of South Africa to frame necessary legislation to grant legal recognition to non heterosexual marriages. It suspended the declaration of invalidity for a period of 12 months and held that if the Parliament would not correct the defects within this period, Section 30(1) of the Marriage Act 25 of 1961 will forthwith be read as including the words “or spouse” after the words “or husband” as they appear in the marriage formula. The relevant para of the judgment wherein the order has been made is as follows:

“THE ORDER

...

2. In the matter between the Lesbian and Gay Equality Project and Eighteen Others and the Minister of Home Affairs, the Director General of Home Affairs and the Minister of Justice and Constitutional Development, CCT 10/05, the following order is made:

a) The application by the Lesbian and Gay Equality Project and Eighteen Others for direct access is granted.

b) The common law definition of marriage is declared to be inconsistent with the Constitution and invalid to the extent that it does not permit same-sex couples to enjoy the status and the benefits coupled with responsibilities it accords to heterosexual couples.

c) The omission from section 30(1) of the Marriage Act 25 of 1961 after the words “or husband” of the words “or spouse” is declared to be inconsistent with the Constitution, and the Marriage Act is declared to be invalid to the extent of this inconsistency.

d) The declarations of invalidity in paragraphs (b) and (c) are suspended for 12 months from the date of this judgment to allow Parliament to correct the defects.

e) Should Parliament not correct the defects within this period, Section 30(1) of the Marriage Act 25 of 1961 will forthwith be read as including the words “or spouse” after the words “or husband” as they appear in the marriage formula.

f) The Minister and Director-General of Home Affairs and the Minister of Justice and Constitutional Development are ordered to pay the applicants’ costs, including the costs of two counsel in the Constitutional Court.”

There were a number of relevant principles upheld by the judgment, some of which, along with the excerpts from the judgment, are as follows:

- (a) The Constitutional Court of South Africa held that a legally recognised marriage is the only source of various socio-economic benefits such as the right to inheritance, medical insurance coverage, adoption, access to wrongful death claims, spousal benefits, bereavement leave, tax advantages and post-divorce rights. Hence, by denying same sex-couples the right to legal recognition of marriage, several other rights are being denied to them. It is submitted that the same rationale may be applied in the context of India.

The relevant para of the judgment is as follows:

“[70] Marriage law thus goes well beyond its earlier purpose in the common law of legitimising sexual relations and securing succession of legitimate heirs to family property. And it is much more than a mere piece of paper. As the SALRC Paper comments, the rights and obligations associated with marriage are vast. Besides other important purposes served by marriage, as an institution it was (at the time the SALRC Paper was produced) the only source of socio-economic benefits such as the right to inheritance, medical insurance coverage, adoption,

access to wrongful death claims, spousal benefits, bereavement leave, tax advantages and post-divorce rights.

(b) The constitutional court of South Africa held that exclusion of same-sex couples from legal recognition of marriages represented a harsh and oblique statement that same-sex couples were outsiders and that their need for affirmation and protection of their intimate relations as human beings is somehow less than that of heterosexual couples. The court further held that such exclusion reinforced the flawed notion that same sex couples were biological oddities and misfits. The relevant para of the judgment is as follows:

“[71] 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.

- (c) The constitutional court of South Africa held that given the centrality of marriage in culture, denial of the right to be legally married negates their right to “self-definition” in the most profound way. The relevant para of the judgment is as follows:

“[72] ... It follows that, given the centrality attributed to marriage and its consequences in our culture, to deny same-sex couples a choice in this respect is to negate their right to selfdefinition in a most profound way.”

- (d) While discussing the lack of legal recourses available to same-sex couples in the event of marital problems due to non-recognition of their marriages, the Constitutional Court of South Africa made some interesting observations. The Court observed that slavery, colonialism,

prohibition of interracial marriages and overt male domination were all once sanctioned by religion and imposed by law. The court noted that slavery and colonialism are today regarded with total disdain and prohibition of interracial marriages with shame and embarrassment. It is submitted that like South Africa, India was once a country under colonial rule, with several archaic, discriminatory, archaic laws and practices, exercised both against Indians by the colonial rulers and within Indian society on the basis of caste and creed. Like South Africa, upon attaining freedom from colonial rule, India, as a nation managed to break the shackles that impeded her progress and embrace a Constitution that guaranteed equality and non-discrimination to all persons. The observation of the Constitutional Court of South Africa, regarding evolution of law and change in a progressive direction, applies to India as well. It is most respectfully submitted that this Hon'ble Court may thus apply the same principles and grant legal recognition to same sex marriages, in order to evolve law for the facilitation of social justice. The relevant para of the judgment by the Constitutional Court of South Africa is as follows:

“[74] The law should not turn its back on any persons requiring legal support in times of family breakdown. It should certainly not do so on a discriminatory basis; the antiquity of a prejudice is no reason for its survival. Slavery lasted for a century and a half in this country, colonialism for twice as long, the prohibition of interracial marriages for even longer, and overt male domination for millennia. All were based on apparently self-evident biological and social facts; all were once sanctioned by religion and imposed by law; the first two are today regarded with total disdain, and the third with varying degrees of denial, shame or embarrassment. Similarly, the fact that the law today embodies conventional majoritarian views in no way mitigates its discriminatory impact. It is precisely those groups that cannot count on popular support and strong representation in the legislature that have a claim to vindicate their fundamental rights through application of the Bill of Rights.

- (e) The Constitutional Court of South Africa held that excluding same sex couples from legal recognition of same sex marriages was a denial of equal protection of law that was guaranteed by their Constitution. It is most respectfully

submitted that this Hon'ble Court may thus apply the same rationale in the present case and declare that not granting legal recognition of marriage to same sex couples under Indian law constitutes a denial of the right to equality and equal protection of law guaranteed to all persons by Article 14 of the Constitution of India. The relevant para of the judgment by the Constitutional Court of South Africa is as follows:

“Equal protection and unfair discrimination

[75] It is convenient at this stage to restate the relevant provisions of the Constitution. Section 9(1) provides:

“Everyone is equal before the law and has the right to equal protection and benefit of the law.”

It is clear that the exclusion of same-sex couples from the status, entitlements and responsibilities accorded to heterosexual couples through marriage, constitutes a denial to them of their right to equal protection and benefit of the law.”

- (f) The South African Court in its judgment held that unfair discrimination against same sex couples did not flow from any express exclusion in the Marriage Act. The problem was that the Marriage Act simply made no provision for them to have

their unions recognized and protected in the same manner as heterosexual couples. It was as if they did not exist as far as the law was concerned. It is most respectfully submitted that this Hon'ble Court may thus apply the same principle to the present case, where there is no express exclusion of same-sex marriages in the impugned provisions and there is no recognition of the same either. The law is silent on the marital status of same sex couples and treats them as non-existent, thus presenting the need to accord their marriages legal status. The relevant para of the judgment by the Constitutional Court of South Africa is as follows:

*“[77] Some minorities are visible, and suffer discrimination on the basis of presumed characteristics of the group with which they are identified. Other minorities are rendered invisible inasmuch as the law refuses them the right to express themselves as a group with characteristics different from the norm. **In the present matter, the unfair discrimination against same-sex couples does not flow from any express exclusion in the Marriage Act. The problem is that the Marriage Act simply makes no provision for them to have their unions recognised and protected in the same way as it***

does for those of heterosexual couples. It is as if they did not exist as far as the law is concerned. They are implicitly defined out of contemplation as subjects of the law.”

- (g) The Constitutional Court of South Africa, in its judgment, upheld a very relevant principle. It held that merely protecting same-sex couples from punishment or stigmatisation was not sufficient. The court held that same-sex couples were no longer seeking the right to be left alone or non-interference from the State. They were seeking the right to be acknowledged as equals and be embraced with dignity by law. The court held that the law in the past failed to secure for same-sex couples the dignity, status, benefits and responsibilities that it accorded to heterosexual couples. The court further held that although considerable progress had been made in specific cases through constitutional interpretation, and, by means of legislative intervention, the default position of gays and lesbians was still one of exclusion and marginalisation. The court held that the law and relevant statutes in South Africa continued to deny to same-sex couples equal protection and benefit of the law, resulting in them being subjected to unfair discrimination by the state in conflict with the Constitution. It is

most respectfully submitted that the same rationale may be applied by this Hon'ble Court in the present case. The Hon'ble Supreme Court of India, vide its landmark judgment in the case of ***Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1***, has already decriminalized homosexuality. The Petitioners are now seeking that this Hon'ble Court go a step further and acknowledge LGBTQIA+ persons as equals and members of society, by granting legal recognition to their marriages, so that they can avail the same status, benefits and carry out the same responsibilities that heterosexual couples in India can. The relevant para of the judgment by the Constitutional Court of South Africa is as follows:

“[78] Sections 9(1) and 9(3) cannot be read as merely protecting same-sex couples from punishment or stigmatisation. They also go beyond simply preserving a private space in which gay and lesbian couples may live together without interference from the state. Indeed, what the applicants in this matter seek is not the right to be left alone, but the right to be acknowledged as equals and to be embraced with dignity by the law. Their love that was once forced to be clandestine, may now dare openly to speak its

name. The world in which they live and in which the Constitution functions, has evolved from repudiating expressions of their desire to accepting the reality of their presence, and the integrity, in its own terms, of their intimate life. Accordingly, taking account of the decisions of this Court, and bearing in mind the symbolic and practical impact that exclusion from marriage has on same-sex couples, there can only be one answer to the question as to whether or not such couples are denied equal protection and subjected to unfair discrimination. Clearly, they are, and in no small degree. The effect has been wounding and the scars are evident in our society to this day. By both drawing on and reinforcing discriminatory social practices, the law in the past failed to secure for same-sex couples the dignity, status, benefits and responsibilities that it accords to heterosexual couples. Although considerable progress has been made in specific cases through constitutional interpretation, and, as will be seen, by means of legislative intervention, the default position of gays and lesbians is still one of exclusion and marginalisation. The common law and section 30(1) of the Marriage Act continue to deny to same-sex couples equal protection and benefit of

the law, in conflict with section 9(1) of the Constitution, and taken together result in same-sex couples being subjected to unfair discrimination by the state in conflict with section 9(3) of the Constitution.”

- (iii) The Supreme Court, in the case of ***Navtej Singh Johar vs. Union of India***, relied upon a decision of the Supreme Court of Nepal in the case of ***Sunil Babu Pant vs. Nepal Government***, wherein it was held, in the context of same-sex marriages that one adult had the right to enter into marital relations with another adult wilfully. The Supreme Court of Nepal directed the Nepalese government to enact new legislation or amend existing legislation to ensure that persons of all sexual orientations and gender identities could enjoy equal rights.
- (iv) The Supreme Court of India, in the case of ***Navtej Singh Johar vs. Union of India (2018) 10 SCC 1***, also cited a decision of the European Court of Human Rights in the case of *Oliari Vs. Italy* 276 [2015] ECHR 716 277, wherein it was affirmed that same-sex couples “are in need of legal recognition and protection of their relationship.” The ECtHR concluded that gay couples are equally capable of entering into stable and committed relationships in the same way as heterosexual couples. The ECtHR examined the domestic context in Italy, and noted a clear gap between the “social reality of the applicants”, who openly live their

relationship, and the law, which fails to formally recognize same-sex partnerships. The ECtHR held that in the absence of any evidence of a prevailing community interest in preventing legal recognition of same-sex partnerships, Italian authorities “*have overstepped their margin of appreciation and failed to fulfil their positive obligation to ensure that the applicants have available a specific legal framework providing for the recognition and protection of their same-sex unions.*”

- (v) The global trend towards the right to marry was taken cognizance of, while rendering her judgment, by Indu Malhotra J in her judgment in *Johar (supra)* as follows:

“631. The trend of decriminalizing anti-sodomy laws world over has gained currency during the past few decades since such laws have been recognised to be violative of human rights. In 2017, the International Lesbian, Gay, Bisexual, Trans and Intersex Association noted in its Annual State Sponsored Homophobia Report that 124 countries no longer penalise homosexuality. The change in laws in these countries was given effect to, either through legislative amendments to the statutory enactments, or by way of court judgments. Relationships between same-sex couples have been increasingly accorded protection by States across the world. As per the aforesaid Report, a total of 24 countries now allow same-sex couples to marry, while 28 countries

legally recognise partnerships between same-sex couples. Several countries have enacted enabling legislations which protect LGBT persons from discrimination, and allow them to adopt children. For instance, the United Kingdom now outlaws discrimination in employment, education, social protection and housing on the ground of sexual orientation. Marriage between same-sex couples have been recognised in England and Wales.”

INTERNATIONAL LAW AND QUEER RIGHTS

WW. A. Because international law prevents discrimination on the basis of sexual orientation and recommends that states legally recognize same sex marriages, inter alia:

- (i) The United Nations General Assembly (UNGA) released a “*Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity A/HRC/35/36*” dated 19th April, 2017. The report states:

“20...The genesis of human rights protection after the Second World War was the Universal Declaration of Human Rights, of 1948. There are now nine core international human rights treaties, complemented by various protocols. All of them interrelate with the issue of sexual orientation and gender identity, to a lesser or greater extent. For instance, the right to be free from discrimination is propounded in article 2 of the

Universal Declaration of Human Rights and in all human rights treaties. Article 2 of the International Covenant on Civil and Political Rights stipulates:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

21. Other provisions (e.g. article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights) reaffirm the right to equality before the law and equal protection of the law without discrimination. The stricture against discrimination was deliberated upon by the Human Rights Committee in regard to a seminal case, Toonen v. Australia, that concerned the presence of a local law that prohibited same-sex relations. The Committee found that the local law in question violated article 17 of the Covenant in regard to the right to privacy, and that the reference to “sex” in article 2 (1) (as well as in art. 26) covered sexual orientation.

22. *Under the International Covenant on Economic, Social and Cultural Rights, the monitoring committee has affirmed that the right to nondiscrimination guaranteed by the Covenant includes sexual orientation, gender identity and sex characteristics. Under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, the monitoring committees have issued general comments and have made recommendations to States covering respect for sexual orientation and gender identity.*

...

32. *A sample of recent constructive practices can be cited. A number of countries on every continent have seen reforms of antiquated and obstructive laws and policies, even though the progress is not always universal. Many South Asian countries and countries in other regions uphold the rights of transgender people, even where they have difficulty in accepting the rights of gays, lesbians and bisexuals. **Same-sex couples are now allowed to marry officially in a number of countries, such as Canada, the United States of America, and a range of countries in Europe and Latin America. In 2016, a top court in Belize declared an old law, which had prohibited same-sex relations, to be unconstitutional.***

Seychelles reformed its law similarly on this front. In 2017, New Zealand agreed to expunge the criminal record of persons criminalized by the colonial law which had forbidden same-sex relations (the law itself having been abrogated a while ago). Germany also moved to annul Nazi-era homosexuality convictions (about 42,000 such convictions had been made under the Third Reich, under an old provision of the Penal Code (art. 175)) and to offer compensation.

A perusal of the excerpts of the report cited above indicate that the United Nations and other international organizations are taking measures to combat discrimination on the grounds of sexual orientation and are encouraging States to legally recognize same sex marriages.

- (ii) The Inter American Court of Human Rights (“IACtHR”), upon being requested by the Republic of Costa Rica gave Advisory Opinion Oc-24/17 Of November 24, 2017, titled *“Gender Identity, And Equality And Non-Discrimination Of Same-Sex Couples State Obligations Concerning Change Of Name, Gender Identity, And Rights Derived From A Relationship Between Same-Sex Couples (Interpretation And Scope Of Articles 1(1), 3, 7, 11(2), 13, 17, 18 And 24, In Relation To Article 1, Of The American Convention On Human Rights)”*. In this Opinion, it stated that in several resolutions adopted since 2008, the OAS

General Assembly has stated that LGBTQIA+ persons are subject to various forms of violence and discrimination based on the perception of their sexual orientation and gender identity or expression, and has resolved to condemn acts of violence, human rights violations and **all forms of discrimination on the basis of sexual orientation** and gender identity or expression. As per the Opinion, these resolutions are, “Cf. OAS, *General Assembly resolutions: AG/RES. 2908 (XLVII-O/17), Promotion and protection of human rights, June 21, 2017; AG/RES. 2887 (XLVI-O/16), Promotion and protection of human rights, June 14, 2016; AG/RES. 2863 (XLIV-O/14), Human Rights, Sexual Orientation, and Gender Identity and Expression, June 5, 2014; AG/RES. 2807 (XLIII-O/13) corr.1, Human Rights, Sexual Orientation, and Gender Identity and Expression, June 6, 2013; AG/RES. 2721 (XLII-O/12), Human Rights, Sexual Orientation, and Gender Identity, June 4, 2012; AG/RES. 2653 (XLI-O/11), Human Rights, Sexual Orientation, and Gender Identity, June 7, 2011; AG/RES. 2600 (XL-O/10), Human Rights, Sexual Orientation, and Gender Identity, June 8, 2010; AG/RES. 2504 (XXXIXO/09), Human Rights, Sexual Orientation, and Gender Identity, June 4, 2009, and AG/RES. 2435 (XXXVIII-O/08), Human Rights, Sexual Orientation, and Gender Identity, June 3, 2008.”*

The relevant observations and findings of the advisory opinion by the ICAtHR are as follows:

- (a) The ICAtHR, in its advisory opinion, referred to its judgment in Cf. Case of Duque v. Colombia, of 2016, wherein it had made observations on the consequences of the failure of official recognition of relationships between persons of the same sex.
- (b) The ICAtHR in its Advisory Opinion also referred to Para 68 of the Report of the Office of the United Nations High Commissioner for Human Rights (“UNHCR”), titled ***“Discrimination And Violence Against Individuals Based On Their Sexual Orientation And Gender Identity, A/HRC/29/23”***, dated 4 May 2015, wherein the UNHCHR has indicated that lack of official recognition results in *“same-sex partners being treated unfairly by private actors, including health-care providers and insurance companies.”*
- (c) The ICAtHR in its advisory opinion said that States must refrain from taking actions that are directly or indirectly aimed at creating situations of de jure or de facto discrimination and cited para 110 of its decision in the ***Case of Flor Freire v. Ecuador***.
- (d) The ICAtHR in its advisory opinion stated that as per its jurisprudence, the fundamental principle of equality and

non-discrimination has entered the domain of *ius cogens* in international law.

(e) The ICAtHR concluded by deciding that:-

“7. The State must recognize and ensure all the rights derived from a family relationship between same-sex couples in accordance with the provisions of Articles 11(2) and 17(1) of the American Convention, as established in paragraphs 200 to 218.”

“8. Under Articles 1(1), 2, 11(2), 17 and 24 of the Convention, States must ensure full access to all the mechanisms that exist in their domestic laws, including the right to marriage, to ensure the protection of the rights of families formed by same-sex couples, without discrimination in relation to those that are formed by heterosexual couples, as established in paragraphs 200 to 228.”

THE TRANSFORMATIVE CONSTITUTION OF INDIA

XX. A. Because the Constitution is a transformative, living document. It must be interpreted to uphold and protect fundamental rights of persons as per changing times. It can thus be interpreted by this Hon’ble Court in a manner so as to prevent discrimination against same sex couples, by granting legal recognition to their marriages. The Supreme Court of India, in the case of *Navtej Singh Johar vs. Union of India (2018) 10 SCC 1*, discussed the concept of

“transformative constitutionalism” and relied upon a number of its own previous judgments to hold that the Constitution is an “*organic charter of progressive rights*”. The relevant paras of the judgment in the Navtej Singh Johar case are as follows:

“G. The Constitution – an organic charter of progressive rights

93. *A democratic Constitution like ours is an organic and breathing document with senses which are very much alive to its surroundings, for it has been created in such a manner that it can adapt to the needs and developments taking place in the society. It was highlighted by this Court in the case of Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others that the Constitution is a living, integrated organism having a soul and consciousness of its own and its pulse beats, emanating from the spinal cord of its basic framework, can be felt all over its body, even in the extremities of its limbs.*

94. *In Saurabh Chaudri and others v. Union of India and others³⁵, it was observed:-*

"Our Constitution is organic in nature, being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law are expanding."

95. *Thus, we are required to keep in view the dynamic concepts inherent in the Constitution that have the potential to enable and urge the constitutional courts to beam with*

expansionism that really grows to adapt to the ever-changing circumstances without losing the identity of the Constitution. The idea of identity of the individual and the constitutional legitimacy behind the same is of immense significance. Therefore, in this context, the duty of the constitutional courts gets accentuated. We emphasize on the role of the constitutional courts in realizing the evolving nature of this living instrument. Through its dynamic and purposive interpretative approach, the judiciary must strive to breathe life into the Constitution and not render the document a collection of mere dead letters. The following observations made in the case of Ashok Kumar Gupta and another v. State of U.P. and others further throws light on this role of the courts:-

"Therefore, it is but the duty of the Court to supply vitality, blood and flesh, to balance the competing rights by interpreting the principles, to the language or the words contained in the living and organic Constitution, broadly and liberally."

96. The rights that are guaranteed as Fundamental Rights under our Constitution are the dynamic and timeless rights of 'liberty' and 'equality' and it would be against the principles of our Constitution to give them a static interpretation without recognizing their transformative and evolving nature. The argument does not lie in the fact that the concepts underlying these rights change with the

changing times but the changing times illustrate and illuminate the concepts underlying the said rights. In this regard, the observations in Video Electronics Pvt. Ltd. and another v. State of Punjab and another are quite instructive:-

"Constitution is a living organism and the latent meaning of the expressions used can be given effect to only if a particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour in evolving dynamic situations."

97. Our Constitution fosters and strengthens the spirit of equality and envisions a society where every person enjoys equal rights which enable him/her to grow and realize his/her potential as an individual. This guarantee of recognition of individuality runs through the entire length and breadth of this dynamic instrument. The Constitution has been conceived of and designed in a manner which acknowledges the fact that 'change is inevitable'. It is the duty of the courts to realize the constitutional vision of equal rights in consonance with the current demands and situations and not to read and interpret the same as per the standards of equality that existed decades ago. The judiciary cannot remain oblivious to the fact that the

society is constantly evolving and many a variation may emerge with the changing times. There is a constant need to transform the constitutional idealism into reality by fostering respect for human rights, promoting inclusion of pluralism, bringing harmony, that is, unity amongst diversity, abandoning the idea of alienation or some unacceptable social notions built on medieval egos and establishing the cult of egalitarian liberalism founded on reasonable principles that can withstand scrutiny.

...

Transformative Constitutionalism and the Rights of LGBTQIA+ Community

107. For understanding the need of having a constitutional democracy and for solving the million dollar question as to why we adopted the Constitution, we perhaps need to understand the concept of transformative constitutionalism with some degree of definiteness. In this quest of ours, the ideals enshrined in the Preamble to our Constitution would be a guiding laser beam. The ultimate goal of our magnificent Constitution is to make right the upheaval which existed in the Indian society before the adopting of the Constitution. The Court in State of Kerala and another v. N.M. Thomas and others 41 observed that the Indian Constitution is a great social document, almost revolutionary in its aim of transforming a medieval, hierarchical society into a modern, egalitarian democracy

and its provisions can be comprehended only by a spacious, social- science approach, not by pedantic, traditional legalism. The whole idea of having a Constitution is to guide the nation towards a resplendent future. Therefore, the purpose of having a Constitution is to transform the society for the better and this objective is the fundamental pillar of transformative constitutionalism. 41 AIR 1976 SC 490

108. *The concept of transformative constitutionalism has at its kernel a pledge, promise and thirst to transform the Indian society so as to embrace therein, in letter and spirit, the ideals of justice, liberty, equality and fraternity as set out in the Preamble to our Constitution. The expression ‘transformative constitutionalism’ can be best understood by embracing a pragmatic lens which will help in recognizing the realities of the current day. Transformation as a singular term is diametrically opposed to something which is static and stagnant, rather it signifies change, alteration and the ability to metamorphose. Thus, the concept of transformative constitutionalism, which is an actuality with regard to all Constitutions and particularly so with regard to the Indian Constitution, is, as a matter of fact, the ability of the Constitution to adapt and transform with the changing needs of the times.*

109. *It is this ability of a Constitution to transform which gives it the character of a living and organic*

document. A Constitution continuously shapes the lives of citizens in particular and societies in general. Its exposition and energetic appreciation by constitutional courts constitute the lifeblood of progressive societies. The Constitution would become a stale and dead testament without dynamic, vibrant and pragmatic interpretation. Constitutional provisions have to be construed and developed in such a manner that their real intent and existence percolates to all segments of the society. That is the raison d'etre for the Constitution.

110. The Supreme Court as well as other constitutional courts have time and again realized that in a society undergoing fast social and economic change, static judicial interpretation of the Constitution would stultify the spirit of the Constitution. Accordingly, the constitutional courts, while viewing the Constitution as a transformative document, have ardently fulfilled their obligation to act as the sentinel on qui vive for guarding the rights of all individuals irrespective of their sex, choice and sexual orientation.

...

122. The principle of transformative constitutionalism also places upon the judicial arm of the State a duty to ensure and uphold the supremacy of the Constitution, while at the same time ensuring that a sense of transformation is ushered constantly and endlessly in the society by interpreting and enforcing the Constitution as

well as other provisions of law in consonance with the avowed object. The idea is to steer the country and its institutions in a democratic egalitarian direction where there is increased protection of fundamental rights and other freedoms. It is in this way that transformative constitutionalism attains the status of an ideal model imbibing the philosophy and morals of constitutionalism and fostering greater respect for human rights. It ought to be remembered that the Constitution is not a mere parchment; it derives its strength from the ideals and values enshrined in it. However, it is only when we adhere to constitutionalism as the supreme creed and faith and develop a constitutional culture to protect the fundamental rights of an individual that we can preserve and strengthen the values of our compassionate Constitution.

...

Q. Conclusions

268. *In view of the aforesaid analysis, we record our conclusions in seriatim:-*

...

268.4 *The primary objective of having a constitutional democracy is to transform the society progressively and inclusively. Our Constitution has been perceived to be transformative in the sense that the interpretation of its*

provisions should not be limited to the mere literal meaning of its words; instead they ought to be given a meaningful construction which is reflective of their intent and purpose in consonance with the changing times. Transformative constitutionalism not only includes within its wide periphery the recognition of the rights and dignity of individuals but also propagates the fostering and development of an atmosphere wherein every individual is bestowed with adequate opportunities to develop socially, economically and politically. Discrimination of any kind strikes at the very core of any democratic society. When guided by transformative constitutionalism, the society is dissuaded from indulging in any form of discrimination so that the nation is guided towards a resplendent future.”

- YY. B. Because in the process of rights-based transformation, a variety of voluntary relationships of love, care and family may be recognised. In *NALSA vs. Union of India (2018) 10 SCC*, the Hon’ble Supreme Court recognised the social and cultural identities of the Hijra, Arvani and Jogappa communities. These communities have their own established institutions of family, household and kinship that are not based on marriage, but rather on their own institutionalised practices. Several other queer communities are based on relationships of love, belonging and shared experiences that reject the traditional cisgender heterosexual patriarchal family. Conceptions of family and kinship under law, hence should recognise communities of people who may vary in their personal identities but live together in a shared experience of queerness and

love to not participate in the compulsory heteronormative family. The practices and relationships of queer people deserve to be recognised, as much as heterosexual relationships are, in society and in law. By the same token, voluntary relationships of marriage between same sex and queer persons must be recognised under Articles 14, 15, 19 and 21.

- ZZ. C. Because our courts have time and again cast a positive obligation upon states to take active measures to protect and ensure the fulfilment of the right to life and personal liberty under Article 21. In the case of *Vishaka vs. State of Rajasthan AIR 1997 6 SCC 241*, the Supreme Court went a step further and held that since domestic law on sexual harassment of women at the workplace was absent, effective measures with respect to the same were to be put in place and implemented to protect fundamental rights under Articles 14, 15 19(1)(g) and 21 of the Constitution for which the contents of international conventions and norms were significant, by placing reliance on Article 51(c) of the Constitution. The court further held that the Parliament had the power to enact laws for implementing international conventions and norms by virtue of Article 253 read with Entry 14 of the

Union List in Seventh Schedule of the Constitution. The court also referred to Article 73 of the Constitution which provides that the executive power of the Union shall extend to the matters with respect to which the Parliament has power to make laws and held that till the Parliament legislated on the issue of sexual harassment at the workplace, the executive power of the Union could be

exercised to curb the evil. The relevant portion of the judgment is as follows:

“7. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which

Parliament has power to make laws. The executive power of the Union is, therefore, available till the parliament enacts to expressly provide measures needed to curb the evil.”

Similarly, in the case of *Ms. S. Sushma & Anr. Vs. Commissioner of Police, Greater Chennai Police & Ors. W.P. No. 7284 of 2021*, the Hon'ble High Court of Madras, vide a recent order dated 7th June, 2021 issued a slew of guidelines/directions to the police, Union Government, State Governments as well as certain ministries/departments to protect same-sex couples from discrimination, harassment and to provide them support.

AAA. D. Because the Supreme Court, in the case of *Navtej Singh Johar vs. Union of India (2018) 10 SCC 1*, held that that the constitutional courts have to embody in their approach a telescopic vision wherein they inculcate the ability to be futuristic and do not procrastinate till the day when the number of citizens whose fundamental rights are affected and violated grow in figures. The Court also held that it was not relevant that the LGBTQIA+ community, being discriminated against, was small, rather it was necessary to strike down any discriminatory law. The relevant paras of the judgment are as follows:

“181. The observation made in Suresh Koushal (supra) that gays, lesbians, bisexuals and transgenders constitute a very minuscule part of the population is perverse due to the very reason that such an approach would be violative of the equality principle enshrined under Article 14 of the Constitution. The mere fact that the percentage of population whose fundamental right to privacy is being

abridged by the existence of Section 377 in its present form is low does not impose a limitation upon this Court from protecting the fundamental rights of those who are so affected by the present Section 377 IPC.

181. The constitution framers could have never intended that the protection of fundamental rights was only for the majority population. If such had been the intention, then all provisions in Part III of the Constitution would have contained qualifying words such as 'majority persons' or 'majority citizens'. Instead, the provisions have employed the words 'any person' and 'any citizen' making it manifest that the constitutional courts are under an obligation to protect the fundamental rights of every single citizen without waiting for the catastrophic situation when the fundamental rights of the majority of citizens get violated.

183. Such a view is well supported on two counts, namely, one that the constitutional courts have to embody in their approach a telescopic vision wherein they inculcate the ability to be futuristic and do not procrastinate till the day when the number of citizens whose fundamental rights are affected and violated grow in figures. In the case at hand, whatever be the percentage of gays, lesbians, bisexuals and transgenders, this Court is not concerned with the number of persons belonging to the LGBT community. What matters is whether this community is entitled to certain fundamental rights which they claim and

whether such fundamental rights are being violated due to the presence of a law in the statute book. If the answer to both these questions is in the affirmative, then the constitutional courts must not display an iota of doubt and must not hesitate in striking down such provision of law on the account of it being violative of the fundamental rights of certain citizens, however minuscule their percentage may be.

184. *A second count on which the view in Suresh Koushal (supra) becomes highly unsustainable is that the language of both Articles 32 and 226 of the Constitution is not reflective of such an intention. A cursory reading of both the Articles divulges that the right to move the Supreme Court and the High Courts under Articles 32 and 226 respectively is not limited to a situation when there is violation of the fundamental rights of a large chunk of populace.*

185. *Such a view is also fortified by several landmark judgments of the Supreme Court such as D.K. Basu v. State of W.B.⁷¹ wherein the Court was concerned with the fundamental rights of only those persons who were put under arrest and which again formed a minuscule fraction of the total populace. Another recent case wherein the Supreme Court while discharging its constitutional duty did not hesitate to protect the fundamental right to die with dignity is Common Cause (A Regd. Society) (supra)*

wherein the Supreme (1997) 1 SCC 416 Court stepped in to protect the said fundamental right of those who may have slipped into permanent vegetative state, who again form a very minuscule part of the society.

186. *Such an approach reflects the idea as also mooted by Martin Luther King Jr. who said, —Injustice anywhere is a threat to justice everywhere. While propounding this view, we are absolutely conscious of the concept of reasonable classification and the fact that even single person legislation could be valid as held in **Chiranjit Lal Chowdhury v. Union of India**, which regarded the classification to be reasonable from both procedural and substantive points of view.”*

- BBB. E. Because constitutional courts must protect constitutional morality and disregard social morality. It is the duty of the courts to ensure that queer persons , however small in number or disregarded by society are given the full protection of rights under the Constitution. In *Navtej Singh Johar v. Union of India*, the then CJI Dipak Mishra held that in the garb of social morality, members of the queer community cannot be denied their fundamental rights. The relevant para of the judgment is as follows:

“122. In the garb of social morality, the members of the LGBT community must not be outlawed or given a step-motherly treatment of malefactor by the society. If this happens or if such a treatment to

the LGBT community is allowed to persist, then the constitutional courts, which are under the obligation to protect the fundamental rights, would be failing in the discharge of their duty. A failure to do so would reduce the citizenry rights to a cipher.

CCC. F. Because the nature of our constitution is transformative and rights thereunder aim to develop with society and change as society changes, the right to marry for queer persons, which was not recognised before, should be recognised now. This transformative constitutionalism allows the Constitution to be a living document that breathes lives into communities who have been previously social and legally discarded. The constitution must be interpreted in a manner to protect rights of all individuals regardless of their gender identity or sexual orientation.

DDD. G. Because the constitution must be interpreted in a dynamic and progressive manner, to ensure that purpose of the rights under the Constitution are fulfilled. Such interpretation requires prioritisation of the constitutional obligation to give all the rights under the Constitution to all persons including queer persons. In *Naz Foundation v. Government of NCT of Delhi and others* (2009) 111 DRJ 1, this Hon'ble court held that,

“114. A constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied

or fossilized but remains flexible enough to meet the newly emerging problems. [Francis Coralie Mullin v. Union Territory of Delhi (supra), para 6 of SCC). In M. Nagraj v. Union of India, (2006) 8 SCC 212, the Constitution Bench noted that:

"Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an expanding future and is intended to endure for ages to come and consequently to be adapted to the various crisis of human affairs. Therefore, a purposive rather than a strict literal approach to the interpretation should be adopted. A Constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that constitutional provision does not get fossilized but remains flexible enough to meet the newly emerging problems and challenges" [para 19 of SCC)]"

- EEE. H. It is for the aforementioned reasons that the non-recognition of same sex or non-heterosexual or queer persons marriages in India is manifestly unjust and a violation of the fundamental rights of the Petitioners under Articles 14 and 21 which are available to all persons including foreigners and the public at large under Articles 14, 15, 19 and 21.

- FFF. I. That the Petitioners seek leave of this Hon'ble Court to raise additional grounds during the course of the proceedings.
- GGG. J. The Petitioners have not filed any other petition praying for a similar relief before this court or any other court apart from the present petition/lis.
- HHH. K. The Petitioners submit that they have no alternative, efficacious remedy under the law except to approach this Hon'ble Court by way of the present Writ Petition under Article 226 of the Constitution of India.
- III. L. The balance of convenience and/or inconvenience entirely lies in favour of passing of orders as prayed for herein.
- JJJ. M. This Petition is made bona fide and in the interest of justice and unless orders as prayed for herein are passed, the Petitioner will suffer irreparable loss, prejudice and injury.

PRAYERS

In the aforesaid facts and circumstances it is respectfully prayed that this Hon'ble Court may be pleased to:

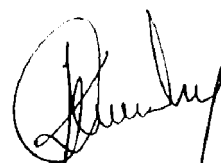
- (a) Issue a writ, order or direction in the nature of a declaration that since section 7A(1)(d) of the Citizenship Act, 1955, does not distinguish between heterosexual, same-sex or queer spouses, a person married to an Overseas Citizen of India, whose marriage is registered and subsisting for two years, be eligible to apply as a spouse for an OCI card.

- (b) Issue a writ, order or direction in the nature of prohibition to Respondent no. 2, restraining it from declaring a spouse of an OCI applying for an OCI card to be ineligible for the same merely, on the ground that they are in a same-sex marriage or queer (non-heterosexual) marriage; and also restraining it from refusing to certify/apostille the registered marriage certificate of the Petitioner Nos. 1 and 2 on this ground.
- (c) Issue a writ, order or direction in the nature of declaration that to the extent the Foreign Marriage Act, 1969 excludes same-sex marriages or queer marriages, it violates articles 14, and 21 of the Constitution of India; and further read the Foreign Marriage Act, 1969 to recognize marriages between consenting adults irrespective of the gender, sex and sexual orientation of the parties;
- (d) Issue a writ, order or direction in the nature of declaration that to the extent the Special Marriage Act, 1954 excludes same-sex marriages or queer marriages, it violates articles 14, 15, 19 and 21 of the Constitution of India; and further read the Special Marriage Act 1954 to recognize marriages between consenting adults irrespective of the gender, sex and sexual orientation of the parties;
- (e) Issue a writ order or direction in the nature of declaration to the effect that the right to legal recognition of a same sex marriage or queer marriage is a fundamental right under

Articles 14, 15, 19 and 21 irrespective of a person's gender, sex or sexual orientation; and that all such marriages be legally recognized in India by the under the applicable statutes, rules and policies that are in force.

(f) Pass such other orders as may be deemed fit in the interest of justice in the facts and circumstances of the case.

THROUGH COUNSEL



Karuna Nundy

**With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi
karuna.nundy@gmail.com
+91-9818258357**

Date:05.07.2021 Place: New Delhi

**IN THE HIGH COURT OF DELHI AT NEW DELHI CIVIL
EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. ____ OF 2021**

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors. Petitioners

Versus

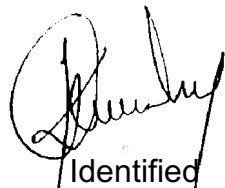
Union of India & Ors. Respondents

AFFIDAVIT

I, Mr. Joydeep Sengupta, S/o Mr. Subir Sengupta, aged about 44 years, Resident of 8 rue Lallier, 75009 Paris, France, presently at 1311 Quincy Street NE, Washington, DC 20017 United States of America, do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 1 in the present case. I state that I am conversant with the facts of the present case and as such I am competent to swear and affirm this affidavit.
2. That the accompanying Writ Petition (Civil) under Article 226 of the Constitution of India, has been drafted by my counsel based on instructions received from me. The contents of Paras ____ to ____ of the accompanying Petition, being the Facts are true and correct to the best of my

knowledge, based on records of the case, while the contents of Grounds (A to JJJ) are legal submissions believed to be true based on legal advice received and believed to be correct and the last para is the Prayer para. Nothing material has been concealed in the accompanying Writ Petition.


Identified

3. The documents/ Annexures filed along with the accompanying petition are true copies of their respective originals.



DEPONENT

VERIFICATION

Verified at Washington, DC, United States of America on this 1st day of July, 2021 that the contents of my foregoing affidavit are true and correct to my knowledge or have been derived from the records of the case. No part of it is false and nothing material has been concealed therein.



DEPONENT

STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME 2021
THIS 1 DAY OF JULY
BY CHRISTINE POLO
CHLO
NOTARY PUBLIC



**IN THE HIGH COURT OF DELHI AT NEW DELHI CIVIL
EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. ____ OF 2021**

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors. Petitioners

Versus

Union of India & Ors. Respondents

AFFIDAVIT

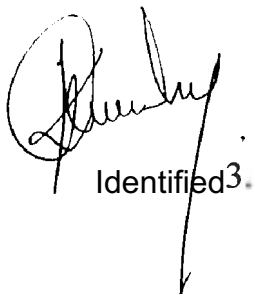
I, Mr. Russell Blaine Stephens S/o Mr. Chester Stephens, aged



1. That I am the Petitioner No. 2 in the present case. I state that I am conversant with the facts of the present case and as such I am competent to swear and affirm this affidavit.

2. That the accompanying Writ Petition (Civil) under Article 226 of the Constitution of India, has been drafted by my counsel based on instructions received from me. The contents of Paras 1 to 4 of the accompanying Petition, being the Facts are true and correct to the best of my

knowledge, based on records of the case, while the contents of Grounds (A to JJJ.) are legal submissions believed to be true based on legal advice received and believed to be correct and the last para is the Prayer para. Nothing material has been concealed in the accompanying Writ Petition.


Identified³.

The documents/ Annexures filed along with the accompanying petition are true copies of their respective originals.



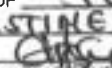
DEPONENT

VERIFICATION

Verified at Washington, DC, United States of America on this 1st day of July, 2021 that the contents of my foregoing affidavit are true and correct to my knowledge or have been derived from the records of the case. No part of it is false and nothing material has been concealed therein.



DEPONENT

STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1 DAY OF JULY 2021
BY CHRISTINE POLO

NOTARY PUBLIC



**IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) NO. ____ OF 2021**

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

..... Petitioners

Versus

Union of India & Ors.

..... Respondents

AFFIDAVIT

I, Mr. Mario Leslie Dpenha S/o Late Mr. Leslie Dpenha, aged



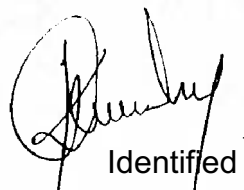
do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 3 in the present case. I state that I am conversant with the facts of the present case and as such I am competent to swear and affirm this affidavit.
2. That the accompanying Writ Petition (Civil) under Article 226 of the Constitution of India, has been drafted by my counsel based on instructions received from me. The contents of Paras 1 to 4 of the accompanying Petition, being the Facts are true and correct to the best of my knowledge, based on records of the case, while the contents of Grounds (A to JJJ) are legal submissions



01 JUL 2021

believed to be true based on legal advice received and believed to be correct and the last para is the Prayer para. Nothing material has been concealed in the accompanying Writ Petition.

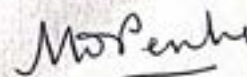

Identified

3. The documents/ Annexures filed along with the accompanying petition are true copies of their respective originals.

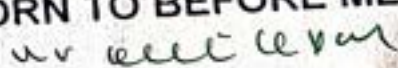

DEPONENT

VERIFICATION

Verified at Bengaluru on this First day of July, 2021 that the contents of my foregoing affidavit are true and correct to my knowledge or have been derived from the records of the case. No part of it is false and nothing material has been concealed therein.


DEPONENT



SWORN TO BEFORE ME

ARAVIND PATIL. G.G., B.A., LL.B.
ADVOCATE & NOTARY
28, 12th Main, Near Old Sub Register Office
4th Block, Javanagar, Bangalore - 560 011

01 JUL 2021

Apostille

(Convention de La Haye du 5 Octobre 1961)

1. Country: **United States of America**
This public document
2. has been signed by **Norman Goodman**
3. acting in the capacity of **County Clerk**
4. bears the seal/stamp of the county of **New York**

Certified

5. At New York, New York
6. the 06th day of August 2012
7. by Special Deputy Secretary of State, State of New York
8. [REDACTED]
9. Seal/Stamp
10. Signature



Sandra J. Tallman

Sandra J. Tallman
Special Deputy Secretary of State

[REDACTED]

JOYDEEP SENGUPTA

RUSSELL BLAINE STEPHENS

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
MARRIAGE LICENSE BUREAU

License Number

Certificate of Marriage Registration

This Is To Certify That JOYDEEP SENGUPTA

residing at

born on 11/18/1976 at Calcutta India
SUBIR SENGUPTA born in India & INDRANI ROY born in India
and RUSSELL BLAINE STEPHENS

residing at

born on 12/04/1972 at Bakersfield California United States
CHESTER STEPHENS born in United States & CONSTANCE DAYTON born in United States

Were Married

on 08/06/2012 at The Office of the City Clerk
By ALISA FUENTES 141 WORTH STREET
NEW YORK, NY 10013
United States

Witnessed by BENJAMIN MOSS

(Groom was married 0 time(s) before; Bride was married 0 time(s) before)

as shown by the duly registered license and certificate of marriage of said persons on file in this office.

CERTIFIED THIS DATE AT THE CITY CLERK'S OFFICE

Manhattan
N. Y.August 06, 12
20

PLEASE NOTE: Facsimile Signature
and seal are printed pursuant
to Section 11-A, Domestic
Relations Law of New York.



Michael McSweeney
City Clerk of the City of New York

Subdiv. 4, Section 14-a, Domestic Relations Law of the
State of New York:

A copy of the record of marriage registration when properly certified by the city and town clerks or their duly authorized deputies, as herein provided, shall be prima facie evidence of the facts therein stated and in all actions, proceedings or applications, judicial, administrative or otherwise and any such certificate of registration of marriage shall be accepted with the same force and effect with respect to the facts therein stated as the original certificate of marriage or certified copy thereof.

Subdiv. 2, Section 11-a, Domestic Relations Law of the
State of New York:

State of New York, } ss.
County of New York, }

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record, having by law a seal, DO HEREBY CERTIFY, that

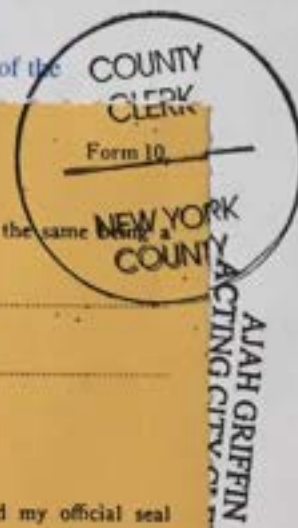
Ayah Griffin
before or by whom the annexed record was signed, was at the date thereof
ACTING CITY CLERK

in and for the County of New York, duly **APPOINTED**
and sworn, and that full faith and credit are due to all his official acts;
And, further, that I am well acquainted with the handwriting of such official
or have compared the signature of such official with that deposited in my
office and believe that the signature to the annexed record is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
this AUG 13 2012 day of 20

Fee Paid \$3.00

Norman Goodman
County Clerk and Clerk of the Supreme Court, New York County.



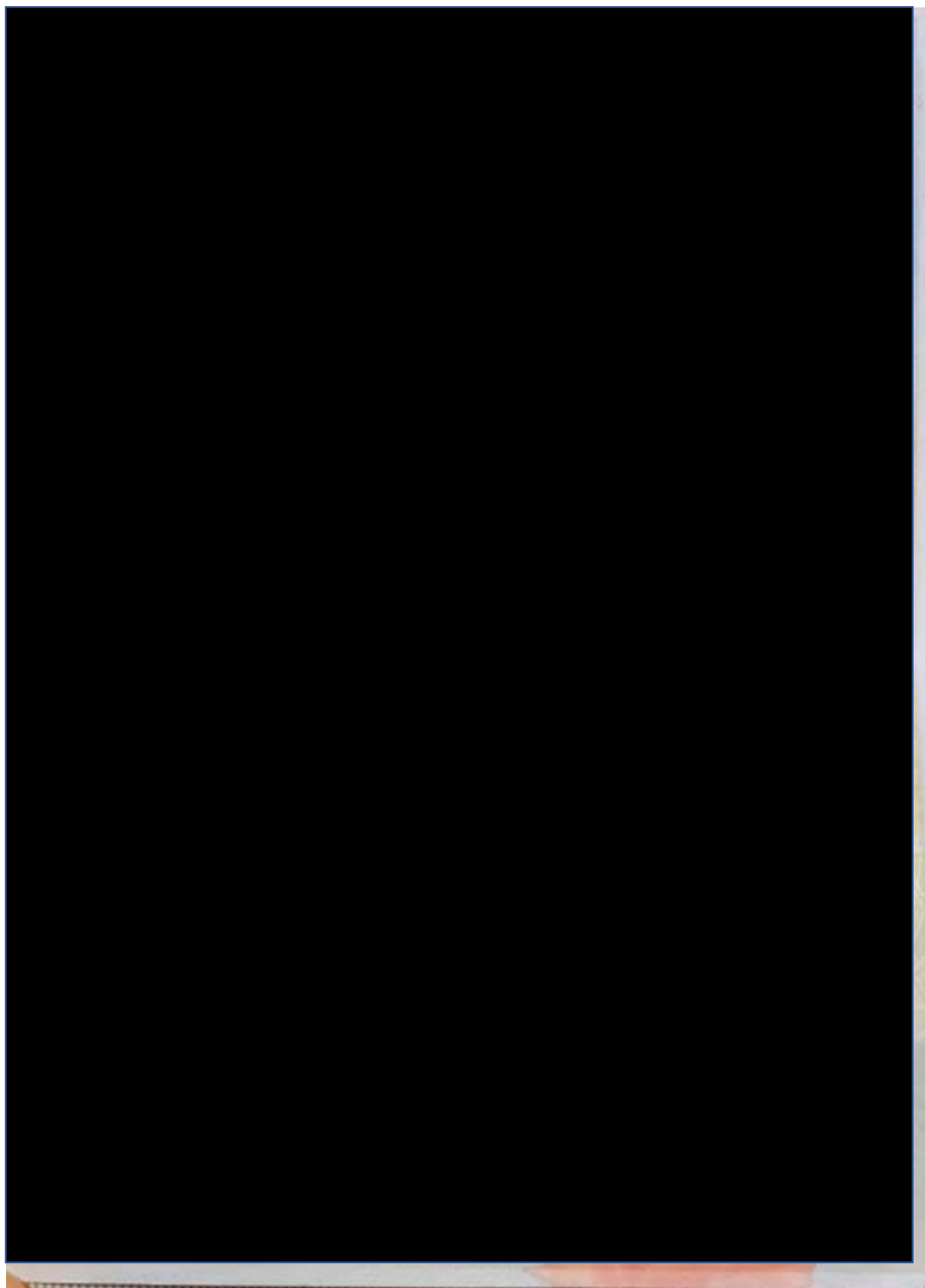








ANNEXURE P-3



ANNEXURE P-4



पंजीयन प्रमाणपत्र
CERTIFICATE OF REGISTRATION
 विदेशी भारतीय नागरिक
OVERSEAS CITIZEN OF INDIA

यह प्रमाणित किया जाता है कि जिस व्यक्ति की जानकारी इस प्रमाणपत्र में दी गई है उसे नागरिकता अधिनियम 1955 की धारा 7 क के अधीन विदेशी भारतीय नागरिक के रूप में पंजीकृत किया गया है।

This is to certify that the person whose particulars are given in this Certificate has been registered as an Overseas Citizen of India under the provisions of Section 7A of the Citizenship Act, 1955.



N.K. Sarawat

N.K. SARAWAT
CONSUL (OCI)

CONSULATE GENERAL OF INDIA
NEW YORK

जारी करने वाले अधिकारी के हस्ताक्षर एवं मुहर
 Signature & Seal of issuing authority

पंजीकृत विदेशी भारतीय नागरिक (ओ. सी. आई.) निम्नलिखित सुविधाओं का हकदार होगा:

- 1 भारत आने हेतु अनेक बार प्रवेश सहित बहुपयोगी आजीवन वीजा।
- 2 भारत में किसी भी अंतराल तक रहने के लिए एक बार ओ / एक बार ओ के पंजीयन से छूट।
- 3 अनिवासी भारतीयों की तरह, कृषि / बागान के लिए सम्पत्ति के अधिग्रहण को छोड़कर, आर्थिक, वित्तीय और शैक्षिक कार्यों में सम्भागता।

REGISTERED O.C.I. IS ENTITLED TO THE FOLLOWING BENEFITS:

- 1 Grant of multiple entry, multi-purpose life long visa to visit India;
- 2 Exemption from registration with FRRO / FRO for any length of stay in India; and
- 3 Parity with NRIs in economic, financial and educational fields except in matters relating to acquisition of agricultural / plantation properties.

विदेशी भारतीय नागरिक योजना की अन्य जानकारी हेतु संपर्क करें :

गृहमंत्रालय का वेबसाइट : www.mha.nic.in

For other information on O.C.I. Scheme

Visit MHA's website : www.mha.nic.in

सावधानी

- 1 यह प्रमाणपत्र भारत सरकार की सम्पत्ति है। जारी करनेवाले प्राधिकारी की ओर से इस प्रमाणपत्र के बारे में, इसे वापस करने सहित कोई भी सूचना प्राप्त होने पर, उसका तुरन्त अनुपासन किया जाए।
- 2 इस प्रमाणपत्र में कोई परिवर्तन न किया जाए या किसी भी प्रकार से इसे क्षतविक्षत भी न किया जाए।
- 3 यह प्रमाणपत्र गुम हो जाने या चोरी हो जाने पर उसकी सूचना निकट के भारतीय मिशन को और यदि भारत में हो तो ओ.सी.आई. ब्रकोष्ट, नागरिक अनुभाग, विदेश प्रभाग, गृहमंत्रालय, जैसलमेर हाऊस, मानसिंह रोड, नई दिल्ली-110011 को तुरन्त दी जाए।

CAUTION

- 1 This certificate is the property of the Government of India. Any communication received by the holder from the Issuing Authority regarding this certificate including demand for its surrender should be complied with immediately.
- 2 This certificate must not be altered or mutilated in any way.
- 3 Loss, theft or destruction of this certificate should be immediately reported to the nearest Indian Mission abroad or to the O.C.I. cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs, Jaisalmer House, Mansingh Road, New Delhi-110011 if, the holder is in India.

We the People

*Of the United States,
in Order to form a more perfect Union,
establish Justice, insure domestic Tranquility,
provide for the common defence,
promote the general Welfare, and secure
the Blessings of Liberty to ourselves and
our Posterity, do ordain and establish this
Constitution for the United States of America.*



[Handwritten signature]

3

SIGNATURE OF BEARER / SIGNATURE DU TITULAIRE / FIRMA DEL TITULAR

ANNEXURE P-6















भारत का राजपत्र

The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 153]

नई दिल्ली, सोमवार, अप्रैल 11, 2005/चैत्र 21, 1927

No. 153]

NEW DELHI, MONDAY, APRIL 11, 2005/CHAITRA 21, 1927

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 11 अप्रैल, 2005

सा.का.नि. 224(अ).—केन्द्रीय सरकार, पासपोर्ट (भारत में प्रवेश) अधिनियम, 1920 (1920 का 34) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पासपोर्ट (भारत में प्रवेश) नियम, 1950 का और संशोधन करने के लिए निम्नलिखित नियम बनाती है, अर्थात् :—

1. (1) इन नियमों का संक्षिप्त नाम पासपोर्ट (भारत में प्रवेश) संशोधन नियम, 2005 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. पासपोर्ट (भारत में प्रवेश) नियम, 1950 नियमों के नियम (5) के खंड (iv) में उपखंड (ग) के पश्चात् निम्नलिखित अंतःस्थापित किया जाएगा, अर्थात् :—

“नागरिकता अधिनियम, 1955 के उपबंधों के अधीन भारत के विदेशी नागरिक के रूप में रजिस्ट्रीकृत व्यक्तियों को भारत की यात्रा के लिए गुणक प्रवेश, जीवनपर्यन्त वीजा;”।

[फ. सं. 25022/17/05-एफ. I]

दुर्गा शंकर मिश्रा, संयुक्त सचिव

पाद टिप्पण : मूल नियम 25-4-1950 की अधिसूचना सं. 4/5/49-एफ. I द्वारा प्रकाशित किए गए थे और पश्चात्पर्वी संशोधन निम्नलिखित द्वारा किए गए :—

1. अधिसूचना सं. 6/34/50-एफ. I तारीख 12 अक्टूबर, 1950
2. सं. 6/34/50-एफ. I तारीख 17 अक्टूबर, 1950
3. सं. 4/13(ब)/51-एफ. I तारीख 2 अगस्त, 1951
4. सं. 6/69/52-एफ. I तारीख 14 अक्टूबर, 1952
5. सं. 4/1/54-एफ. I तारीख 26 मार्च, 1954

6. सं. 6/67/52-एफ. I तारीख 10 अप्रैल, 1954
7. सं. 6/25/53-एफ. I तारीख 6 मई, 1954
8. सं. 1/4/54-एफ. I तारीख 3 सितंबर, 1954
9. सं. 6/28/52-एफ. I तारीख 24 नवंबर, 1954
10. सं. 6/37/54-एफ. I तारीख 18 अप्रैल, 1955 (का.नि.आ. : 1846)
11. सं. 4/1/56-एफ. I तारीख 26 मई, 1956 और 12 जुलाई, 1956
12. सं. 6/32/56-एफ. I तारीख 23 अगस्त, 1958 (का.नि.आ. : 1893)
13. सं. 6/65/57-एफ. I तारीख 7 सितंबर, 1957 (का.नि.आ. : 2883)
14. सं. 4/1/58-एफ. I तारीख 6 अक्टूबर, 1968 (सा.का.नि. : 905)
15. सं. 1/8/60-II एफ. III तारीख 18 जुलाई, 1969
16. सं. 6/162/59-एफ. I तारीख 28 जुलाई, 1960 (सा.का.नि. : 882)
17. सं. 6/151/62-एफ. I तारीख 12 अक्टूबर, 1962
18. सं. 6/217/62-एफ. I तारीख 23 फरवरी, 1963 (सा.का.नि. : 333)
19. सं. एफ. 6/102/64-एफ. I तारीख 21 नवंबर, 1965
20. सं. 6/165/64-एफ. I तारीख 16 मार्च, 1965
21. सं. 6/86/65-एफ. I तारीख 21 सितंबर, 1965
22. सं. 6/10/67-एफ. I तारीख 20 सितंबर, 1967 (सा.का.नि. : 1454)
23. सं. 6/33/68-एफ. I तारीख 6 मार्च, 1968
24. सं. 6/71/69-एफ. I तारीख 20 जून, 1969 (सा.का.नि. : 1491)
25. सं. 6/34/69-एफ. I तारीख 4 मई, 1970 (सा.का.नि. : 812)
26. सं. 11011/6/72-एफ. I तारीख 11 अगस्त, 1972 [सा.का.नि. : 373 (अ)]

27. सं. 12011/52/72-एफ. III (I) तारीख 5 जनवरी, 1973 [सा.का.नि. : 4 (अ)]
28. सं. 14011/13/73-एफ. I तारीख 20 मार्च, 1974
29. सं. 14011/3/74-एफ. I तारीख 24 जुलाई, 1974 (सा.का.नि. : 844)
30. सं. 12011/23/74-एफ. III तारीख 14 जनवरी, 1975
31. सं. 14011/9/76-एफ. I तारीख 31 मार्च, 1979
32. सं. का.आ. 440 (अ) तारीख 13 जून, 1984 (सा.का.नि. : 521)
33. सं. 11013/2/(i)/84-एफ. II तारीख 16 जून, 1984 [का.आ. सं. 448(अ)]
34. सं. 11013/2 (i)/84-एफ. I तारीख 22 जून, 1984 [का.आ. सं. 460(अ)]
35. सं. 11013/2 (ii)/84-एफ. I तारीख 22 जून, 1984 [का.आ. सं. 460(अ)]
36. का. आ. 871 (अ) तारीख 28 नवंबर, 1986
37. सा.का.नि. 20 (अ) तारीख 17 जनवरी, 1990
38. सा.का.नि. 95(अ) तारीख 26 फरवरी, 1990 और सं. सा.का.नि. 132(अ) तारीख 26 फरवरी, 1992
39. सा.का.नि. 20(अ) तारीख 17 जनवरी, 1997
40. सा.का.नि. 56(अ) तारीख 30 जनवरी, 1999
41. सा.का.नि. 322(अ) तारीख 2 मई, 2001

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 11th April, 2005

G.S.R. 224(E).—In exercise of the powers conferred by Section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920), the Central Government hereby makes the following rules further to amend the Passport (Entry into India) Rules, 1950, namely :—

1. (1) These rules may be called the Passport (Entry into India) Amendment Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In rule 5 of the Passport (Entry into India) Rules, 1950, in clause (iv), after sub-clause (c), the following shall be inserted, namely :—

“(d) a multiple entry, life long visa for journey to India to persons registered as Overseas Citizen of India under the provisions of the Citizenship Act, 1955.”

[F. No. 25022/17/05-F.I.]

DURGA SHANKER MISHRA, Jt. Secy.

Foot Note : The principal rules were published on 25-04-1950 vide Notification No. 4/5/49-F.I and were subsequently amended vide :—

1. Notification No. 6/34/50-F.I dated the 12th October, 1950.

2. No. 6/34/50-F.I dated 17th October, 1950.
3. No. 4/13(B)/51 dated 2nd August, 1951.
4. No. 6/69/52-F.I dated 14th October, 1952.
5. No. 4/1/54-F.I dated 26th March, 1954.
6. No. 6/67/52-F.I dated 10th April, 1954.
7. No. 6/25/53-F.I dated 6th May, 1954.
8. No. 1/4/54-F.I dated 3rd September, 1954.
9. No. 6/28/52-F.I dated 24th November, 1954.
10. No. 6/37/54-F.I dated 18th April, 1955 (SRO : 1846)
11. No. 4/1/56-F.I dated 26th May, 1956 and 12th July, 1956.
12. No. 6/32/56-F.I dated 23rd August, 1958 (SRO:1893).
13. No. 6/65/57-F.I dated 7th September, 1957 (SRO: 2883).
14. No. 4/1/58-F.I dated 6th October, 1968 (GSR:905)
15. No. 1/8/60-II F. III dated 18th July, 1969.
16. No. 6/162/59-F.I dated 28th July, 1960 (GSR:882).
17. No. 6/151/62-F.I dated 12th October, 1962.
18. No. 6/217/62-F.I dated 23rd February, 1963 (GSR:333).
19. No. 6/102/64-F.I dated 21st November, 1965.
20. No. 6/165/64-F.I dated 16th March, 1965.
21. No. 6/86/65-F.I dated 21st September, 1965.
22. No. 6/10/67-F.I dated 20th September, 1967 (GSR:1454).
23. No. 6/33/68-F.I dated 6th March, 1968.
24. No. 6/71/69-F.I dated 20th June, 1969 (GSR:1491).
25. No. 6/34/69-F.I dated 4th May, 1970 (GSR:812).
26. No. 11011/6/72-F.I dated 11th August, 1972 [GSR:373(E)].
27. No. 12011/52/72-F.III (I) dated 5th January, 1973 [GSR:4(E)]
28. No. 14011/13/73-F.I dated 20th March, 1974.
29. No. 14011/3/74-F.I dated 24th July, 1974 [GSR:844].
30. No. 12011/23/74-F.III dated 14th January, 1975.
31. No. 14011/9/76-F.I dated 31st March, 1979.
32. S.O. 440(E) dated 13th June, 1984 [GSR:521].
33. No. 11013/2/(i)/84-F.I dated 16th June, 1984 [S.O. No. 448(E)].
34. No. 11013/2/(i)/84-F.II dated 22nd June, 1984 [S.O. No. 460(E)].
35. No. 11013/2/(ii)/84-F.I dated 22nd June, 1984 [S.O. No. 460(E)].
36. S.O. 871(E) dated 28th November, 1986.
37. GSR 20(E) dated 17th January, 1990.
38. GSR 95(E) dated 26th February, 1990 and GSR No. 132(E) dated 26th February, 1992.
39. GSR 20(E) dated 17th January, 1997.
40. GSR 56(E) dated 30th January, 1999.
41. GSR 322(E) dated 2nd May, 2001.

**Press Information Bureau
Government of India**

MHA relaxes Visa and Travel restrictions imposed in response to COVID -19, permitting certain categories of OCI cardholders stranded abroad, to come back to India

New Delhi, May 22, 2020

Union Ministry of Home Affairs (MHA) has relaxed Visa and Travel restrictions imposed in response to COVID -19, permitting certain categories of Overseas Citizen Of India (OCI) cardholders, who are stranded abroad, to come to India.

Following categories of OCI Cardholders stranded abroad, have been permitted to come to India:-

- Minor children born to Indian nationals abroad and holding OCI cards.
- OCI cardholders who wish to come to India on account of family emergencies like death in family.
- Couples where one spouse is an OCI cardholder and the other is an Indian national and they have a permanent residence in India.
- University students who are OCI cardholders (not legally minors) but whose parents are Indian citizens living in India.

The travel restrictions, imposed earlier by MHA on 07.05.2020, would not apply to any aircraft, ship, train or any other vehicle deployed for bringing back the above mentioned categories of OCI cardholders who are stranded abroad. All other terms and conditions laid down by MHA on 07.05.2020 would continue to remain in effect.

[Click here to see the Official Document](#)

***** VG/SNC/VM

No.25022/24/2020-F.V/F.I
Government of India
Ministry of Home Affairs
(Foreigners Division)

Major Dhyan Chand National Stadium,
India Gate Circle, New Delhi - 110002

Dated : October 21, 2020

OFFICE MEMORANDUM

Sub: Visa & Travel restrictions in response to COVID-19 - Permitting certain categories of foreign nationals [including Overseas Citizen of India (OCI) & PIO Cardholders] to enter India - regarding

The undersigned is directed to refer to this Ministry's O.Ms of even number dated 30th June, 2020, 7th August, 2020, 17th August, 2020 and 2nd September, 2020 on the above mentioned subject. The Government has further considered the need for relaxation of visa & travel restrictions for more categories of foreign nationals who want to travel to India.

2. Accordingly, in supersession of this Ministry's O.M. dated 30th June, 2020, 7th August, 2020 and 17th August, 2020, it has been decided as follows:-

(i) Following categories of foreign nationals are permitted to enter India by water routes or by flights including those under the Vande Bharat Mission or 'air bubble' (bilateral air travel arrangements) scheme or by any non-scheduled commercial flights as allowed by the Ministry of Civil Aviation:-

(a) All Overseas Citizen of India (OCI) cardholders and PIO cardholders holding passports of any country.

(b) All foreign nationals intending to visit India for any purpose (including their dependents on appropriate category of dependent visa) **except those on Tourist Visa.**

(ii) All existing visas, **except electronic visas (e-Visa), Tourist visa and Medical Visa**, which remained suspended shall stand restored with immediate effect. If the validity of such visa has expired, the foreign national may obtain a fresh visa of appropriate category/sub-category from the Indian Mission/ Post concerned. In the case of Medical Visa (including visa for Medical Attendants), foreign nationals intending to visit India for medical treatment in emergencies may be granted Medical visa for appropriate period by the Indian Missions/ Posts. The condition of obtaining a visa will not apply to dependent family members of foreign diplomats/officials who are eligible for visa exemption in terms of bilateral visa exemption agreements or visa specific agreements entered into by India with various countries. Such foreign nationals covered by para 2 (i) (b) above will not be permitted to travel to India on the strength of any electronic visa (e-Visa) obtained earlier.



- (iii) In case any foreign national not covered by categories mentioned in (i) above is required to visit India urgently due to any family emergency, the Indian Missions/ Posts are authorized to issue single entry **X-Misc** visa for appropriate period. In such cases, the Indian Missions/ Posts may take a decision on grant of visa on a case to case basis on the merits of each case.
 - (iv) Nationals of Nepal and Bhutan are permitted to come to India from any country (including any third country).
 - (v) Any Indian national or a national of Nepal or Bhutan holding any type of valid visa of any country is permitted to travel from India to the country concerned provided there is no travel restriction for entry of Indian/ Nepalese/ Bhutanese nationals in that country. It would be for the airlines concerned to ensure that there is no travel restriction for Indian/ Nepalese/ Bhutanese nationals to enter the country concerned with the particular visa category before issue of tickets/ boarding pass to the Indian/ Nepalese/ Bhutanese passenger.
 - (vi) There will be no restriction on incoming passenger traffic into India through the authorised airport/seaport Immigration Check Posts for all categories of foreign nationals who are permitted to enter India or those who may be permitted to enter India in future. Such travel restrictions would also not apply to any movement of cargo or goods and supplies in any vehicle, aircraft, ship, train etc. along with their crew, sailor, driver, helper, cleaner etc. on any of the 107 Immigration Check Posts including the land ICPs. However, such restriction on incoming passenger traffic into India will continue to be in effect in respect of foreign nationals holding Tourist Visa.
 - (vii) In respect of quarantine and all other health/ COVID-19 related matters, guidelines of the Ministry of Health and Family Welfare shall be strictly adhered to.
3. Instructions contained in this Ministry's O.M. of even number dated 2nd September, 2020 (Copy enclosed) regarding entry of certain categories of Tibetan migrants will continue to be in effect.
4. This issues with the approval of the Competent Authority.



(Pratap Singh Rawat)

Under Secretary to the Government of India

☎ 23077506

To

1. Foreign Secretary

Contd.....3

2. Ministry of Civil Aviation [**Kind Attn: Shri Pradeep Singh Kharola, Secretary**], Rajiv Gandhi Bhawan, Block B, Safdarjung Airport Area, New Delhi -110 003
3. Directorate General of Civil Aviation (**Kind Attn: Shri Arun Kumar, Director General**) .
4. Bureau of Immigration [**Kind Attn: Shri Rajeev Ranjan Verma, Additional Director**], East Block, R.K. Puram, New Delhi
5. Joint Secretary (DM), Ministry of Home Affairs
6. Ministry of External Affairs [**Kind Attn: Shri Devesh Uttam, OSD(CPV)**], Patiala House Annexe, New Delhi



No.25022/24/2020-F.V/F.I (Pt.)
Government of India
Ministry of Home Affairs
(Foreigners Division)

Major Dhyan Chand National Stadium,
India Gate Circles, New Delhi - 110002

Dated : September 02, 2020

OFFICE MEMORANDUM

Sub: Visa & Travel restrictions in response to COVID-19 - Permitting certain categories of foreign nationals to enter India

The undersigned is directed to refer to this Ministry's O.M. of even number dated 30th June, 2020, 7th August, 2020 and 17th August, 2020 on the subject mentioned above and to say that the Government has further considered the need for relaxation of visa & travel restrictions for more categories of foreign nationals who want to travel to India.

2. Accordingly, in addition to the categories of foreign nationals who are permitted to enter India vide this Ministry's O.M. of even number dated 30th June, 2020, 7th August, 2020 and 17th August, 2020, it has been decided to permit Tibetan migrants who have their residence in India and holding Certificate of Identity issued by the Ministry of External Affairs and Return Visa to enter India. This is subject to the condition that such Tibetan migrants should have been registered with the FRRO/FRO concerned. Their Return Visa shall stand restored with immediate effect to facilitate their entry into India. However, if the validity of such visas has expired, they may obtain a fresh Return Visa from the Indian Missions/Posts concerned. It has also been decided that the existing restrictions on incoming passenger traffic into India through the Immigration Check Posts will not apply in respect of these foreign nationals. However, in respect of quarantine and all other health/COVID-19 related matters, guidelines of the Ministry of Health & Family Welfare shall be adhered to.

3. This issues with the approval of the Competent Authority.



(Pramod Kumar)
Director (Foreigners)
☎: 23077508

To

1. Foreign Secretary (Shri Harsh Vardhan Shringla).
2. Ministry of Civil Aviation [Kind Attn: Shri Pradeep Singh Kharola, **Secretary**], Rajiv Gandhi Bhawan, Block B, Safdarjung Airport Area, New Delhi -110 003
3. Bureau of Immigration [Kind Attn: Shri Rajeev Ranjan Verma, **Additional Director**], East Block, R.K. Puram, New Delhi
4. Ministry of External Affairs [Kind Attn: Shri Devesh Uttam, **OSD (CPV)**], Patiala House Annexe, New Delhi
5. Joint Secretary (DM), Ministry of Home Affairs

Major Dhyan Chand National Stadium,
India Gate Circle, New Delhi – 110002

Dated : October 21, 2020

ORDER

In supersession of this Ministry's Orders of even number dated 13.03.2020, 16.04.2020, 05.05.2020, 12.06.2020 and 07.08.2020, the Central Government, in exercise of the powers conferred by clause (a) of sub-section (2) of section 3 of the Foreigners Act, 1946 (31 of 1946), being of the opinion that it is necessary and expedient in public interest to do so, hereby specifies that the right of multiple entry lifelong visa facility granted for any purpose in terms of the Notification S.O. 542(E) dated 11th April, 2005 issued by the Ministry of Home Affairs shall stand restored with immediate effect to all persons registered as Overseas Citizen of India (OCI) cardholders under section 7A of the Citizenship Act, 1955 (57 of 1955).


21.10.20
(Gopal Jha)

Under Secretary to the Government of India
☎: 23075329

Copy to :

1. Foreign Secretary
2. Ministry of Civil Aviation [**Kind Attn: Shri Pradeep Singh Kharola, Secretary**], Rajiv Gandhi Bhawan, Block B, Safdarjung Airport Area, New Delhi -110 003
3. Directorate General of Civil Aviation (Kind Attn: **Shri Arun Kumar, Director General**) .
4. Bureau of Immigration [**Kind Attn: Shri Rajeev Ranjan Verma, Additional Director**], East Block, R.K. Puram, New Delhi
5. Joint Secretary (DM), Ministry of Home Affairs
6. Ministry of External Affairs [**Kind Attn: Shri Devesh Uttam, OSD(CPV)**], Patiala House Annexe, New Delhi

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राजधकार से प्रकाजित

सं. 962]

नई दिल्ली, बृहस्पत जतवार, माच च4, 2021/फाल्गुन 13, 1942

No. 962]

NEW DELHI, THURSDAY, MARCH 4, 2021/PHALGUNA 13, 1942



भारत का राजपत्र The Gazette of India

सी.जी.-डी.एल.-अ.-04032021-225647

CG-DL-E-04032021-225647

PUBLISHED BY AUTHORITY

गृह मंत्रालय

अजधसू ना नई

दिल्ली, 4 माचच,

2021

का.आ. 1050(अ).—केंद्रीय सरकार, नागरिकता अजधजनयम, 1955 (1955 का 57) की धारा 7ख की उपधारा (1) द्वारा प्रित िजतियय का प्रयगग करत े ुएए ता रापिपत्र म ें प्रकाजित गृह मंत्रालय, भारत सरकार की अजधसूचना सं. का.आ. 542(अ), तारीख 11 अप्रैल, 2005 ता रापिपत्र में प्रकाजित तत्कालीन प्रवासी भारतीय कायच मंत्रालय, भारत सरकार की अजधसूचना सं. का.आ. 12(अ), तारीख 5 िनवरी, 2007 ता का.आ. 36(अ), तारीख 5 िनवरी, 2009 कग, उन बात के जसवाय अजधक्ांत करत े ुएए, जिन्ह ें ऐसे अजधक्मण के पूवच दकया गया ह ै या करने स े लगप

दकया गया है, जनमजलजखत अजधकार कग जवजनर्ष्टिच करती है जिनका कगई भारत का प्रवासी नागरिक काडच धारक रापत्र म ें इस अजधसूचना के प्रकाशिन की तारीख से हकिार हगगा, अााचत :-

(1) दकसी प्रयगिन के जलए भारत आने हते ु िीवन पयचन्त बुए प्रवि वीिा अनुि्त करना:

परंतु जनमजलजखत दक्याकलाप करन े के जलए, भारत का प्रवासी नागरिक काडच धारक कग सक्षम प्राजधकारी या जवििी क्षेत्रीय रजिस्ट्रीकरण अजधकारी या संबंजधत भारतीय जमिन स,े याजस्टाजत, जविष अनुज्ञा या जविष अनुज्ञजि प्राि करना अपेजक्षत हगगा, अााचत:-

1397 GI/2021

(1)

2

THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(ii)]

- (i) अनुसंधान करन े के जलए;
 - (ii) दकन्हीं जमिनरी या तबलीग या पवचतारगहण या पत्रकाररता सबं धी दक्याकलाप के जलए;
 - (iii) भारत में दकन्हीं जवििी रािनजयक जमिन या जवििी सरकारी संगठन में इंटनचजिप करने के जलए या भारत म ें दकन्हीं जवििी रािनजयक जमिन म ें रगिगार के जलए;
 - (iv) दकसी ऐसे स्टान पर भ्रमण के जलए, िग केंद्रीय सरकार या सक्षम प्राजधकारी द्वारा याा अजधसूचत संरजक्षत या जनबंजधत या प्रजतजषद्ध क्षेत्र है;
- (2) भारत म ें दकसी भी अवजध के ठहराव के जलए जवििी क्षेत्रीय रजिस्ट्रीकरण अजधकारी या जवििी रजिस्ट्रीकरण अजधकारी के पास रजिस्ट्रीकरण से छूट:
- परंतु ु भारत के प्रवासी नागरिक काडच धारक, िग सामान्यतः भारत म ें जनवासी है, ें अजधकाररता वाल े जवििी क्षेत्रीय रजिस्ट्रीकरण अजधकारी या जवििी रजिस्ट्रीकरण अजधकारी कग ई-मेल द्वारा सजू चत करेंगे,
- िब कभी उनके स्टायी जनवास के पते या उनके व्यवसाय म ें कगई पररवतचन हगता है;
- (3) जनमजलजखत के जवषय म ें भारत के राजिक से समानता,-
- (i) भारत में घरेलू क्षेत्र में वायुयान भाडे के टैररफ; और
 - (ii) भारत म ें रािीय उद्यान, वन्थीव अभ्यारण्य, रािीय स्टमारक, ऐजतहाजसक स्टाल और संग्रहालय िेखने हते ु वसूल की िाने वाली प्रवेि फीस;
- (4) जनमजलजखत के जवषय म ें अजनवासी भारतीय से समानता,-
- (i) ऐसे ि्त क ग्रहण के जलए सक्षम प्राजधकारी द्वारा याा अजधकजात प्रदक्या के अनुपालन के अधीन रहते ुएए, भारतीय बालक का अंतिीय ि्त क ग्रहण;
 - (ii) उन्ह ें केवल दकसी अजनवासी भारतीय सीट या दकसी अजधसंख्य सीट पर प्रवेि के जलए पात्र बनाने हते ु अजखल भारतीय प्रवि परीक्षाओं, िैसे रािीय पात्रता-सह-प्रवेि परीक्षा, संयुतिय प्रवि परीक्षा (मखु य), संयुतिय प्रवेि परीक्षा (उच्च) या ऐसी अन्य परीक्षाओं म ें सजममजलत हगना:

परंतु भारत का प्रवासी नागरिक काडच धारक जवजिष्टतया भारत के नागरिक के जलए आरजक्षत दकसी सीट पर प्रवेि के जलए पात्र नहीं हगगा;

- (iii) कृष भूजम या फामच हाउस या बागान संपज्त् से जभन्न अचल संपज्त् का क्य या जवक्य; और
- (iv) याजस्टाजत, लागू सुसंगत पररजनयम या अजधजनयम म ें अंतर्वचष्ट उपबंध के अनुसार जनमजलजखत वृज्त् यां करना, अाचत्:-
 - (क) जचदकत्सक, िंत जचदकत्सक, पररचाजयका और भेषिज;
 - (ख) अजधवतिया;
 - (ग) वास्टुजवि;
 - (घ) चाटचडच अकाउन्टे;
- (5) अन्य सभी आर्ाचक, जवत् िय और िैक्षजणक क्षेत्र के संबंध में, जिन्ह ें इस अजधसूचना म ें जवजनर्िष्टच नहीं दकया गया ह ै या जवििी मुद्रा प्रबंध अजधजनयम, 1999 (1999 का 42) के अधीन भारतीय ररिवच बैंक द्वारा की गई अजधसूचनाओं के अंतगतच नहीं आन े वाले अजधकार और जविषाजधकार के संबंध में भारत के प्रवासी नागरिक काड च धारक के वही अजधकार और जविषाजधकार ह ग े िग दकसी जवििी व्यजतिय के ह।ैं

[भाग II—खण्ड 3(ii)]

भारत का रािपत्र : असाधारण

3

स्टपटीकरण,- इस अजधसूचना के प्रयगिन के जलए,-

- (1) भारत का प्रवासी नागरिक काडच धारक (जिसके अंतं गतच भारतीय मूल का व्यजतिय काड च धारक भी ह)ै अन्य िेि का पासपगटच धारण करन े वाला जवििी राजिक ह ै और भारत का नागरिक नहीं ह।ै
- (2) “अजनवासी भारतीय” का वही अाच हगगा िग इसका जवििी मुद्रा प्रबंध अजधजनयम, 1999 (1999 का 42) के अधीन भारतीय ररिवच बैंक द्वारा बनाए गए जवििी मुद्रा प्रबंध (भारत म ें अचल संपज्त् का अिचन और अंतरण) जवजनयम, 2018 में उसका ह ै ताा िग आयकर अजधजनयम, 1961 (1961 का 43) के अनुसार “अजनवासी भारतीय” की प्राजस्टाजत कग पणू च करता ह।ै

[फा. सं. 26011/सीसी/05/2018-ओसीआई]

प्रमगि कुमार, जनििक

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 4th March, 2021

S.O. 1050(E).— In exercise of the powers conferred by sub-section (1) of section 7B of the Citizenship Act, 1955 (57 of 1955) and in supersession of the notification of the Government of India in the Ministry of Home Affairs published

in the Official Gazette *vide* number S.O. 542(E), dated the 11th April, 2005 and the notifications of the Government of India in the *erstwhile* Ministry of Overseas Indian Affairs published in the Official Gazette *vide* numbers S.O. 12(E), dated the 5th January, 2007 and S.O. 36(E), dated the 5th January, 2009, except as respect things done or omitted to be done before such supersession, the Central Government hereby specifies the following rights to which an Overseas Citizen of India Cardholder (hereinafter referred to as the OCI cardholder) shall be entitled, with effect from the date of publication of this notification in the Official Gazette, namely:—

- (1) grant of multiple entry lifelong visa for visiting India for any purpose:
 Provided that for undertaking the following activities, the OCI cardholder shall be required to obtain a special permission or a Special Permit, as the case may be, from the competent authority or the Foreigners Regional Registration Officer or the Indian Mission concerned, namely:-
 - (i) to undertake research;
 - (ii) to undertake any Missionary or Tabligh or Mountaineering or Journalistic activities;
 - (iii) to undertake internship in any foreign Diplomatic Missions or foreign Government organisations in India or to take up employment in any foreign Diplomatic Missions in India;
 - (iv) to visit any place which falls within the Protected or Restricted or prohibited areas as notified by the Central Government or competent authority;
- (2) exemption from registration with the Foreigners Regional Registration Officer or Foreigners Registration Officer for any length of stay in India:
 Provided that the OCI cardholders who are normally resident in India shall intimate the jurisdictional Foreigners Regional Registration Officer or the Foreigners Registration Officer by email whenever there is a change in permanent residential address and in their occupation;
- (3) parity with Indian nationals in the matter of,-
 - (i) tariffs in air fares in domestic sectors in India; and
 - (ii) entry fees to be charged for visiting national parks, wildlife sanctuaries, the national monuments, historical sites and museums in India;
- (4) parity with Non-Resident Indians in the matter of,-
 - (i) inter-country adoption of Indian children subject to the compliance of the procedure as laid down by the competent authority for such adoption;

- (ii) appearing for the all India entrance tests such as National Eligibility cum Entrance Test, Joint Entrance Examination (Mains), Joint Entrance Examination (Advanced) or such other tests to make them eligible for admission only against any Non-Resident Indian seat or any supernumerary seat:
 Provided that the OCI cardholder shall not be eligible for admission against any seat reserved exclusively for Indian citizens;
- (iii) purchase or sale of immovable properties other than agricultural land or farm house or plantation property; and
- (iv) pursuing the following professions in India as per the provisions contained in the applicable relevant statutes or Acts as the case may be, namely:-
 - (a) doctors, dentists, nurses and pharmacists;
 - (b) advocates;
 - (c) architects;
 - (d) chartered accountants;

- (5) in respect of all other economic, financial and educational fields not specified in this notification or the rights and privileges not covered by the notifications made by the Reserve Bank of India under the Foreign

Exchange Management Act, 1999 (42 of 1999), the OCI cardholder shall have the same rights and privileges as a foreigner.

Explanation.— For the purposes of this notification,—

- (1) The OCI Cardholder (including a PIO cardholder) is a foreign national holding passport of a foreign country and is not a citizen of India.
- (2) “Non-Resident Indian” shall have the same meaning as assigned to it in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 made by the Reserve Bank of India under the Foreign Exchange Management Act, 1999 (42 of 1999) and who fulfils the “Non-Resident Indian” status as per the Income Tax Act, 1961 (43 of 1961).

[F. No. 26011/CC/05/2018-OCI]

PRAMOD KUMAR, Director

ANNEXURE P-8
ANNEXURE P-8 (COLLY)
ANNEXURE P-

Decriminalizing Homosexual Sex in India: An Inspiring Movement

October 27, 2009

IWHC

On October 22, my colleague Chelsea Ricker and I went to a very inspiring panel organized by the Center for Human Rights and Global Justice (CHRGJ), “Litigating Human Rights Series: The Task and Implications of Decriminalizing Homosexual Sex in India.” The recent decision by the Delhi High Court to repeal Penal Code 377 has been by far the single greatest event that has happened in my lifetime, and it was fascinating to hear the reflections of those who were closely involved in this historic event.

The event featured distinguished panelists including Anand Grover, Project Director of the HIV/AIDS Unit of the Lawyers Collective in India and recently appointed UN Special Rapporteur to Health. Grover first filed the challenge to 377 on behalf of the Naz Foundation in Delhi High Court more than eight years ago.

My friend, Mario D’Penha, a queer feminist historian was also on the panel. Mario is a founding member of two organizations who are part of Voices Against 377, a coalition of progressive organizations that intervened in the case against Section 377. I felt so proud seeing him on the panel, and fondly reminisced about how I used to see him at Voices meetings, where he was one of the most active members, when I was living in India.

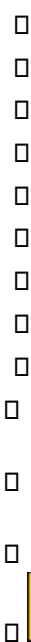
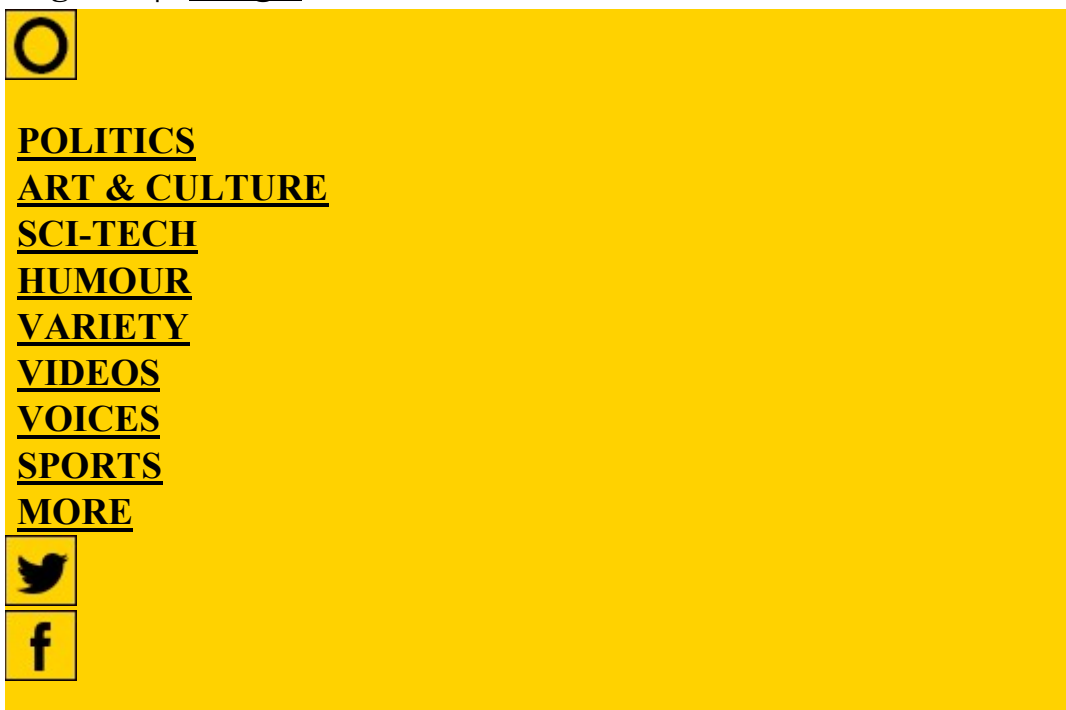
Panelists shared fascinating insider tidbits about the struggle to overturn 377. For example, Mr. Grover explained the original reasoning for filing the petition in Delhi. For one, explained Grover, they knew if they failed, they still would have the option of taking the case to the Supreme Court. They also chose Delhi because its Tihar jail had stopped distributing condoms due to 377, which provided a concrete example of how 377 impairs AIDS prevention.

While the panel topic was focused on litigation, all the panelists agreed that the single biggest factor that resulted in the repeal of 377 was the change in mentality of judges, parliamentarians and everyday Indians since the petition was filed in 2001. Activists in India have led painstaking efforts in India to increase awareness about how HIV/ AIDS cannot be addressed in a punitive environment and to increase support for the rights of LGBTQI people. I would have loved to hear more about how women's groups, child rights, human rights groups, and LGBTQI all came together so effectively and emphatically on the issue.

My friend, Caroline Earle, who works at Creating Resources for Empowerment in Action, or CREA, did a brilliant job discussing a very inspiring question asked by Carole Vance, an anthropologist and activist who specializes in sexuality, human rights, health at the Mailman School of Public Health. Vance asked how movements can be brought together around shared issues that impact everyone such as discrimination, privacy, consent, dignity, and the freedom to make choices. Caroline pointed out that one of the greatest factors that led to the Delhi High Court's decision was the fact that so many diverse groups and interests came together to oppose the law, which impacted them all.

Moving forward, I hope that this collaborative spirit amongst diverse groups will ensure further victories for civil and political rights in India, particularly for women and sex workers.

TRUE COPY /-

English | Bangla

Why US ruling on same-sex ensuring basic rights and entitlements.

POLITICS

| 4-minute read | 07-07-2015



MARIO DA PENHA

@MLECHCHHA

In 1958, acting on an anonymous complaint, police arrested a black woman and a white man in the US state of Virginia for sharing a bed.

At the time, this was a crime “against the peace and dignity” of the state, punishable by a prison sentence of up to five years. Mildred and Richard Loving had married in Washington DC, where a law against interracial marriage did not exist, but lived in Virginia, where the antimiscegenation statute was by then more than 30 years old.

In 1987, acting on similar leads, police confined and later dismissed two female police officers in Madhya Pradesh for sleeping on the same bed. Leela Namdeo and Urmila Srivastava had married each other in Bhopal by exchanging garlands after which whispers about their intimacy degenerated into a sensational scandal in the Indian media. In both cases, the dignity of a state, or a state institution was defended through an act of exclusion: the Lovings were ordered to leave Virginia, and Namdeo and Srivastava were intimidated out of Bhopal.

The desire of both of these couples to live unhindered lives of respect propelled them into conflict with the laws and social conventions of their times. These are yearnings for dignity shared by many others such as Jim Obergefell who sued his home state Ohio in order to be recognised as the spouse of his then terminally ill and later deceased

partner of 21 years. There were relatively minor social security and disability benefits at stake. Yet what drove Obergefell to drag the state to court was not the cornering of monetary benefit but an inclination far more fundamental to the human condition.

On June 26, the Supreme Court of the US recognised this inclination when the majority opinion of Justice Anthony Kennedy stated that same-sex couples had sought “equal dignity in the eyes of the law”. The decision in the Obergefell versus Hodges case extends that honour to more than 200 million Americans and all same-sex couples. US President Barack Obama characterised the dawdling progress towards this judgement as one where “slow, steady effort (was) rewarded with justice that arrives like a thunderbolt”.

Yet, the story is not so simple. Among some queer activists, there remains considerable dissatisfaction with the limited gains that the marriage equality movement brings. Some, such as Chicago’s Yasmin Nair, suggest that this struggle has “ravaged the economic landscape of queer organising”, by channelling cash out of other important causes. The range of such runner-up causes for limited resources is wide. To take just one example: A 2012 nationwide survey by the Williams Institute at the UCLA School of Law reports that 40 per cent of homeless youth identify as lesbian, gay, bisexual, or transgender. A plurality of these LGBT youth cite family rejection because of their sexual and/or gender identities as the primary reason for their homelessness.

Some believe the significance of the Supreme Court judgment lies in reinforcing marriage as the dominant axis on which rights may be fought for and won. As Jeff Redding, associate professor of law, St Louis

University, tells me, the Obergefell decision has heightened the legal and social distinctions between married and unmarried people. “It seems marriage is the be-all and end-all of mature citizenship in the US,” he says. “To be unable or unwilling to marry is to be left in the political wilderness.”

Some of these debates around LGBT activist priorities also occur in India as the struggle to overturn Section 377 was defeated in the Supreme Court in 2013. As attention from Obergefell travelled to New Delhi, law minister DV Sadananda Gowda denied reports that the government was planning to scrap the statute. BJP leader Subramanian Swamy went a step further, terming homosexuality a “genetic disorder”.

When it emerged, many queer people in India cheered the Obergefell judgment: Atanu, an Assamese gay man from Delhi, who married his American partner of five years in New York in 2013, says that “every citizen deserves equal protection, rights and freedom”. Yet several other queer Indians have suggested that the blueprint for equal protection of the law lies not with marriage rights, but with comprehensive anti-discrimination legislation for LGBT people and the removal of Section 377.

Some progress on this blueprint has emerged from judicial and legislative favour for transgender civil rights. In 2014, the Supreme Court of India delivered a verdict that called for affirmative action for the transgender population. Further, bipartisan political support for a new transgender civil rights bill ensured it cleared the Rajya Sabha this year. Yet even with transgender citizens, real progress has been much slower. While lawmakers may seem zealous about ensuring that

transgender citizens come under India's reservations regime, a spate of violence against the same citizens has gone unchallenged.

So while one recognises that yearning for dignity that moved Obergefell to fight for his rights, the battles in India remain more fundamental — around preventing violence and ensuring basic rights and entitlements that, ironically, both precede and are beyond the question of marriage.

TRUE COPY/-

PERSPECTIVES

latter term would mean acknowledging that other groups could have an older claim to this land. (Organisations such as the Gondwana Gantantara Party, which espouses a Gond identity outside the Hindu fold, define themselves as adivasis precisely to bolster a sense of ownership.)

Dalits have never seriously claimed an identity outside the Hindu fold, but have largely stayed away from association with the Sangh. The recent Uttar Pradesh by-elections, which were preceded by the Sangh's attempts (still ongoing) to polarise Dalits and Muslims, may signal a new strategy for fostering an aggressive "Hindu" identity among "lowercaste" voters. But battles over loudspeakers at temples—one pretext for the polarisation—cannot obscure the fact that for most Dalits even access to temples remains a problem.

While Dalits and tribals represent Hindutva's largest set of dissenters, in theoretical terms the greatest challenge to the ideology is the Sikh assertion of a separate identity, which undermines the very construct of a "Hindu rashtra" from within. With both their fatherland and holy land firmly within the country's geographical boundaries, the Sikhs of India satisfy Hindutva's twin criteria for being "Hindus," but they refuse to accept this nomenclature. On the birth anniversary of Guru Nanak in 1986, in the midst of the violence in Punjab, the RSS made a bid to woo the community by floating a new outfit called the Rashtriya Sikh Sangat. Perhaps aware of the potential for controversy, this organisation's aims continue to be shrouded in the same ambiguity that marks most of the Sangh's efforts at garnering support from more marginalised "Hindu" communities.

The website of the Rashtriya Sikh Sangat lists ten "resolutions," some of which are uncharacteristic as Sikh demands. One states that "in Pakistan, the Hindu shrines should be handed over to the Hindu community and it should be managed only by them. It should be opened for the Hindu

devotees of India for Darshans." Another articulates an RSS position that has few takers in the Sikh community: that "a magnificent temple of Shri Ram should be made."

Such attempts have attracted considerable resistance, providing fodder for only the most radical voices within the Sikh community. In a 2009 case that was underreported in the national media, the head of the Rashtriya Sikh Sangat, Rulda Singh, was shot in Patiala and died of his injuries two weeks later. At the height of the so-called Modi wave, during the Lok Sabha elections, the Bharatiya Janata Party was still unable to get its candidate, Arun Jaitley, elected from the Sikh-dominated constituency of Amritsar.

However, setting aside this aberration, which in numerical terms count for little, the RSS does draw great satisfaction from Modi's electoral victory, tending to see it as an affirmation of the logic that drives their view of India. The BJP has failed to garner support from Christians and Muslims, but it has effectively consolidated a "Hindu" vote cutting across caste. It is in this context that Modi's rhetoric, which has been so endlessly and so pointlessly analysed, must be understood.

Hindutva allows Modi to speak of inclusiveness without spelling out that Muslims and Christians are less than equal by definition. Exclusion is built into the term, and his record in Gujarat bears this out, as do his party's first few months in power in Delhi. Only those commentators who have tried to project their own longings for an Indian inclusivity onto him have missed noting this consistency.

Thus far, Modi has reconciled the two by outsourcing the Hindutva agenda to cohorts such as Amit Shah and Yogi Adityanath. At some point he is likely to be forced to choose between the Constitution's guarantees of equality and Hindutva's implicit exclusivity. While Modi does not have, and is unlikely to get, the parliamentary numbers to fundamentally tamper with the Constitution, we can guess what his instinctive choice would be. We only have to remember that moment in Gujarat when the man who gamely sports headgear from any "Hindu" sect balked when offered a skullcap. s

In TransITION

New legal support for transgender people may challenge India's affirmative action framework

Marlo da Penha

On 15 April, the hijra activist Laxmi Narayan Tri- to choose their own gender. They asked the centre and the pathi walked down the stairs of India's Supreme states to endorse these choices on birth certificates, passCourt, overwhelmed by what she had just heard. ports, college application forms, ration cards, in public fa-

A division bench of Justices KS Radhakrishnan cilities and restrooms—in short, the range of services that and AK Sikri had reversed a longstanding policy of actively gender our national belonging.

excluding from public life those outside the male–female gender binary.

Since the colonial era, such individuals had been demeaned as eunuchs, dislodged from positions of political authority, dispossessed of their property and livelihoods, and finally criminalised. The justices sought to neutralise this legacy by recognising the fundamental right of citizens

More radically, the judges insisted that elected representatives create plans to incorporate transgender people within India's mammoth affirmative action regime. "There is a growing recognition," the court wrote in its judgement, "that the true measure of development of a nation is not economic growth; it is human dignity."

Tripathi, who has spent 16 years working for transgender

04 | THE CARAVAN | NOVEMBER 2014

PERSPECTIVES



Transgender activists celebrated in Delhi, a few days after the Supreme Court's April verdict recognising third gender status.

justice, was in tears after hearing the decision. "I felt that no other person of my gender would ever again go through what I have gone through," she told me. "One of the tallest pillars of democracy in this world had given us back our rights."

The watershed verdict in *National Legal Services Authority vs. Union of India* marks a fundamental shift in the country's established norms for recognising and accommodating marginalised communities in the social and political mainstream. Affirmative action is largely pursued through reservations in educational institutions and in public employment, and these reservations are largely accorded on the basis of *varna* and *jati*. Generations of federal and state government programmes—as well as Supreme Court judgements—have confirmed the primacy of caste in the pursuit

of affirmative action, even when beneficiaries are not legally Hindu. By recognising that transgender people are discriminated against because of their gender identity, and granting that such discrimination constitutes them as a distinct class, the court has unsettled this consensus. It now seems plausible that factors other than caste or ethnicity could become the basis for successful claims to affirmative action by different kinds of groups.

The first part of the judgement—legal recognition of gender identities other than male or female—is comparable to similar decisions made by governments and courts around the world. The second—affirmative action policies for those identifying as transgender—is perhaps unique to India. In all its radical implications, the judgement left some thorny questions

unanswered. The transgender community in the South Asian context weaves together complicated threads of community and caste with those of gender. The judgement did not specifically address how India's reservations structure, built predominantly to empower an assortment of caste identities, will accommodate a community ostensibly constituted by gender difference. It remains unclear in the eyes of the law whether, for the purposes of affirmative action, the transgender community includes individuals who simply self-identify as such.

To understand its future interpretations and impact, this momentous judgement must be placed within the long history of defining and demarcating people who are neither male nor female in India. In the immediate pre-colonial period, hijras and jogappas, who both serve as ritual functionaries to the subcontinent's gods and saints, were among a range of initiation-based groups, which accepted people of heterogeneous origins who had abandoned the security of their ethnic communities and families. Historical sources from the eighteenth century tend not to dwell on ethnic origins or corporeal difference in their mentions of hijras. The term "hijra" itself—Arabic for "to leave one's tribe behind"—suggests apathy towards individual histories, and to castes and pasts foregone.

Colonialism brought two persistent forms of categorisation that continue to shape new legislation for transgender people: a focus on the authenticity of ethnic origins, and on

people in India: the country's first Transgender Welfare Board, set up in 2008 by the Tamil Nadu government. (Maharashtra set up a similar board this September.) While the Board cannot authorise affirmative action, it disburses identity documents, subsidies, and limited pensions that incorporate transgender people into the state's social welfare programmes.

Tamil Nadu's Transgender Welfare Board was formed in part to address the struggles of one particular community in the state, and the history of how Aravani identity has been constituted and defined illuminates some of the difficulties the judgment in *National Legal Services Authority vs. Union of India* will throw up. Until the early twentieth century, an annual festival in the village of Koovagam required men of the Vanniyar ethnic community to dress as women, signifying Krishna's transformation into Mohini to marry the deity Aravan. Across southern India, similar performances remain popular to this day, across a range of ethnic groups bound by this ritual.

However, by the 1920s, after at least 90 years of upward social mobility, the Vanniyars began to fashion themselves as Kshatriyas. Christian missionary memoirs, such as Henry Whitehead's *The Village Gods of South India*, recorded that Vanniyar men began to resent the practice of dressing as women. R Narulla's Tamil monograph, *Alikkal Valkkai* argues that beginning in the 1960s, the Alis, the local transgender community, visited Koovagam, and appropriated the ritual of gender transformation from Vanniyar men. By the early 2000s, as their association with the Koovagam festival grew, and their own prestige rose, the Alis abandoned their previous nomenclature, now considered derogatory, and adopted the new name "Aravani." A community constituted by the ritual practice of crossdressing was now composed of transgender individuals who appropriated that gender-queering ritual.

NOVEMBER 2014 | THE CARAVAN | 05

PERSPECTIVES

corporeal difference. In 1836, RD Luard, the enterprising sub-collector of Solapur, recorded that six hijras under his jurisdiction came from four separate ethnic groups. (That all six remembered and divulged these details is a noteworthy reminder of the durability of ethnic identity.) By 1892, HB Abbott, another colonial official, recorded that 356 hijras in Rajputana were born in 38 distinct Hindu, Muslim and animist ethnic communities. This sort of documentation, usually for the Imperial Census, was ambivalent about the suitability of classifying hijras as a caste, or an ethnic group unto themselves.

Even as original jati began to be counted as a part of hijra identity due to the mechanisms of the colonial census, physical difference became increasingly important as a marker. The colonial term "eunuch" was used as an umbrella to cover all kinds of gender variance, just as "transgender," which gained currency in the 1980s, is today.

These colonial exercises were primarily for studying—and sometimes controlling—minority populations, not empowering them. The Supreme Court's judgement stands as an attempt to depart from this norm. Justices Radhakrishnan and Sikri timed their judgement to coincide with the sixth anniversary of the pre-eminent model for any social welfare initiative for transgender

06 | THE CARAVAN | NOVEMBER 2014

This transgender community's public assertions of its identity over the last fifty years have drawn legitimacy from its association with ritual power. The legitimacy accrued by one identity, based in ritual, has buoyed the empowerment of the larger umbrella group of transgender people, and strengthened the case for national reservations for all individuals identifying as neither male nor female, or transitioning from one to the other. After the court's verdict, as national reservations for at least some groups of transgender people come to pass, Aravanis will be counted among 180 other "backward class" ethnic groups in Tamil Nadu—including the Vanniyars.

But "transgender" does not denote an organic category based on long-term ethnic identification, and questions of who can claim the term—along with its new benefits—have arisen. Many transmen (who were assigned female at birth, but now identify as men), transwomen (who were assigned male at birth, but now identify as women), and genderqueer people (who subvert gender binaries altogether) fear they will be left out of the reforms set into motion by the April verdict. In the Marathi

weekly *Loksatta Chaturang*, Mridul, a transman activist, expressed concern that the verdict allowed the media to be able to equate “‘transgender’ with ‘hijra’ or ‘kinnar,’ completely ignoring every other kind of trans identity or reality, just as society has always done.”

Any affirmative action in line with the court’s ruling would require transgender people to be classified as Other Backward Classes; even transgender people with Scheduled Caste or Scheduled Tribe origins would be treated as OBCs. This would make them vulnerable by placing them within a generally more privileged pool of people, a dilemma that Tripathi, who grew up Brahmin, empathises with.

In September, almost five months after the landmark judgment, the federal government raised some pertinent points of procedure with regard to the judgement—hinting, perhaps, at an undercurrent of resistance. Attorney General Mukul Rohatgi petitioned the court to clarify a few of the federal government’s

concerns with the verdict. Rohatgi asked whether the executive must follow the court’s direction in the verdict suo moto—without prompting from a third party—or whether legislation must follow “procedure established,” and be routed through the National Commission for Backward Classes, which considers whom to include in binding lists of backward classes for reservations. Second, since affirmative action would occur by classifying transgender people as OBCs, Rohatgi asked whether those who grew up as SCs and STs would also be codified as OBC.

However, not many transgender people I spoke to seemed to be aware that—in fact—the NCBC had already recommended including transgender people in the central list of OBCs, less than a month after the verdict and in the midst of election season chaos. It is unclear why Rohatgi requested the Supreme Court for clarity when the NCBC’s imprimatur was already an accomplished fact. Anand Grover, a senior lawyer associated with the case, suggested that the federal government did so perhaps because it had failed to understand the case appropriately. “If the Commission has already made a recommendation, there should be no issue,” he told me.

But within the transgender community, too, there are differing opinions on how to resolve these questions. Some suggest a compromise that will allow members who grew up SC/ST to continue seeking reservations under that category, while most others would be classified as OBC. Living Smile Vidya, or “Smiley,” a transwoman artist and activist born into the Dalit Arunthathiyar community, disagreed

In June this year, less than a month after taking office, the

with this view. She told me she believes such an approach will bring no benefit to transgender people who grew up like her, and worries that if transgender Dalits remain categorised as SCs, they will compete against those Dalits who didn’t struggle with their gender or their families.

Smiley is one of five transgender people who last November approached the Madras High Court demanding a 3 percent reservation for transgender people under a new category, mirroring reservations for people with disabilities. “If Dalits can receive separate reservations, as Dalits; and people with disabilities can receive the same, as people with disabilities—why can’t transgender people receive reservations separately?” While innovative and well reasoned, the proposal is not without its complications. Affirmative action for people with disabilities, defined as horizontal reservations that cut across ethnic barriers, began with legislation in 1995 but has proceeded at a snail’s pace.

PERSPECTIVES

At first, the government interpreted these reservations to apply only to public employment; only much later did it extend them to educational institutions. This September, the Supreme Court fought off the latest federal challenge, in which the government argued that reservations for people with disabilities might be considered for jobs in the civil services, but balked at extending them to promotions in the top echelons. If transgender reservations were to sail in their own autonomous waters, without the mooring of an OBC listing, their relatively small size—pegged and possibly underestimated by the 2011 census at 4.9 lakh—might make them vulnerable to similarly narrow interpretations, and to legal challenges based on the government’s whims.

“Nobody will deliver justice to your door,” Tripathi told me, despite her enthusiasm for the judgement. “We still have a long road ahead.” For her part, Smiley remained clear about why affirmative action is vital to this journey: “When parents see a transgender child, they think of begging or sex work as their future. How will they accept their own children if these are their only options?” Reservations for transgender people could aid the social transformation that Smiley dreams about, but they will also push boundaries by leading India’s affirmative action policies into uncharted territory, where the old consensus on caste no longer holds. s

“population stabilisation” was high on his agenda. In

deMograPhy now

India’s misguided family planning policies

ruhl Kandhari

union health minister Harsh Vardhan declared in an interview to the *Deccan Chronicle* that

another interview around two months later to the same paper, Vardhan elaborated on his plans: he intends to revive a

controversial draft bill from 1992, which would disqualify anyone with more than two children from membership to parliament or legislative assemblies.

Vardhan's statements received little attention, and were not discussed in the media. But the government's moves will merit scrutiny, since the statements suggest that the health minister is ignorant of the globally established fact that coercive population control measures not only violate human rights but are simply not effective in curbing population growth.

Since family planning and population control fall under the concurrent list of the Indian constitution, both the central government as well as respective state governments have the power to frame laws and policies on these subjects. But while several states have enacted laws on population control in the past three decades, governments in power at the centre have by and large been wary of dealing with the issue since Indira Gandhi's defeat in the 1977 general elections. That loss, the Congress's first ever fall from central power, was widely seen as an electoral backlash against Gandhi's authoritarian actions during the Emergency, prominent among which was the programme of forced vasectomies.

The previous NDA government had, in fact, considered pushing the 1992 draft bill through, with the support of several of its chief ministers. But the coalition fell out of power before it made any significant progress, and the UPA government—particularly the left parties in the coalition—was less enthusiastic, steering clear of introducing any legislation on the subject. With the NDA back in power now, and the issue having resurfaced with Vardhan's statements, it is worth examining the often vexed questions of family planning and population control against their historical context in India.

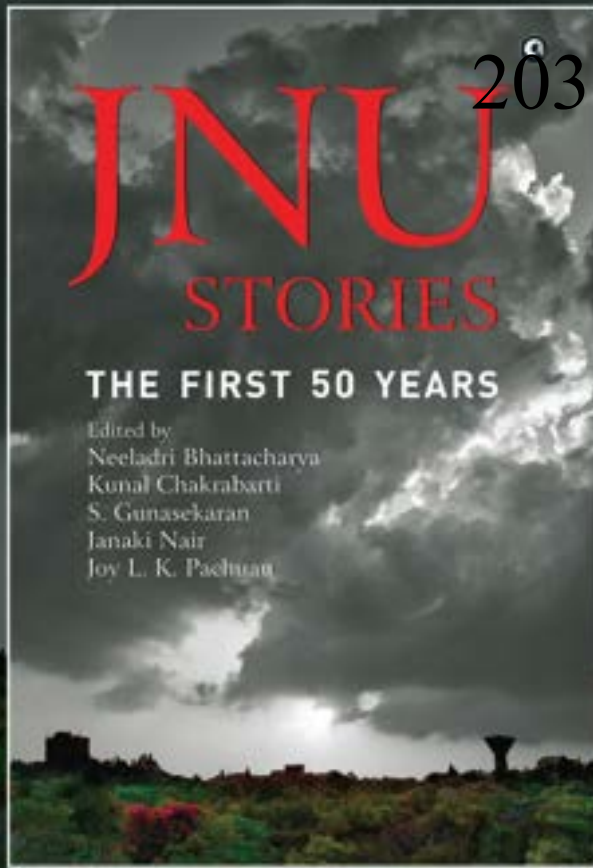
The debate on how policymakers should treat the question of population control is broadly split along two lines. In a 1995 essay, titled "Population Policy: Authoritarianism versus Cooperation," the economist Amartya Sen described these two contrasting approaches in terms of an eighteenth-century dispute between the French mathematician Nicolas de Condorcet, and the English scholar Thomas Malthus. Both felt that population growth was a

JNU

STORIES

THE FIRST 50 YEARS

Edited by
Neeladri Bhattacharya
Kunal Chakrabarti
S. Gunasekaran
Janaki Nair
Joy L. K. Paeluan



VIII

POLITICS OF GENDER



QUEERING THE CAMPUS THE ANJUMAN ExPERIENCE (2003–06)

mario da penha

On a crisp autumn evening in 2003, a circle of friends who identified across the sexuality spectrum were sipping chai and trading banter at JNU's iconic Ganga Dhaba. As new arrivals to the university's social sciences and languages programmes, we sensed a void around conversations on queerness in an otherwise politically active and intellectually robust institution. We were all young people who had come to work in activism around sexuality either because our identities necessitated it or because of the rare, but exceptional feminist academic training in undergraduate colleges in Indian cities that existed in the early millennial years. Not long before, lesbian groups had defended the film *Fire* (1996) against violent assaults from the Shiv Sena and the Bajrang Dal. Moreover, after two years of silence, the BJP-led government had responded to Naz Foundation's petition challenging Section 377 of the Penal Code in the Delhi High Court. It declared that Indian society disapproved of homosexuality, and that alone was reason enough to retain the criminal statute.

Fired by sexuality's moment in the country's imagination, we believed it was an appropriate time to create a students' platform around queerness on campus. Gay students of generations before us noted their unwillingness to wear their sexual identities on their sleeves, for fear of peer harassment and social ridicule. Only some of us were gay or bisexual, but nevertheless, all of us knew that challenging sexual norms went beyond just how we identified. How would we go about this? What would we call ourselves? At that instant, as a cold, invigorating breeze blew by the dhaba, Parth crooned a courtesan's song from *Umrao Jaan*: 'Is Anjuman Mein Aapko Aana Hai Baar Baar.' Anjuman! A milieu, a space, a mehfil where difference was welcomed, and celebrated, without prejudice—that's what we aspired to. How appropriate it was that we had named ourselves

after the words of a tawaif, a woman who skirted the edges of conformity within orthodox society. Our university's first queer collective (and India's second) had just been born.

Confronting Prejudices

During the roughly two and a half years of Anjuman's active work in JNU, challenging social biases and stereotypes around gender and sexuality remained one of our primary endeavours. At that time, many progressive students welcomed our presence, and supported our efforts at the university. However, as we soon discovered, clusters of conservatism also thrived on campus. Our introductory poster, made in both English and Hindi, tackled commonplace stereotypes of the time, such as 'women become lesbian when they can't find a man', 'homosexuals are mentally ill', and 'lesbians and gays can convert you to homosexuality if you are not careful'. We plastered these around liberally, but many posters were torn down; perhaps a sign of the entrenched prejudices we faced, and the uphill task that lay before us. Undaunted, we often made second and third posting rounds on the campus, and glued the ripped up bills back on notice boards. That November, many prejudices also found a public voice in the discussion following our screening of two films, Nishit Saran's coming out documentary, *Summer In My Veins*, and Deepa Mehta's *Fire*. Attendees queried the activist Gautam Bhan on whether homosexuality was moral, whether human beings would go extinct, and what future the family possessed if queer people were allowed to flourish. But even these partisan—and sometimes antagonistic—questions, brought us comfort, because the student community was finally speaking about sexuality in the open.

Over the next few months, we grew increasingly aware of the spatial nature of the hostility to our public discussions. Male students in and around exclusive male hostels made it progressively inconvenient for us to conduct public meetings freely. This homophobic belligerence began in minor, innocuous ways. On the eve of Holi, in 2004, at the university's annual Chaat Sammelan, the festival of humour and satire on the lawns outside Jhelum hostel, a comic asked women standing in the audience's rear to move forward. They needn't worry about the guys ahead, he quipped. 'They're all part of Anjuman.' Other humorists then mimicked

two men kissing on stage, lampooning the collective. None of us were part of the crowd that evening. But we had, nevertheless, become part of the joke. In April, we organized a teatime lecture in the mess in Periyar hostel. Visiting Filipina and Thai academics, Roselle Pineda and Amporn Marddent, spoke about lesbians and sex workers organizing in Southeast Asia. Male students in the neighbouring television room raised the volume to drown out our speakers. Pineda raised her own voice in response, and spoke above the racket, but Marddent was less successful. We moved out eventually, and continued the lecture in the open at Godavari Dhaba. Both Jhelum and Periyar were men's hostels, and our claim over male spaces for gatherings, where both masculinity and patriarchy were questioned, had thrown many male students into a state of restlessness.

However, despite these ominous portents, nothing prepared us for the full force of homophobic ridicule and intimidation, which awaited us in September. That month, after the Delhi High Court dismissed Naz's petition, Anjuman organized an after-dinner public meeting in Jhelum



VIII.1. Sunandan and Padmini hold up the rainbow flag, and lead the Pink Triangle Day march through the campus, March 2005. *Photo courtesy: Mario Da Penha*

hostel with two activists, Shaleen Rakesh and Pramada Menon on the anti-sodomy law, and the desideratum of decriminalizing homosexuality. On the night of the meeting, a huge mob, comprising mostly of men, welcomed our speakers with intimidating body language and mocking laughter, directing disrespectful, homophobic questions their way, speaking loudly over them and often preventing them from responding. When a student insinuated that homosexuality had a negative impact on Indian culture, Menon countered him swiftly: Was this the same Indian culture, which allowed for dowry murders, child abuse, and caste discrimination? Pandemonium ensued. Audience members shouted invectives towards the activists, and sneered at members of Anjuman. When it became clear that we had lost control of the situation, and the throng was physically closing in on us, we escorted Rakesh and Menon out, to jeers of 'Homosexuality hai hai,' and 'Gandu culture down down'. I remember my own tears that night, as Ponni and Sophia held and comforted me. Outside, two Dalit students offered solidarity to our embattled speakers; they were only too familiar with such aggression meted out viciously, they observed, whenever caste-based discrimination was discussed.

These turbulent events came as a rude awakening to the student body's self-understanding as a fulcrum for respectful debate. Until this time, party leaders on the organized Left, who were our friends, had distanced themselves organizationally from Anjuman, steering clear of our events, and looking past any conversation on sexuality, which did not encompass sexual harassment. Jhelum changed that. Within days, two parties—the DSU and AISA—publicly extended support to our collective for the first time. They decried the 'atmosphere of hatred and intolerance' and a 'sense of homophobia', which had resulted in attempts to deny democratic spaces [to] subjugated voices who have dared to question 'accepted' norms of morality'. Professors like Neeladri Bhattacharya and Purushottam Agrawal, scandalized by the violence, also stepped in, guarding future public meetings, ensuring that such overt harassment ceased. Others like Tanika Sarkar and Mary John promised assistance if future meetings were threatened. The university had intervened to protect its own.

Creating Solidarities

Increasingly after 2004, Anjuman considered it vital to build broader alliances both with student groups in JNU, and queer and feminist organizations outside it. We continued exchanges on sexuality with all students on campus, but we wished to open further channels with the organized left, which seemed the most receptive to allying with minority and marginalized struggles. In March 2005, we trooped through the university grounds, from dhaba to dhaba, along with friends and allies, behind a large rainbow flag, which Padmini and Sunandan held up. We clipped pink paper triangles to our hearts, to commemorate Pink Triangle day in honour of the symbol used to identify and shame homosexuals in Nazi Germany, many of whom were exterminated in the Final Solution. Shipra and Ankita handed out flyers about our march to those we passed by. Joining us, among many others, were Mona Das, president of the students' union, revolutionary singers associated with the DSU, feminists from Saheli, and even Vidrohi, the university's resident poet and conscience, who recited his verse aloud. Sometime later, we also responded to a poster drawn up by the Indic Consolidation, a short-



VIII.2. Singing revolutionary songs on Pink Triangle Day, at Godavari dhaba, March 2005.
Photo courtesy: Mario Da Penha



lived conservative group, which argued that homosexuality was never problematic within 'Indic' traditions; in the way 'Semitic' ones saw it as sinful. Our rejoinder challenged this intellectual flattening, and suggested that the experiences of Dalits and women might serve to counter such binaries. This drew cheers from many progressive quarters.

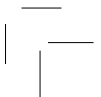
By early 2006, Anjuman joined Voices Against 377, a coalition of nonprofit and progressive groups in Delhi in support of Naz's petition against the law, which the Supreme Court reinstated in the Delhi High Court. We contributed our experiences on campus in an affidavit to demonstrate the continuing presence of the anti-sodomy statute as a barrier to free expression. In March, the American president, George W. Bush, with two wars in Afghanistan and Iraq under his belt, was due to make a state visit to the national capital. Anjuman used the occasion to show how the sexual torture of detainees at Abu Ghraib, the patriarchal ideology of saving Afghan women from the Taliban, and muscular militarism remained at the heart of Bush's foreign policy. Bush's support for Christian conservatives also meant pulling federal funding from organizations that worked with sex workers abroad, or advocated the use of condoms as the primary means of preventing the spread of HIV. A group of us, along with other campaigners from Naz and Voices marched in protest against Bush's visit, carrying the rainbow flag from Ramlila Maidan to Jantar Mantar, surrounded by a sea of red, of banners and flags of trade unionists, and others from the organized left. In April, we joined sit-ins and signed a letter in support of the Narmada Bachao Andolan, which was protesting in Delhi against the raising of the height of the Sardar Sarovar Dam in Gujarat.

However, there also emerged several other moments of rupture, of the straining of solidarities, and of a failure to build alliances. During the campus-wide debates over the presence of a restaurant run by Nestlé near Tapti Hostel, Anjuman felt pulled between the reality that corporations in a liberalized India offered safe spaces—internet cafes, coffee houses, and clubs—to queer people, and the concomitant truth that many such spaces were restricted to those of specific class, linguistic, and caste backgrounds, as well as gender identities. At another time, we also drew disappointment from friends in the SFI, who discreetly reported to us that our poster on public executions for sexual crimes in Iran in 2005 (which we, and several Western queer groups misinterpreted as punishments for sodomy) had angered some of their Muslim constituents. We won no friends among

Christian students when we challenged a fundamentalist group, Exodus International, which was visiting JNU, on its history of spewing dangerous anti-gay rhetoric, with no basis in the scriptures.

But perhaps, our most glaring failure was our inability to bring caste and sexuality into an earnest dialogue with one another. By early 2006, two groups working on caste issues emerged in JNU: the United Dalit Students' Forum (UDSF), and the Ambedkar Study Circle, in addition to *Insight*, a student magazine. Bindu and I had conversations about how we might go about this. We hoped to link historical attempts to break the spatial barriers of caste, in the Temple Entry Movement, for instance, with the breaching of heterosexual male citadels across the world. However, by this time, many Anjuman members—Priya, Ponni, Padmini, Udit, and Kalyan among them—had graduated, and left Delhi. With our dwindling numbers, and our focus on other affairs, this dialogue, sadly, remained unfulfilled.

In 2010, after many of us had left Delhi and Anjuman's activities at the university had long ceased, I jumped with joy when I read about the first openly gay candidate contesting student elections in JNU. Gourab from the SFI, was later a member of a new queer group on campus called Dhanak. In late 2018, I met Paresh, a graduate student of philosophy at JNU, at a protest against the government's new transgender bill in Mumbai. They told me about organizing a third queer collective at the university, delightfully named Hasratein. Over fifteen years after Anjuman first began, with Section 377 now confined to the dustbin of history, it fills my heart with happiness to know that the conversation on sexuality continues. Satrangi salaam!



7/2/2021

The Task and Implications of Decriminalizing Homosexual Sex in India | NYU School of Law

JD



Admissions

Faculty & Scholarship

LLM/JSD Admissions

Executive Programs

About NYU Law

Global Programs

Academics & Courses

Current Students

Alumni & Giving

Law & Business

Public Service

Centers & Institutes

[Home](#) › [Calendar](#) › [The Task and Implications of Decriminalizing Homosexual Sex in India](#) **October 2009**

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

The Task and Implications of Decriminalizing Homosexual Sex in India

Thursday, October 22, 2009 | 6:00 PM - 8:00 PM

[Academic 2019-2020](#)
[Academic 2020-2021](#)
[Admissions \(JD\)](#)
[Admissions \(LLM/JSD\)](#)
[Continuing Legal](#)
[Education \(CLE\)](#)
[Colloquia](#)
[Faculty](#)
[Student Organizations](#)
[Create New Event](#)
[My Events](#)

Furman Hall, 216

245 Sullivan street

Please join CHRGJ as we host a distinguished panel of experts and activists who were instrumental in successful litigation to annul the provision of Indian

Penal Code section 377 criminalizing homosexual sex between consenting adults in private. Professor Smita Narula, Faculty Director of the Center for

Human Rights and Global Justice, will moderate a discussion between several panelists, including:

Anand Grover, Project Director of the HIV/AIDS Unit of Lawyer's Collective in India, filed the challenge to section 377 on behalf of the Naz Foundation in Delhi High Court in 2001.

Mario D'Penha, queer feminist historian and activist, is a founding member of Anjuman and a member of Nigah. Both organizations form part of Voices Against 377, a coalition of progressive organizations that intervened in the case against section 377.

The panel will discuss the advocacy and litigation efforts that resulted in a ruling by the Delhi High Court that ruled that the provision of Indian Penal Code section 377—that criminalizes homosexual sex between consenting adults in private—is unconstitutional. The discussion will focus on the legal movement to protect LGBTI rights and decriminalize homosexuality. The panel will also examine the challenges, themes, and tactics involved in litigating cases in which domestic litigation is part of a broader international strategy to seek to promote LGBTI human rights. R.S.V.P by 10/19/2009

Contact

Veerle Opgenhaffen

veerle.opgenhaffen@nyu.edu CLE

Credit Available No

[top of page](#)

All Events

REMINDER TOOLS

[Remind me by e-mail](#)
[Save to Yahoo Calendar](#)
[Save to Google Calendar](#)
[Save to Outlook Calendar](#)
[ACCESSIBILITY](#)
[DIRECTORIES](#)
[OFFICES AND DEPARTMENTS](#)
[SITE MAP](#)
[VISITOR INFORMATION](#)

THE CITIZENSHIP ACT, 1955

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title.
2. Interpretation.

ACQUISITION OF CITIZENSHIP

3. Citizenship by birth.
4. Citizenship by descent.
5. Citizenship by registration.
6. Citizenship by naturalization.
- 6A. Special provisions as to citizenship of persons covered by the Assam Accord.
- 6B. Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of section 2.
7. Citizenship by incorporation of territory.

OVERSEAS CITIZENSHIP 7A.

Registration of Overseas Citizen of India Cardholder.

7B. Conferment of rights on Overseas Citizen of India Cardholder.

7C. Renunciation of Overseas Citizen of India Card.

7D. Cancellation of registration as Overseas Citizen of India Cardholder.

TERMINATION OF CITIZENSHIP

8. Renunciation of citizenship.
9. Termination of citizenship.
10. Deprivation of citizenship.

SUPPLEMENTAL

11. [Omitted].
12. [Omitted].
13. Certificate of Citizenship in case of doubt.
14. Disposal of application under sections 5, 6 and 7A.
- 14A. Issue of national identity cards.
15. Revision.
- 15A. Review.

16. Delegation of powers.
17. Offences.

1

SECTIONS

18. Power to make rules.
 19. [*Repealed.*].
- [THE FIRST SCHEDULE.] [*Omitted.*].
- THE SECOND SCHEDULE.
- THE THIRD SCHEDULE.
- [THE FOURTH SCHEDULE.] [*Omitted.*].

THE CITIZENSHIP ACT, 1955 ACT No. 57 OF 1955¹

[30th December, 1955.]

An Act to provide for the acquisition and determination of Indian citizenship.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Citizenship Act, 1955.

2. Interpretation.—(1) In this Act, unless the context otherwise requires,—

(a) “a Government in India” means the Central Government or a State Government. ²[(b)

“illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]

³[Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920) or from the application of the provisions of the Foreigners Act, 1946 (31 of 1946) or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;]

(d) “Indian consulate” means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;

(e) “minor” means a person who has not attained the age of eighteen years;

⁴[(ee) “Overseas Citizen of India Cardholder” means a person registered as an Overseas Citizen of India Cardholder by the Central Government under section 7A;]

(f) “person” does not include any company or association or body of individuals, whether incorporated or not;

(g) “prescribed” means prescribed by rules made under this Act;

⁵* * * * *

(h) “undivided India” means India as defined in the Government of India Act, 1935, as originally enacted.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

¹ . This Act has been extended to the Union territory of Dadra and Nagar haveli, *vide* Notification No. S.O. 846, dated 17-3-1962, Gazette of India, Extraordinary, Part II, sec. 3(ii), page 517. The Union territory of Goa, Daman and Diu *vide* Notification No. S.O. 847, dated 17-3-1962, *see ibid.*, and to Pondicherry with modification *vide* Notification No. G.S.R. 1557, dated 24-11-1962, Gazette of India, Part II, section 3(i).

² . Subs. by Act 6 of 2004, s. 2, for clauses (b) and (c) (w.e.f. 3-12-2004).

³ . Ins. by Act 47 of 2019, s. 2 (w.e.f. 10-1-2020).

⁴ . Subs. by Act 1 of 2015, s. 2, for clause (ee) (w.e.f. 6-1-2015).

⁵ . Omitted by Act 32 of 2005, s. 2 (w.e.f. 28-6-2005).

(3) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred

3

before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

ACQUISITION OF CITIZENSHIP

¹[3. **Citizenship by birth.**—(1) Except as provided in sub-section (2), every person born in India—

- (a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
- (b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004) and either of whose parents is a citizen of India at the time of his birth;
- (c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—
 - (i) both of his parents are citizens of India; or
 - (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—

- (a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
- (b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.]

4. Citizenship by descent.—²[(1) A person born outside India shall be a citizen of India by descent,—

- (a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or
- (b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:

Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

¹ . Subs. by Act 6 of 2004, s. 3, for section 3 (w.e.f. 3-12-2004).

² . Subs. by s. 4, *ibid.*, for sub-section (1) (w.e.f. 3-12-2004).

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:

4

Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or

(ii) with the permission of the Central Government, after the expiry of the said period:

Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), ¹[any person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.—²[(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

¹ . Subs. by Act 39 of 1992, s. 2, for “any male person”.

² . Subs. by Act 6 of 2004, s. 5, for sub-section (1) (w.e.f. 3-12-2004).

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and ¹[is ordinarily resident in India for twelve months] immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an ²[Overseas Citizen of India Cardholder] for five years, and who ³[is ordinarily resident in India for twelve months] before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

5

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.]

⁴[(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of *Explanation 1* of sub-section (1), up to a maximum of thirty days which may be in different breaks.]

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

⁵[(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.].

6. Citizenship by naturalisation.—(1) Where an application is made in the prescribed manner by any person of full age and capacity ⁶[not being an illegal migrant] for the grant of a certificate of naturalisation

¹ . Subs. by Act 1 of 2015, s. 3, for “has been residing in India for one year” (w.e.f. 6-1-2015).

² . Subs. by s. 3, *ibid.*, for “Overseas Citizen of India” (w.e.f. 6-1-2015).

³ . Subs. by s. 3, *ibid.*, for “has been residing in India for one year” (w.e.f. 6-1-2015).

⁴ . Ins. by Act 1 of 2015, s. 3 (w.e.f. 6-1-2015).

⁵ . Ins. by Act 6 of 2004, s. 5 (w.e.f. 3-12-2004).

⁶ . Subs. by s. 6, *ibid.*, for “who is not a citizen of a country specified in the First Schedule” (w.e.f. 3-12-2004).

to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

¹[6A. **Special provisions as to citizenship of persons covered by the Assam Accord.**—(1) For the purposes of this section—

(a) “Assam” means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);

(b) “detected to be a foreigner” means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;

(c) “specified territory” means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);

(d) a person shall be deemed to be Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;

6

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner; shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any

¹ . Ins. by Act 65 of 1985, s. 2 (w.e.f. 7-12-1985).

question arises as to whether such person complies with any other requirement under this subsection, the registering authority shall,—

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

7

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.]

¹[**6B. Special provisions as to citizenship of person covered by proviso to clause (b) of subsection (1) of section 2.**—(1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfillment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of

¹ . Ins. by Act 47 of 2019, s. 3 (w.e.f. 10-1-2020).

naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under “The Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873 (Reg. 5 of 1873).]

7. Citizenship by incorporation of territory.—If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

¹[OVERSEAS CITIZENSHIP

²[**7A. Registration of Overseas Citizen of India Cardholder.**—(1) The Central Government may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, register as an Overseas Citizen of India Cardholder— (a) any person of full age and capacity,—

(i) who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or

8

(ii) who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or

(iii) who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

(iv) who is a child or a grandchild or a great grandchild of such a citizen; or

(b) a person, who is a minor child of a person mentioned in clause (a); or

(c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or

(d) 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:

Provided that for the eligibility for registration as an Overseas Citizen of India Cardholder, such spouse shall be subjected to prior security clearance by a competent authority in India:

¹ . Ins. by Act 6 of 2004, s. 7 (w.e.f. 3-12-2004).

² . Subs. by Act 1 of 2015, s. 4, for sections 7A, 7B, 7C and 7D (w.e.f. 6-1-2015).

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.

(2) The Central Government may, by notification in the Official Gazette, specify the date from which the existing persons of Indian Origin Cardholders shall be deemed to be Overseas Citizens of India Cardholders.

Explanation.—For the purposes of this sub-section, “Persons of Indian Origin Cardholders” means the persons registered as such under notification number 26011/4/98 F.I., dated the 19th August, 2002, issued by the Central Government in this regard.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, if it is satisfied that special circumstances exist, after recording the circumstances in writing, register a person as an Overseas Citizen of India Cardholder.

7B. Conferment of rights on Overseas Citizen of India Cardholder.—(1) Notwithstanding anything contained in any other law for the time being in force, an Overseas Citizen of India Cardholder shall be entitled to such rights, other than the rights specified under sub-section (2), as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(2) An Overseas Citizen of India Cardholder shall not be entitled to the rights conferred on a citizen of India—

- (a) under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
- (b) under article 58 of the Constitution for election as President;
- (c) under article 66 of the Constitution for election as Vice-President;
- (d) under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
- (e) under article 217 of the Constitution for appointment as a Judge of the High Court;
- (f) under section 16 of the Representation of the People Act, 1950 (43 of 1950) in regard to registration as a voter;
- (g) under sections 3 and 4 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;

9

(h) under sections 5, 5A and section 6 of the Representation of the People Act, 1951 (43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or the Legislative Council, as the case may be, of a State;

(i) for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order in that behalf, specify.

(3) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

7C. Renunciation of Overseas Citizen of India Card.—(1) If any Overseas Citizen of India Cardholder of full age and capacity makes in prescribed manner a declaration renouncing the Card registering him as an Overseas Citizen of India Cardholder, the declaration shall be registered by the Central Government, and upon such registration, that person shall cease to be an Overseas Citizen of India Cardholder.

(2) Where a person ceases to be an Overseas Citizen of India Cardholder under sub-section (1), the spouse of foreign origin of that person, who has obtained Overseas Citizen of India Card under clause (d)

of sub-section (1) of section 7A, and every minor child of that person registered as an Overseas Citizen of India Cardholder shall thereupon cease to be an Overseas Citizen of India Cardholder.

7D. Cancellation of registration as Overseas Citizen of India Cardholder.—The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that—

- (a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or
- (b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or
- (c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or
- (d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or¹[(*da*) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or;]
- (e) it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or
- (f) the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—
 - (i) has been dissolved by a competent court of law or otherwise; or
 - (ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person.]]

¹[Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.]

10

TERMINATION OF CITIZENSHIP

8. Renunciation of citizenship.—(1) If any citizen of India of full age and capacity,^{2***}, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where³[a person] ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India:

¹ . Ins. by Act 47 of 2019, s. 4 (w.e.f. 10-1-2020).

² . The words “who is also a citizen or national of another country” omitted by Act 6 of 2004, s. 8 (w.e.f. 3-12-2004).

³ . Subs. by Act 39 of 1992, s. 3, for “a male person” (w.e.f. 10-12-1987).

Provided that any such child may, within one year after attaining full age, make a declaration ¹[in the prescribed form and manner] that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

2*

*

*

*

*

(9) **Termination of citizenship.**—(1) Any citizen of India who by naturalisation, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any ³[citizen of India] has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

(10) **Deprivation of citizenship.**—(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b)(ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that—

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of

11

which India is a member, not registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is

¹ . Ins. by Act 6 of 2004, s. 8 (w.e.f. 3-12-2014).

² . Omitted by s. 8, *ibid.* (w.e.f. 3-12-2004).

³ . Subs. by s. 9, *ibid.*, for “person” (w.e.f. 3-12-2004).

proposed to be made and, if the order is proposed to be made on any of the grounds specified in subsection (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

SUPPLEMENTAL

(11)[*Commonwealth citizenship.*]Omitted by Act The Citizenship (Amendment) Act, (6 of 2004), s. 10 (w.e.f. 3-12-2004).

(12)[*Power to confer rights of Indian citizen or citizens of certain country.*] Omitted by s. 10, *ibid.* (w.e.f. 3-12-2004).

(13)**Certificate of Citizenship in case of doubt.**—The Central Government may, in such cases as it thinks fit, certify that a person with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

(14)**Disposal of application under sections 5, 6 and 7A.**—(1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under ¹[sections 5, 6 and 7A] and shall not be required to assign any reasons for such grant or refusal.

(2) Subject to the provisions of section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

²[**14A. Issue of national identity cards.**—(1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

(2) The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.

(4) The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.

(5) The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.]

¹ . Subs. by Act 6 of 2004, s. 11, for “sections 5 and 6” (w.e.f. 3-12-2004).

² . Ins. by s. 12, *ibid.* (w.e.f. 3-12-2004).

(15)**Revision.**—(1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for a revision of that order:

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

¹[15A. **Review.**—(1) Any person aggrieved by an order made by the Central Government, may, within thirty days from the date of such order, make an application for review of such order:

Provided that the Central Government may entertain an application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that an application for a review of an order passed in terms of the provisions of section 14A shall be disposed of in the manner provided for in the procedure as may be laid down under clause (ia) of sub-section (2) of section 18.

(2) On receipt of an application under sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.]

(16)**Delegation of powers.**—The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

(17)**Offences.**—Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to ²[five years], or ³[with fine which may extend to fifty thousand rupees], or with both.

(18)**Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the registration of anything required or authorised under this Act to be registered, and the conditions and restrictions in regard to such registration;

⁴[(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;];

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act and the time within which and the manner in which, such oaths shall be taken and recorded;

¹ . Ins. by Act 6 of 2004, s. 13, *ibid.* (w.e.f. 3-12-2004).

² . Subs. by s. 14, *ibid.*, for “six months” (w.e.f. 3-12-2004)

³ . Subs. by s. 14, *ibid.*, for “with fine” (w.e.f. 3-12-2004)..

⁴ . Ins. by s. 15, *ibid.* (w.e.f. 3-12-2004).

- (d) the giving of any notice required or authorised to be given by any person under this Act;

13

(e) the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

¹[(*ee*) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (6) of section 6A shall be submitted and other matters connected with such declarations;]

²[(*eei*) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B;]

³[(*eea*) the conditions and the manner subject to which a person may be registered as an Overseas Citizen of India Cardholder under sub-section (1) of section 7A;

(*eeb*) the manner of making declaration for renunciation of Overseas Citizen of India Card under sub-section (1) of section 7C;]

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;

(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil courts;

⁴[(*ia*) the procedure to be followed in compulsory registration of the citizens of India under subsection (5) of section 14A;]

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and

(k) any other matter which is to be, or may be, prescribed under the Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

⁵[Provided that any rule made in respect of a matter specified in clause (*ia*) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.]

⁶[(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of session, immediately following

¹ . Ins. by Act 65 of 1985, s. 3 (w.e.f. 7-12-1985).

² . Ins. by Act 47 of 2019, s. 5 (w.e.f. 10-1-2020).

³ . Ins. by Act 1 of 2015, s. 5 (w.e.f. 6-1-2015).

⁴ . Ins. by Act 6 of 2004, s. 15 (w.e.f. 7-12-1985).

⁵ . The proviso ins. by s. 15, *ibid.* (w.e.f. 3-12-2004).

⁶ . Subs. by Act 4 of 1986, s. 2 and the Schedule for sub-section (4) (w.e.f. 15-5-1986).

the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

(19)[*Repeals.*] [*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule.*]

14

[THE FIRST SCHEDULE.] [*Omitted by Act the Citizenship (Amendment) Act, 2003 (6 of 2004), s. 16 (w.e.f. 3-12-2004).*]

15

¹[THE SECOND SCHEDULE[*See* sections 5(2) and 6(2)]

OATH OF ALLEGIANCE

¹ . Subs. by Act 6 of 2004, s. 17, for the Second Schedule (w.e.f. 3-12-2004).

I, A. B. _____ do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfill my duties as a citizen of India.]

QUALIFICATIONS FOR NATURALISATION The

qualifications for naturalisation of a person ^{1***} are—

(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;

(b) that, if he is a citizen of any country, ^{2***};

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

³[Provided that if the Central Government is satisfied that special circumstances exist, it may, after recording the circumstances in writing, relax the period of twelve months up to a maximum of thirty days which may be in different breaks.]

(d) that during the ⁴[fourteen years] immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than ⁵[eleven years];

⁶[Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as “not less than five years” in place of “not less than eleven years”.]

(e) that he is of good character;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into, or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit,—

(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;

¹ . Subs. by Act 6 of 2004, s. 18, for “who is not a citizen of a country specified in the First Schedule” (w.e.f. 3-12-2004).

² . Subs. by s. 18, *ibid.*, for “he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government” (w.e.f. 3-12-2004).

³ . The proviso ins. by Act 1 of 2015, s. 6 (w.e.f. 6-1-2015).

⁴ . Subs. by Act 6 of 2004, s. 18, for “twelve years” (w.e.f. 3-12-2004).

⁵ . Subs. by s. 18, *ibid.*, for “nine years” (w.e.f. 3-12-2004).

⁶ . The proviso ins. by Act 47 of 2019, s. 6 (w.e.f. 10-1-2020).

(ii) allow periods of residence or service earlier than ¹[fifteen years] before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.

17

[THE FOURTH SCHEDULE.] *Omitted by the Citizenship (Amendment) Act, 2005 (32 of 2005), s. 5 (w.e.f. 28-6-2005).*

¹ . Subs. by Act 6 of 2004, s. 18, for “thirteen years” (w.e.f. 3-12-2004).

Date of publication – 15.11.2019

OVERSEAS CITIZENSHIP OF INDIA (OCI) CARDHOLDER

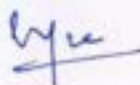
FREQUENTLY ASKED QUESTIONS (FAQs)

1. Who is eligible to apply for registration as OCI cardholder?

Following categories of foreign nationals are eligible for registration as Overseas Citizen of India (OCI) Cardholder:-

- (1) Who was a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or
- (2) who was eligible to become a citizen of India on 26.01.1950; or
- (3) who belonged to a territory that became part of India after 15.08.1947; or
- (4) who is a child or a grandchild or a great grandchild of such a citizen (mentioned in (1) to (3) above) ; or
- (5) who is a minor child of such persons mentioned above; or
- (6) who is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India; or
- (7) 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 of the Citizenship Act, 1955 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.

Note : 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.



2. Who was eligible to become Citizen of India on 26.01.1950?

Any person who, or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who was ordinarily residing in any country outside India was eligible to become citizen of India on 26.01.1950.

3. Which territories became part of India after 15.08.1947 and from what date?

The territories which became part of India after 15.08.1947 are:

- | | | |
|-------|----------------------|--------------|
| (i) | Dadra & Nagar Haveli | - 11.08.1961 |
| (ii) | Goa, Daman and Diu | - 20.12.1961 |
| (iii) | Puducherry | - 16.08.1962 |
| (iv) | Sikkim | - 26.04.1975 |

4. Can the spouse of the eligible person apply for registration as OCI Cardholder?

A spouse of eligible person can apply if he/she is eligible in his/ her own capacity.

Further, 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 of the Citizenship Act, 1955 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 can apply.

5. Can minor children apply for registration as OCI Cardholder?

Yes. However, if either of the child's 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, the child will not be eligible for registration as an Overseas Citizen of India Cardholder.

6. In what form should a person apply for registration as an OCI Cardholder and where are the forms available?

Applications for registration as OCI Cardholder is to be submitted only on the online system. For this purpose, please log on to <https://ociservices.gov.in>.

7. What documents have to be submitted with the application?

List of supporting documents to be uploaded along with the application are :-

(1) Proof of present citizenship –

- (a) Copy of present valid passport (applicable in all cases), with validity of minimum 6 months at the time of submission of application.
- (b) Copy of the certificate of registration of citizenship/ Naturalization (as the case may be), for the present nationality of the applicant (applicable in all cases).
- (c) Cancelled/ Surrendered Indian passport with Surrender Certificate (for those who have surrendered Indian passport in or after 2010).

(2) Evidence of address of the place of application -

- (i) Copy of the Electricity Bill/ Telephone Bill in own/ parents/ grandparents/ spouse name
- (ii) If the above is in any other relative's name, undertaking from the relative stating that the foreigner is residing with him/ her.
- (iii) Lease License in case of tenants.

(3) In case application is submitted in India -

Copy of any long duration Visa (**other than Tourist Visa, Missionary Visa and Mountaineering Visa**) with 3 months validity as on the date of application along with Residential Permit/ Registration Certificate issued by the jurisdictional FRRO/ FRO, as the case may be (applicable in all cases where application is submitted in India).

[Foreign nationals holding Tourist Visa, Missionary visa and Mountaineering visa cannot apply for registration as OCI cardholder in India]

(4) Evidence of self or parents or grandparents or great grandparents -

Being a citizen of India at the time of, or at any time after the commencement of the Constitution i.e. 26.01.1950; or

- (a) Being eligible to become a citizen of India at the time of commencement of the Constitution i.e. 26.01.1950; or
- (b) Belonging to a territory that became part of India after 15th August, 1947.

These could be:

- (i) Copy of the Indian Passport; or
- (ii) Copy of the Domicile Certificate issued by the Competent Authority; or
- (iii) Copy of Nativity Certificate from the competent authority; or
- (iv) PIO/ OCI card of parents/ spouse along with documents to prove Indian origin; or
- (v) Any other proof substantiating the request. Usually applicants are able to submit a certificate of residence or place of birth of self/ parents/ grandparents from First Class Magistrate/ District Magistrate (DM) of the concerned place.

(5) Evidence of relationship as parent/ grandparent/ great grandparent, if their Indian origin is claimed as basis for registration as OCI Cardholder -

- (a) The document of relationship could be "Birth Certificate" issued from competent authority mentioning both parents' name. In case the birth certificate is issued by a foreign authority, it is to be Apostled or endorsed by the concerned Indian Mission abroad/ concerned foreign Mission in India.

Note : If the parents are divorced, court order of dissolution of marriage, which specifically mentions that the legal custody of the child is with the parent, who is applying for the OCI card. If the court order is in any foreign language, translation in English or Hindi by authorized translator is to be enclosed.

- (b) Birth certificate from Birth Registrar to be supported by (i) Education documents, if any and (ii) Documents of inherited landed property, if any.
- (c) Marriage certificate of parents (If not available, reasons for same).

(6) In case of minor child whose both parents are citizens of India or one of the parents is a citizen of India -

- (i) Copy of child's birth certificate
- (ii) Marriage certificate of parents (if no marriage certificate is available, reasons for same to be indicated)

- (iii) Copy of Indian passport of the parents / one of the parents or copy of the Domicile Certificate or Nativity Certificate issued by the Competent Authority in respect of the parents/ one of the parents or any other proof substantiating the status of the parents/ one of the parents as being Indian citizen(s).
 - (iv) If the parents are divorced, court order of dissolution of marriage, which specifically mentions that the legal custody of the child is with the parent who is applying for the OCI card. If the court order is in any foreign language, translation in English or Hindi by authorized translator is to be enclosed.
- (7) Evidence as spouse of foreign origin of a citizen of India or spouse of foreign origin of an OCI Cardholder -
- (i) Registered marriage certificate; and
 - (ii) In the case of spouse of an Indian citizen - copy of the Indian Passport of the spouse or copy of the Domicile Certificate or Nativity Certificate issued by the Competent Authority in respect of the Indian spouse or any other proof substantiating the status of the spouse as being an Indian citizen.
 - (iii) In the case of spouse of an OCI Cardholder - Copy of the present valid Passport of the spouse and copy of the OCI Card of the spouse and copies of the documents upon which the OCI Card was issued to the spouse.
 - (iv) Declaration from the Indian/ OCI cardholder spouse stating that in case of divorce/ separation/ death of foreign spouse, it is his/ her responsibility to surrender the OCI card to the Government of India.

Note: In all cases where the marriage certificate is to be submitted, the following guidelines will be applicable:-

- (i) If the marriage is solemnized in India, Marriage certificate issued by Marriage Registrar is required.
- (ii) If the marriage is solemnized in foreign country, it should be apostled/ certified by the concerned Indian Mission/ Post.

- (iii) If the marriage certificate is in any foreign language other than English, it should be translated in English by authorized translator.

Note: Only one living spouse duly fulfilling the conditions laid down in clause (d) of sub-section (1) of section 7A of Citizenship Act, 1955 shall be registered as an Overseas Citizen of India Cardholder

8. What is the application fee payable for registration as OCI cardholder?

- (a) In case of application submitted in Indian Mission/ Post abroad - By way of Demand Draft for US\$275 for each applicant or equivalent in local currency.
- (b) In case application is submitted in India - a fee of Rs.15,000/- by way of Demand Draft drawn in favour of "Pay and Accounts Officer (Secretariat), Ministry of Home Affairs" payable at New Delhi.

9. What are the specifications of the photograph to be uploaded with the application?

Photograph to be uploaded on the application should be of square shape of size not less than 51x 51 mm (with 80% coverage of face). It should have plain light color background (not white) without the border with front view of person's head and shoulders showing the full face in middle of the photograph.

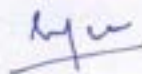
The height and width of the applicant photo must be equal. The minimum dimensions are 200 pixels (width) x 200 pixels (height). The maximum dimensions are 900 pixels (width) x 900 pixels (height).

The images of the photograph and signature must be in JPEG/ JPG format with max size 200 KB.

Note: Photographs that do not conform to the above standards will be rejected and may cause delay in processing the applications.

10. Whether applicant(s) have to go to the Indian Mission/ Post/ FRRO concerned to submit hard copy of the application (s)?

After submission of the complete application online including documents, photograph and signature, the applicants are required to bring only the originals of the supporting documents to the Indian Mission/ Post/ FRRO concerned for prior



verification. They are not required to bring hard copies/ printouts of the application or the photocopies of the uploaded documents.

237

11. Whether the applicant(s) have to take oath before the Counsel of the Indian Mission/Post?

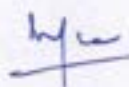
No. Earlier provision in this regard has been done away with.

12. Where the applicant has to bring the original documents for verification?

The originals of the documents are to be submitted to the Indian Mission/ Post having jurisdiction over the country of which the applicant is a citizen or if he/she is not living in the country of his/her citizenship, to the Indian Mission/Post having jurisdiction over the country of which the applicant is ordinarily a resident.

In case the applicant is residing in India, the originals of the documents will have to be submitted to the FRRO concerned. Details of FRROs along with their jurisdiction are given below:-

S.No.	FRRO Office	States/ UTs (jurisdiction)
1	FRRO, Amritsar	Punjab, Jammu & Kashmir and Chandigarh
2	FRRO, Bengaluru	Karnataka
3	FRRO, Chennai	Tamilnadu, Puducherry and Andaman & Nicobar islands
4	FRRO, Delhi	Delhi, Haryana, Rajasthan, Himachal Pradesh and Uttarakhand
5	FRRO, Hyderabad	Andhra Pradesh, Telangana, Odisha and Chhattisgarh
6	FRRO, Kochi	Kerala (excluding jurisdiction of other FRROs in Kerala)
7	FRRO, Kolkata	West Bengal, Sikkim, Assam, Arunachal Pradesh, Mizoram, Nagaland, Manipur, Meghalaya and Tripura
8	FRRO, Kozhikode (Calicut)	Kerala (excluding jurisdiction of other FRROs in Kerala)
9	FRRO, Lucknow	Uttar Pradesh, Bihar and Jharkhand
10	FRRO, Mumbai	Maharashtra, Madhya Pradesh and Daman & Diu. Till further orders, cases pertaining to Goa and



		Dadra & Nagar Haveli will also be handled by the FRRO, Mumbai
11	FRRO, Thiruvananthapuram	Kerala (excluding jurisdiction of other FRROs in Kerala) and Lakshadweep
12	FRRO, Ahmedabad	Gujarat

For addresses and contact details of FRROs, please log on to <https://boi.gov.in/content/frro-contact-list>

Note: For the above purpose, 'ordinarily resident' will mean a person staying in a particular country or in India for a continuous period of 6 months.

If there is any deficiency in the application/ uploaded documents/ photograph, the Indian Mission/Post/FRRO concerned shall inform the same to the applicant by email. The applicant may then submit the required documents to the Indian Mission/ Post/ FRRO concerned, who will take necessary action to upload the same on the online system.

After verification of the documents with the originals and confirming that the application along with all the documents submitted are in order, the Indian Mission/Post/FRRO concerned shall acknowledge the receipt of the application on the online system and simultaneously an auto email will be sent to the applicant informing "**Application received and is under process**". Thereafter, the originals of the supporting documents will be returned to the applicant.

13. Will there be a personal interview at the Indian Mission/ FRRO concerned?

There will be a mandatory verification step of personal interview (either physical or through video conference) of all OCI applicants who apply for registration as OCI cardholder under section 7A(1)(d) of the Citizenship Act, 1955 (i.e. spouse basis). This personal interview shall be conducted by the Indian Mission/ Post/ FRRO concerned at the time of document verification stage itself and the OCI application on spouse basis shall be acknowledged on the online system only after the personal interview has been held. In other cases, there will be no personal interview.

14. Will the biometrics be captured at the time of submission of the application?

Capturing of biometrics of fingerprints & face (if technically feasible) in case of applicants for registration as OCI cardholders is mandatory. In case of applications for registration as OCI cardholders submitted to Indian Missions/ Posts abroad, the applicants will have the option of giving biometrics at the application stage or at the Immigration Check Posts on arrival in India. Applicants are, however, advised to give biometrics at the Indian Mission/ Post concerned at the

by

application stage itself i.e. at the document verification stage. If for any reason the applicant is not able to give the biometrics at the application stage (which shall be informed to the Indian Mission/ Post concerned in writing), his/ her biometrics shall be captured at the Immigration Check Posts (ICPs) on arrival in India.

In respect of applications submitted to FRROs in India, biometrics shall be captured at the application stage itself i.e. at the document verification stage.

Biometrics captured would be valid for next 5 years from the date of enrolment and applicants would not be required to be enrolled again within 5 years, if they have already enrolled their biometrics. Applicants with no fingerprints or poor fingerprints will be exempted and only facial traits would be captured for them. Further, applicants with less number of fingers shall give fingerprints of existing fingers only. Applicants above 70 years of age or below 12 years of age would be exempted from biometric capturing.

15. What is the procedure for collecting the OCI cardholder registration booklet?

After grant of registration, a registration certificate in the form of a booklet will be issued. For collection of the OCI Cardholder registration booklet, the applicant is required to be present at the concerned Indian Mission/FRRO in person or he/she can send a duly authorized person, along with his/her passport for this purpose. However, the condition is that the applicant should be physically present in the country of issuance of OCI cardholder registration booklet when it is collected through an authorized person. If a person is not in a position to travel to the country of issuance of the OCI cardholder registration booklet, he/she could procure it through the concerned Indian Mission/ FRRO of their present place of stay by making a formal request to the office issuing the OCI Cardholder registration booklet.

16. Will the 'U' Visa sticker be pasted on the foreign passport?

'U' (Universal) visa sticker on the foreign passport of OCI card holders has been dispensed with from 29th January, 2015. Immigration authorities in ICPs in India have been advised not to insist on production of foreign passport containing the 'U' visa sticker in the case of OCI cardholders while they enter/ exit India.

17. What are the requirements to be fulfilled by erstwhile PIO cardholders for registration as OCI Cardholder?

All PIO cardholders with valid PIO cards as on 09.01.2015 are deemed to be OCI cardholders in terms of the notification issued by the Ministry of Home Affairs on 9th January, 2015 in exercise of the powers conferred by section 7A(2) of the

Citizenship Act, 1955. However, all persons having valid PIO cards as on 9th January, 2015 are advised to apply for registration as OCI cardholder in view of the following advantages in possessing an OCI card:-

- (a) OCI card is a smart card
- (b) Possession of an OCI card will facilitate quicker immigration clearance at the Immigration Check Posts
- (c) It will help in obtaining various Consular Services from the Indian Missions
- (d) For those who are resident in India, it will facilitate in availing various services in India.

A separate online application form for submission of application for registration as OCI cardholder in lieu of PIO card is available in the website <https://ociservices.gov.in>. Applications can be submitted online from anywhere. An erstwhile PIO cardholder with a valid PIO card as on 09.01.2015 will have to upload only the following documents with his/ her application:-

- (a) Copy of the valid Passport
- (b) Copy of the PIO card

Applicants are to make payment of the following fee:-

- (a) In case of application submitted in Indian Missions/Post abroad- By way of Demand Draft for USD 100 for each applicant or equivalent in local currency.
- (b) In case of application submitted in India, a fee of INR 5,500/- by way of Demand draft drawn in favour of "Pay and Accounts Officer (Secretariat), Ministry of Home Affairs" payable at New Delhi".

The OCI card shall be issued by the Indian Mission/ Post/ FRRO concerned within the jurisdiction of the applicant's place of residence. The applicant will have to approach the Indian Mission/ Post/ FRRO concerned for collecting the OCI Card by surrendering the PIO card.

18. What are the consequences of furnishing wrong information or suppressing material information?

If the registration as an OCI Cardholder was obtained by means of fraud, false representation or the concealment of any material fact, the registration as OCI Cardholder shall be cancelled under section 7D of the Citizenship Act, 1955. The person will also be blacklisted thereby banning his/her future entry into India.

W/C

19. What is the time taken for registration as OCI?

Normally, the time taken for issue of OCI registration booklet is about 30 days from the date of acknowledgement of the application on the online system.

20. If the registration as an OCI Cardholder is not granted, what amount will be refunded?

If registration is refused, an amount of US \$ 250 or equivalent in local currency shall be refunded. US \$ 25 is the processing fees, which is non-refundable. In case of application submitted in India, the processing fee is Rs.1400/-, which is non-refundable.

21. Will a duplicate certificate of registration as an OCI Cardholder will be issued in the event of loss of the original certificate?

Yes. For this purpose, an application has to be made to the Indian Mission/Post/ FRRO with evidence for loss of certificate of registration under OCI Miscellaneous Services. For details please see Brochure on OCI, Guidelines & FAQs on OCI Miscellaneous Services on this website.

22. Will the applicant lose his citizenship after registering as an OCI Cardholder?

No.

23. Would the Indian civil/criminal laws be applicable to persons registered as OCI Cardholder?

Yes, for the period the OCI Cardholder is living in India.

24. Can a person registered as an OCI Cardholder be granted Indian citizenship?

Yes. As per section 5(1)(g) of the Citizenship Act, 1955, a person registered as an OCI cardholder for 5 years and who is ordinarily resident in India for twelve months before making an application for registration is eligible for grant of Indian citizenship. Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, up to a maximum of thirty days which may be in different breaks.

25. Will any category of persons be registered as an OCI Cardholder on gratis basis?

No.

- (i) Multiple entry lifelong visa for visiting India for any purpose.

However, OCI Cardholders will require a special permission to undertake research work in India for which they may submit the application to the Indian Mission/ Post/ FRRO concerned.

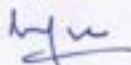
OCI cardholders are also not entitled to undertake Missionary, Mountaineering, journalism & tabligh activities without prior permission of the Government of India. For undertaking missionary, mountaineering & tabligh activities, OCI cardholder may seek prior permission from the Indian Mission/ Post/ FRRO concerned. For undertaking journalistic activities, requisite permission may be sought from the External Publicity (XP) Division of the Ministry of External Affairs.

OCI cardholder shall also require Protected Area Permit (PAP)/ Restricted Area Permit (RAP) to visit any place which falls within the Protected/ Restricted Area notified by the Government as in the case of any other foreigner.

- (ii) Exemption from registration with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay in India.
- (iii) Parity with Non-Resident Indians (NRIs) in respect of all facilities available to them in economic, financial, and educational fields **except in matters relating to the acquisition of agricultural or plantation properties.**
- (iv) Registered Overseas Citizen of India Cardholder shall be treated at par with Non-Resident-Indians in the matter of inter-country adoption of Indian children.

- (v) Registered Overseas Citizen of India Cardholder shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.
- (vi) Registered Overseas Citizen of India Cardholder shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.
- (vii) Parity with Non-Resident Indians (NRI) in respect of:-
 - (A) entry fees to be charged for visiting the national monuments, historical sites and museums in India;
 - (B) pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-
 - (a) doctors, dentists, nurses and pharmacists;
 - (b) advocates;
 - (c) architects;
 - (d) chartered accountants;
 - (C) to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.
- (viii) State Governments should ensure that the OCI Cardholder registration booklets of OCI Cardholders are treated as their identification for any services rendered to them. In case proof of residence is required, Overseas Citizens of India Cardholder may give an affidavit attested by a notary public stating that a particular/specific address may be treated as their place of residence in India and may also in their affidavit give their overseas residential address as well as e-mail address, if any.
- (ix) Overseas Citizen of India (OCI) cardholders are eligible for appointment as teaching faculty in IITs, NITs, IIMs, IISERs, IISc, Central Universities and in the new AIIMS set up under Pradhan Mantri Swasthya Suraksha Yojana (PMSSY).

Any other benefits to an OCI Cardholder will be notified by the Central Government under section 7B(1) of the Citizenship Act, 1955.



27. What are the benefits to which the OCI Cardholder is not entitled to?

The OCI Cardholder is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament, cannot hold Constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc. as specified in section 7B(2) of the Citizenship Act, 1955. The OCI Cardholder shall not be entitled for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may, by special order, in that behalf specify. Further, the OCI Cardholder cannot acquire agricultural or plantation properties in India.

28. If a person is already holding more than one nationality, can he/she apply for registration as OCI Cardholder?

Yes.

29. Whether an OCI Cardholder be entitled to apply for and obtain normal Indian passport which is given to a citizen of India?

No. Indian Passport is given only to an Indian citizen. An OCI cardholder can be registered as a citizen of India under section 5(1)(g) of the Citizenship Act, 1955 as explained in reply to Question 24 above.

30. Whether nationals of Commonwealth countries are eligible for registration as OCI Cardholder?

Yes, if they fulfill the eligibility criteria.

31. Can a person renounce his/her registration as OCI Cardholder?

Yes. He/she has to make a declaration renouncing the Card registering him/her as an OCI Cardholder to the Indian Mission/Post/ FRRO from where the registration as OCI Cardholder was granted. After receipt of the declaration, the Indian Mission/Post/FRRO shall issue an acknowledgement in the prescribed form. Upon such registration of the declaration, the person shall cease to be an OCI Cardholder. Where a person ceases to be an OCI Cardholder, the spouse of foreign origin of that person who has obtained OCI Card under clause (d) of subsection (1) of section 7A and every minor child of that person registered as an OCI Cardholder shall thereupon cease to be an OCI Cardholder.

32. Can an OCI holder undertake Research work in India? Will they require a separate Research visa?

OCI cardholders do not require a separate visa for undertaking research activities. However, they would require a special permission to undertake research work in

33. What are the other activities for which OCI cardholder would require separate permission?

OCI cardholders are not entitled to undertake Missionary, Mountaineering, journalism & tabligh activities without prior permission of the Government of India. For undertaking missionary, mountaineering & tabligh activities, OCI cardholder may seek prior permission from the Indian Mission/ Post/ FRRO concerned. For undertaking journalistic activities, requisite permission may be sought from the External Publicity (XP) Division of the Ministry of External Affairs.

OCI cardholder shall also require Protected Area Permit (PAP)/ Restricted Area Permit (RAP) to visit any place which falls within the Protected/ Restricted Area notified by the Government as in the case of any other foreigner.

34. Do OCI cardholders undertaking journalistic activities in India require permission to visit J&K and North Eastern States even if the place to be visited do not fall under Protected/ Restricted Area?

As per extant policy of the Government of India, a foreign journalist, TV cameraman etc. including a foreign journalist already based in India who desires to visit restricted or protected areas or Jammu & Kashmir or North Eastern States (including Assam) has to apply for a special permit to visit these areas for journalistic purpose to the External Publicity (XP) Division of the Ministry of External Affairs. OCI cardholders are foreign nationals holding passports of their respective country. Hence, all rules and regulations that are applicable to foreign nationals visiting/ staying in India are also equally applicable to OCI cardholders.

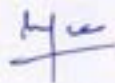
35. Whether foreign military/ Police personnel are eligible for grant of OCI?

1. Foreign Military/ Police Personnel either serving or retired will not be registered as OCI Cardholder.
2. However, Israeli citizens who are otherwise eligible for registration as OCI cardholder in terms of the provisions of section 7A of the Citizenship Act, 1955 and do no more than that of compulsory years of conscription can be granted OCI. However, if an individual does even the shortest of the terms with Israeli armed forces beyond compulsory training period prescribed by the rules in that country, then such a person would not be eligible for an OCI card.

3. Other foreign nationals of Indian origin, who have undergone only compulsory years/ period of military/ police conscription in their country for a period not more than 2 years and have not opted to join the military/ police force of the country even for the shortest period of time beyond compulsory military/ police conscription may also be considered for registration as OCI cardholders subject to the following conditions:-

- (i) Such registration as OCI cardholder will be subject to the satisfaction of the Mission/ Post/ FRRO concerned and the applicant fulfilling the eligibility criteria as provided in Section 7A(1)(a), (b) & (c) of the Citizenship Act, 1955. They would be registered as OCI cardholders only after a personal interview (either physical or through video conference) by the Mission/ Post/ FRRO concerned.
- (ii) OCI cards issued to such persons shall carry the following instructions, which shall be stamped on the OCI card:-

"OCI cardholder shall immediately surrender this OCI card to the Indian Mission/Post/FRRO concerned in the event of the OCI cardholder joining the military or police service. If it comes to the notice of the authorities that the OCI cardholder has joined the military or police service and has not surrendered the OCI card, the OCI card shall be deemed to have been cancelled and action as appropriate under the law including blacklisting of the OCI cardholder shall be taken."
- (iii) If the OCI cardholder opts to join the military or police service for any term beyond the number of years/period prescribed for compulsory military/police conscription, he/ she shall immediately surrender the OCI card to the Mission/Post/FRRO concerned.
- (iv) Foreign nationals of Indian origin who are undergoing compulsory military/police conscription at the time of application will not be eligible to be registered as OCI cardholder during the period of such conscription.
- (v) Foreign nationals, who are applying for OCI card on spouse basis under Section 7A (1) (d) of the Citizenship Act, 1955 shall not be eligible if they have undergone any military/police conscription or they



are undergoing such military/police conscription at the time of application.

4. Children and spouse of foreign military/police personnel either in service or retired and foreign nationals working in Private Security Agencies, Home Offices, Prisons, National Probation Service and companies or organisations associated with the Home Office or military institutions, i.e. those who are not directly employed in military or police, may be considered for registration as OCI cardholder subject to fulfilling the eligibility criteria as provided in Section 7A of the Citizenship Act, 1955.

36. Whether application for registration as OCI cardholder of a foreigner spouse whose Indian spouse is not alive will be accepted?

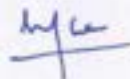
Application for registration as OCI cardholder of a foreigner whose Indian spouse is not alive may be accepted by the Indian Missions/ Posts/ FRROs and decision taken on case to case basis subject to the condition that the foreigner has not remarried another foreigner. Each case may be assessed afresh and decision may be taken after examination of each and every aspect of the case. In cases fulfilling the condition mentioned above, the OCI status of the foreign spouse will remain intact if –

- (i) the foreign spouse has children born from marriage with the deceased Indian spouse who are Indian citizens / OCI cardholders; or
- (ii) the foreign spouse has acquired property individually or jointly with the Indian spouse; or
- (iii) if any other such ground prevails.

While issuing the registration as OCI cardholder, it will be made clear that if the foreign national gets remarried to another foreigner/Indian, the existing OCI registration will be immediately cancelled. In case of re-marriage to another citizen of India or an OCI cardholder, the foreign national will have to submit fresh application for registration as OCI cardholder. In such cases, fresh OCI card shall be granted on surrender of the earlier OCI card.

37. Whether foreign national children of such Indian national who is not alive will be registered as OCI cardholder?

The foreign national children of such Indian national who is not alive will be entitled to registration as OCI cardholder as per section 7A of the Citizenship Act, 1955 on the basis of their Indian origin. Such children holding PIO card will also be eligible to apply for registration as OCI cardholder in lieu of PIO card.



38. **Whether a foreign national holding Diplomatic Passport will be registered as OCI cardholder?**

A foreign national holding Diplomatic Passport will not be registered as OCI cardholder. However, foreign diplomatic and official passport holders not assigned in India can travel on the strength of their OCI cards.

39. **Whether OCI cardholders living in India should have a valid passport?**

Yes. Passport is the primary travel document. OCI is only a life-long visa. Stay of a foreigners in India without a valid passport is illegal even if he or she is an OCI cardholder. Therefore, it is necessary that OCI cardholders staying in India should have a valid passport at all times of his/her stay in the country.

by

Annexure P-11 (Colly)**TO,****Dated: __.__.2021**01 03

The Director (CPIO),
Sh. Vishnu Kumar Sharma,
Ministry of External Affairs,
Room No. 3, Patiala House Annexe,
Consular, Passport and Visa Division,
Ministry of External Affairs, Tilak Marg,
New Delhi- 110001

A. Contact Details:**1. Name of the Applicant:** Mario Leslie Dpenha**2. Gender:** Male**3. Father's Full Name:** Leslie Dpenha**4. Address for Correspondence****5. Tel. No****6. E-mail ID:****7. Whether a citizen of India** Yes**B. Details of information sought:****1. Nature of information sought****2. Type of information required****(a) Copy of documents**

No

(b) Inspection of records	No
(c) Sample of material	No
(d) Other information	Yes

**3. (a) Whether information sought
relates to third party?**

(b) If yes his/her name & address N.A

4. Information Sought :

(1) A spouse of foreign origin of an OCI card Holder is qualified to apply for an OCI card under Clause (d) of Section 7A of the Citizenship Act, 1955 if the marriage has been registered and has subsisted for a continuous period of at least two years preceding the presentation of the application. I request you to provide information on what is meant by 'registered' under Section 7A(d) of the Citizenship Act, i.e:

- (i) Whether the marriage between the OCI card holder and spouse of foreign origin must be validly registered under the law in force of the country where the marriage was solemnized? or
- (ii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under Section 4 or Section 17 of the Foreign Marriage Act, 1969? (Prima facie, marriages under the Foreign Marriage Act appear to require atleast one party to be an Indian citizen, and I seek information on a fact situation where one party is an OCI Card Holder and the other is a foreigner); or
- (iii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under any other law for the time being in force in India, and if so, which law?

Since Section 7A of the Citizenship Act is silent on all these issues and since the Ministry of Overseas Indian Affairs which dealt with all matters relating to Indian Diaspora around the world has been merged with the Ministry of External Affairs, I request you to provide answers to these questions. I have requested you, the Consular, Passport and Visa Division for this information as the “Guide to Consular Services” available on the website of Ministry of External Affairs says that you can assist OCI Cardholders under special circumstances. Hence, I have directed this query pertaining to OCI cardholders to you.

- (2) Under Section 23 of the Foreign Marriage Act, the Central Government is empowered to declare that marriages solemnized under the law in force in a particular foreign country as a valid marriage in India if it is satisfied that the law in the said foreign country contains provisions similar to those contained in the Foreign Marriage Act. In this regard, I request you to provide information on whether the Central Government has declared the marriage laws of any such foreign country as valid under Indian law under Section 23? If so, which foreign countries' marriages laws and marriages solemnized thereunder, have been recognized as valid under Indian law?
- (3) If the information sought above is not available to the posted Public Information Office, I request you to transfer it to the concerned Department/CPIO/PIO/Department/ Ministry.
- (4) I Undertake to pay any other charges including Photo copy charges as and when asked by your office as per the law.

5. Time period for which information is required N.A.

6. Whether applicant belongs to BPL category: No

7. Details of fee paid Rs. 10. (Rupees ten only) by postal order no. _____
392001

issued by _____ dated _____ .POST OFFICE
HAUZ KHAS 01.03.2021
I.I.T. GATE NEW DELHI

(_____)

Applicant

TRUE COPY /-

TO,
Central Public Information Officer,

Ministry of Home Affairs,

North Block,

New Delhi-110001

Dated: __.__.202101 03

A. Contact Details:

1. **Name of the Applicant:** Mario Leslie Dpenha

2. **Gender:** Male

3. **Father's Full Name:** Leslie Dpenha

4. **Address for Correspondence**



5. **Tel. No**



6. **E-mail ID**

7. **Whether a citizen of India** Yes

B. Details of information sought:

1. **Nature of information sought**

2. **Type of information required**

(a) Copy of documents	No
(b) Inspection of records	No
(c) Sample of material	No
(d) Other information	Yes

3. (a) **Whether information sought**

relates to third party?

(b) **If yes his/her name & address** N.A

4. Information Sought :

(1) A spouse of foreign origin of an OCI card Holder is qualified to apply for an OCI card under Clause (d) of Section 7A of the Citizenship Act, 1955 if the marriage has been registered and has subsisted for a continuous period of at least two years preceding the presentation of the application. I request you to provide information on what is meant by 'registered' under Section 7A(d) of the Citizenship Act, i.e:

- (i) Whether the marriage between the OCI card holder and spouse of foreign origin must be validly registered under the law in force of the country where the marriage was solemnized? Or
- (ii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under Section 4 or Section 17 of the Foreign Marriage Act, 1969? (Prima facie, marriages under the Foreign Marriage Act appear to require atleast one party to be an Indian citizen, and I seek information on a fact situation where one party is an OCI Card Holder and the other is a foreigner); or
- (iii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under any other law for the time being in force in India, and if so, which law?

Since Section 7A of the Citizenship Act is silent on all these issues and since you, the MHA are the nodal authority for OCI, I request you to provide answers to these questions.

(2) Under Section 23 of the Foreign Marriage Act, the Central Government is empowered to declare that marriages solemnized under the law in force in a particular foreign country as a valid marriage in India if it is satisfied that the

law in the said foreign country contains provisions similar to those contained in the Foreign Marriage Act. In this regard, I request you to provide information on whether the Central Government has declared the marriage laws of any such foreign country as valid under Indian law under Section 23? If so, which foreign countries' marriages laws and marriages solemnized thereunder, have been recognized as valid under Indian law?

(3) If the information sought above is not available to the posted Public Information Office, I request you to transfer it to the concerned Department/CPIO/PIO/Department/ Ministry.

(4) I Undertake to pay any other charges including Photo copy charges as and when asked by your office as per the law.

5. Time period for which information is required N.A.

6. Whether applicant belongs to BPL category: No

7. Details of fee paid Rs. 10. (Rupees ten only) by postal order no. _____
392002

issued by _____ dated _____ .POST OFFICE
HAUZ KHAS, 01.03.2021
I.I.T. GATE, NEW DELHI

(_____)

Applicant

TRUE COPY/-

TO,

Dated: __.__.2021 01 03

Ministry of Home Affairs,

Foreigners Division,
National Stadium, India Gate,
New Delhi, Delhi-110001

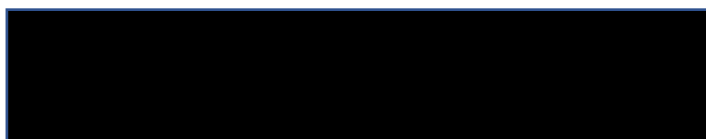
A. Contact Details:

1. Name of the Applicant: Mario Leslie Dpenha

2. Gender: Male

3. Father's Full Name: Leslie Dpenha

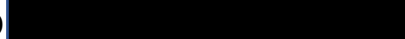
4. Address for Correspondence



5. Tel. No



6. E-mail ID



7. Whether a citizen of India Yes

B. Details of information sought:

1. Nature of information sought

2. Type of information required

(a) Copy of documents	No
(b) Inspection of records	No
(c) Sample of material	No
(d) Other information	Yes

**3. (a) Whether information sought
relates to third party?**

(b) If yes his/her name & address N.A

4. Information Sought :

(1) A spouse of foreign origin of an OCI card Holder is qualified to apply for an OCI card under Clause (d) of Section 7A of the Citizenship Act, 1955 if the marriage has been registered and has subsisted for a continuous period of at least two years preceding the presentation of the application. I request you to provide information on what is meant by 'registered' under Section 7A(d) of the Citizenship Act, i.e:

- (i) Whether the marriage between the OCI card holder and spouse of foreign origin must be validly registered under the law in force of the country where the marriage was solemnized? or
- (ii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under Section 4 or Section 17 of the Foreign Marriage Act, 1969? (Prima facie, marriages under the Foreign Marriage Act appear to require atleast one party to be an Indian citizen, and I seek information on a fact situation where one party is an OCI Card Holder and the other is a foreigner); or
- (iii) Whether the marriage between the OCI card holder and spouse of foreign origin must be registered under any other law for the time being in force in India, and if so, which law?

Since Section 7A of the Citizenship Act is silent on all these issues and since you, the MHA, Foreigners Division are the nodal authority for OCI, I request you to provide answers to these questions.

(2) Under Section 23 of the Foreign Marriage Act, the Central Government is empowered to declare that marriages solemnized under the law in force in a particular foreign country as a valid marriage in India if it is satisfied that the law in the said foreign country contains provisions similar to those contained in

the Foreign Marriage Act. In this regard, I request you to provide information on whether the Central Government has declared the marriage laws of any such foreign country as valid under Indian law under Section 23? If so, which foreign countries' marriages laws and marriages solemnized thereunder, have been recognized as valid under Indian law?

(3) If the information sought above is not available to the posted Public Information Office, I request you to transfer it to the concerned Department/CPIO/PIO/Department/ Ministry.

(4) I Undertake to pay any other charges including Photo copy charges as and when asked by your office as per the law.

5. Time period for which information is required N.A.

6. Whether applicant belongs to BPL category: No

7. Details of fee paid Rs. 10. (Rupees ten only) by postal order no. _____
392003

issued by _____ dated _____ .POST OFFICE
HAUZ KHAS, 01.03.2021
I.I.T GATE, NEW DELHI

(_____)

Applicant

TRUE COPY/-

ANNEXURE P- 12(Colly)

Vishnu Kumar Sharma
 Director (CPV) & CPIO
 Tel: 23388015
 E-mail: dircpv@mea.gov.in

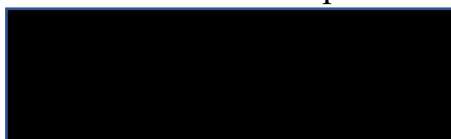
Room No. 3, CPV Division
 Ministry of External Affairs
 Patiala House Annexe
 Tilak Marg, New Delhi- 01

No. R-41/Dir(CPV)/2021

10-03-2021

To

Mr. Mario Leslie Dpenha



Subject: Reply of application for Information sought under RTI Act 2005.

Sir,

Reference your RTI application dated 01.03.2021.

2. The RTI application is being transferred to Ministry of Home Affairs under Section 6 (3) (ii) of the RTI Act, 2005 as the subject matter pertains to them. You are requested to contact MHA for further correspondence in the matter.

Also note that the Postal Order No. 392002 for Rs 10 as mentioned in your letter has not been received in this office. You are therefore, requested to send the same to the CPIO in Foregners Division of Ministry of Home Affairs.

3. This disposes of your RTI application.

4. Appeal against this decision, if any, may be filed within 30 days of receipt of this communication before Mr. Devesh Uttam, JS (CPV) and First Appellate Authority, CPV Division, Ministry of External

Affairs, Room No. 20, Patiala House Annexe, Tilak Marg New Delhi 110001.

Yours faithfully,
(Vishnu Kumar Sharma)

Copy to:-

Shri Manoj Kumar Jha, DS (Foreigners) and CPIO, Foreigners Division,
MHA, Major Dhyan Chand National Stadium Gate No. 7, New Delhi-
110001. Email: mk.jha65@nic.in

TRUE COPY/-

R.T.I. Matter

F.No.26011/RTI/08/2021-OCI

Government of India

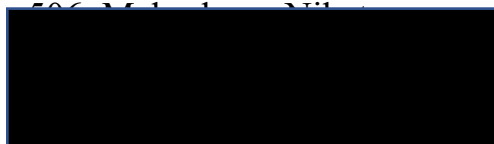
Ministry of Home Affairs

(Foreigners Division)

1st Floor, Major Dhyan Chand National Stadium,
India Gate Circle, New Delhi-110002. Dated,
the 16th March, 2021.

To

Mr. Mario Leslie Dpenha



**Subject: Information sought under the Right to Information Act, 2005
- regarding.**

Dear Sir,

Please refer to your RTI application No. MHOME/R/P/21/00395 and MHOME/R/P/21/00396 dated 09.03.2021.

2. For the information sought in Point No. 1, it is intimated that Information sought by you is in the form of query/ seeking opinion, clarification and hence it does not constitute information as defined in section 2(f) of the RTI Act, 2005. However, you may refer to the OCI cardholder brochure, which may be accessed through the website link: https://www.mha.gov.in/sites/default/files//Brochure_OCI_15112019.pdf

3. For the information sought in Point No. 2, it is intimated that the information sought closely relates to the Ministry of External Affairs. Therefore, it is being transferred to Ministry of External Affairs under Section 6(3) of the RTI Act, 2005.

4. Shri Anil Malik, Additional Secretary (Foreigners), Foreigners Division, MDC National Stadium, India Gate, New Delhi-110002 is the First Appellate Authority to whom first appeal may be preferred within statutory time limit.

Yours sincerely,
(Pramod Kumar)
Director (F)/CPIO
Ph. No. 23077508

Copy to:-

1. The Joint Secretary (CPV Division), Ministry of External Affairs, Patiala House Annexe, Tilak Marg, New Delhi with a request to provide information in respect of Point No. 2 directly to the applicant.

2. PPS to Director (F) & CPIO with the request to upload the copy of this letter on RTI-MIS portal.
3. US (RTI), MHA, North Block. New Delhi.

TRUE COPY/-

ANNEXURE P- 13(Colly)

R.T.I. Matter

F.No.26011/RTI/15/2021-OCI

Government of India
Ministry of Home Affairs (Foreigners
Division)

1st Floor, Major Dhyan Chand National Stadium,
India Gate Circle, New Delhi-110002. Dated,
the 30 March, 2021.

To,

Mr. Mario Leslie Dpenha



**Subject: Information sought under the Right to Information Act, 2005 -
regarding.**

Dear Sir,

Please refer to your RTI applications dated 01.03.2021 received in this
Ministry after being transferred from Ministry of External Affairs on 10.03.2021.

2. For the information sought in Point No. 1, it is intimated that Information sought by you is in the form of query/ seeking opinion, clarification and hence it does not constitute information as defined in section 2(f) of the RTI Act, 2005. However, you may refer to the OCI cardholder brochure, which may be accessed through the website link: https://www.mha.gov.in/sites/default/files/Brochure_OCI_15112019.pdf.

3. For the information sought in Point No. 2, it is intimated that the information sought closely relates to the Ministry of External Affairs. Therefore, it is being transferred to Ministry of External Affairs under Section 6(3) of the RTI Act, 2005.

4. Shri Anil Malik, Additional Secretary (Foreigners), Foreigners Division, MDC National Stadium, India Gate, New Delhi-110002 is the First Appellate Authority to whom first appeal may be preferred within statutory time limit.

Yours sincerely.

(Pramod Kumar)

Director (F)/CPIO

Ph. No. 23077508

Copy to:-

1. The Joint Secretary (CPV Division), Ministry of External Affairs, Patiala House Annexe, Tilak Marg, New Delhi alongwith a copy of the RTI application with a request to provide information in respect of Point No. 2 directly to the applicant.
2. PPS to Director (F) & CPIO with the request to upload the copy of this letter on RTI-MIS portal.
3. US (RTI), MHA, North Block. New Delhi.

True copy/-

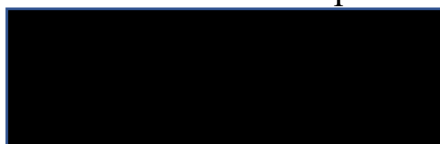
R.T.I. Matter

F.No.26011/RTI/14/2021-OCI

Government of India
Ministry of Home Affairs (Foreigners
Division)

1st Floor, Major Dhyan Chand National Stadium,
India Gate Circle, New Delhi-110002. Dated,
the 30th March. 2021.

To
Mr. Mario Leslie Dpenha



**Subject: Information sought under the Right to Information Act, 2005 -
regarding.**

Dear Sir,

Please refer to your RTI applications dated 01.03.2021.

2. For the information sought in Point No. 1, it is intimated that Information sought by you is in the form of query/ seeking opinion, clarification and hence it does not constitute information as defined in section 2(f) of the RTI Act, 2005. However, you may refer to the OCI cardholder brochure, which may be accessed through the website link: https://www.mha.gov.in/sites/default/files/Brochure_OCI_15112019.pdf.

3. For the information sought in Point No. 2, it is intimated that the information sought closely relates to the Ministry of External Affairs. Therefore,

it is being transferred to Ministry of External Affairs under Section 6(3) of the RTI Act, 2005.

4. Shri Anil Malik, Additional Secretary (Foreigners), Foreigners Division, MDC National Stadium, India Gate, New Delhi-110002 is the First Appellate Authority to whom first appeal may be preferred within statutory time limit.

Yours sincerely.

(Pramod Kumar)

Director (F)/CPIO

Ph. No. 23077508

Copy to:-

1. The Joint Secretary (CPV Division), Ministry of External Affairs, Patiala House Annexe, Tilak Marg, New Delhi along with a copy of the RTI application with a request to provide information in respect of Point No. 2 directly to the applicant.
2. PPS to Director (F) & CPIO with the request to upload the copy of this letter on RTI-MIS portal.
3. US (RTI), MHA, North Block. New Delhi.

True copy/-

ANNEXURE P- 14

Vishnu Kumar Sharma
Director (CPV) & CPIO
Tel: 23388015
Email:- dircpv@mea.gov.in

Room No. 3, CPV Division
Ministry of External Affairs
Patiala House Annexe
Tilak Marg, New Delhi- 01

No. R-47/Dir (CPV)/2021

31-03-2021

To
Mario Leslie Dpenha

[REDACTED]
[REDACTED]
[REDACTED]

Subject: Reply of application for Information sought under RTI Act 2005.

Sir,

Reference your two RTI applications No. MHOME/R/P/21/00395 and No. MHOME/R/P/21/00396 dated 09.03.2021 received in this office on 26.03.2021.

2. The information as sought is not available in this Division. However, your RTI application is being transferred to Legislative Department of Ministry of Law and Justice under section 6 (3) (ii) of the RTI Act, 2005. You are requested to contact Legislative Department of Ministry of Law and Justice directly for further correspondence in the matter.

3. This disposes of your RTI application.

4. Appeal against this decision, if any, may be filed within 30 days of receipt of this communication before Mr. Devesh Uttam, JS (CPV) and First Appellate Authority, CPV Division, Ministry of External Affairs, Room No. 20, Patiala House Annexe, Tilak Marg, New Delhi 110001.

Yours faithfully,

(Vishnu Kumar Sharma)

Copy to:

Shri PC Meena, Deputy Secretary and (CPIO), Room No. 728-A, A Wing, Legislative Department, Ministry of Law and Justice, Shastri Bhawan, New Delhi-110001

TRUE COPY/-

1. Who is eligible to apply?

A foreign national, who was eligible to become a citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, is eligible for registration as an Overseas Citizen of India (OCI). Minor children of such person are also eligible for

OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

2. Who was eligible to become Citizen of India on 26.01.1950?

Any person who, or whose parents or grand-parents were born in India as defined in the Government of India Act, 1935 (as originally enacted), and who was ordinarily residing in any country outside India was eligible to become citizen of India on 26.01.1950.

3. Which territories became part of India after 15.08.1947 and from what date?

The territories which became part of India after 15.08.1947 are:

- (i) Sikkim 26.04.1975
- (ii) Pondicherry 16.08.1962
- (iii) Dadra & Nagar Haveli 11.08.1961
- (iv) Goa, Daman and Diu 20.12.1961

4. Can the spouse of the eligible person apply for OCI?

Yes, if he/she is eligible in his/her own capacity.

5. **Can Minor children apply for OCI?**

Yes, if either of the parents is eligible for OCI.

6. **In what form should a person apply for an OCI and where are the forms available?**

A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX, which can be filed online or downloaded from our website <http://mha.nic.in/ForeigDiv/ForeigHome.html>.

7. **Can application form be filled and submitted on line?**

Yes. Part A of the application form should be filed online. Part B should be downloaded and printed on computer or by hand in Block letters. Printed Part A and Part B of the application form has to be submitted to the Indian Mission/Post/Office along with all requisite documents.

8. **What documents have to be submitted with the application?**

The following documents shall be enclosed for each applicant:

1. Proof of present citizenship
2. Evidence of self or parents or grand parents,
 - (a) being eligible to become a citizen of India at the time of commencement of the Constitution; or
 - (b) belonging to a territory that became a part of India after 15 th August, 1947; or
 - (c) being a citizen of India on or after 26 th January, 1950

These could be:

- (i) Copy of the passport :or
 - (ii) Copy of the domicile certificate issued by the Competent authority ;or
 - (iii) Any other proof substantiating the request. Usually applicants are able to submit a certificate of residence or place of birth of self/parents/grand parents from First Class Magistrate/District Magistrate (DM) of the concerned place.
3. Evidence of relationship as parent/grand parent, if their Indian origin is claimed as basis for grant of OCI such as birth certificate or Educational Certificate etc.
4. Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local currency; US \$ 25 or equivalent In local currency for each PIO card holder) in case of application filled in India, fee Rs.15,000/- for general category, for PIO card holders Rs.1,400/- and for minor PIO card holder Rs.8,000/- to be paid by way of Demand Draft.
5. PIO card holders should submit a copy of his/her PIO card.
9. **What documents would qualify for “Any other proof” for evidence of self or parents or grand parents being eligible for grant of an OCI?**
- Any documentary evidence like a school certificate, Agricultural land ownership certificate, birth certificate etc. by which eligibility may be reasonably ascertained.
10. **How many copies of application have to be submitted?**

Only one Set of Application has to be submitted for each applicant.

11. Whether applicant(s) have to go in person to submit the application (s)?

No. Application(s) can be sent by post either by Speed post or Registered post only and not through Courier.

12. Whether the applicant (s) have to take oath before the Counsel of the Indian Mission/Post?

No. Earlier provision in this regard has been done away with.

13. Where to submit the application?

To the Indian Mission/ Post of the country of citizenship of the applicant. If the applicant is not in the country of citizenship, to the Indian Mission/Post of the country where he is ordinarily residing. If the applicant is in India, to the FRRO Amritsar, Bangalore, Kozhikode, Chennai, Kochi, Delhi, Goa, Hyderabad, Lucknow, Mumbai, Kolkata, and Thiruvananthapuram as per specified Jurisdiction of the FRRO concerned.

14. Can a person apply in the country where he is ordinarily residing?

Yes.

15. What are the consequences of furnishing wrong information or suppressing material information?

All the applications will be subject to pre or post enquiry depending on whether any adverse information is voluntarily reported in the application or not. If the Government comes to the know that any false information was furnished or material information was suppressed, the registration as OCI

already granted shall be cancelled by an order under section 7D of the Citizenship Act, 1955. The persons will also be blacklisted thereby banning his/her entry into India.

16. What is the fee for application for registration as an OCI?

US \$ 275 or equivalent in local currency for each applicant. In case of PIO card holder, US \$ 25 or equivalent in local currency for each applicant. In case of application filled in India, fee Rs.15,000/- for general category, for PIO card holders Rs.1,400/- and for minor PIO card holder Rs.8,000/- to be paid by way of Demand Draft.

17. What is the time taken for registration as OCI?

Within 30 days of the application, if there is no adverse information available against the applicant. If any adverse information is available against the applicant, the decision to grant or otherwise is taken within 120 days.

18. If the registration as an OCI is not granted, what amount will be refunded?

An amount of US \$ 250 or equivalent in local currency shall be refunded, if registration is refused. US \$ 25 is the processing fees, which is non-refundable. In case application filled in India, Rs.1,400/- will be non-refundable being processing fees.

19. Can a PIO Cardholder apply?

Yes, provided he/she is otherwise eligible for grant of OCI like any other applicant.

20. Will the PIO Cardholder be granted an OCI registration gratis?

No. He/she has to make a payment of US \$ 25 or equivalent in local currency along with the application & Rs.1,400/- in case of application is filled in India.

21. Will the PIO card be honored till the time it is valid even after acquisition of an OCI?

No. PIO card will have to be surrendered to the Indian Mission/Post/FRROs before collection of OCI registration certificate and an OCI 'U' visa sticker.

22. What will be issued after registration as an OCI?

A registration certificate in the form of a booklet will be issued and a multiple entry, multi-purpose OCI 'U' visa sticker will be pasted on the foreign passport of the applicant. For this purpose, the applicant has to produce the original passport to the Indian Mission/Post/FRROs after receipt of the acceptance letter/verifying the status of the application online.

23. Will a separate OCI passport be issued?

No.

24. Will a duplicate certificate of registration as an OCI will be

issued?

Yes. For this purpose, an application has to be made to the Indian Mission/Post with evidence for loss of certificate. In the case of mutilated/damaged certificate an application has to be made enclosing the same. The applications in both the cases to be submitted to the concerned Indian Mission/ Post/FRRO along with payment of a fee of US \$ 100 or equivalent in local currency & Rs.5,500/- in case of application is filled in India.

- 25. Will a new OCI visa sticker be pasted on the new foreign passport after the expiry of the old passport?**

Yes. On payment of requisite fee, a new OCI 'U' visa sticker will be issued. However, the applicant can continue to carry the old passport wherein the OCI 'U' visa sticker was pasted along with new passport for visiting India without seeking a new visa, as the visa is lifelong.

- 26. Will the applicant lose his citizenship after registering as an OCI?**

No.

- 27. Can a person registered as an OCI travel to protected area/restricted area without permission?**

No. He/she will be required to seek PAP/RAP for such visits.

28. **Would the Indian civil/criminal laws be applicable to persons registered as OCI?**

Yes, for the period OCI is living in India.

29. **Can a person registered as an OCI be granted Indian citizenship?**

Yes. As per the provisions of section 5(1) (g) of the Citizenship Act, 1955, a person who is registered as an OCI for 5 years and is residing in India for 1 year out of the above 5 years, is eligible to apply for Indian Citizenship.

30. **Will an OCI be granted gratis to certain categories of people?**

No.

31. **Can OCI be granted to foreign nationals who are not eligible for OCI, but married to persons who are eligible for OCI?**

No.

32. **Will foreign-born children of PIOs be eligible to become an OCI?**

Yes, provided one of the parents is eligible to become an OCI.

33. **What are the benefits of an OCI?**

Following benefits will be allowed to an OCI:

- (i) Multiple entry, multi-purpose life long visa to visit India;

- (ii) Exemption from reporting to Police authorities for any length of stay in India; and
 - (iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.
 - (iv) Registered Overseas Citizen of India shall be treated at par with NonResident-Indian in the matter of inter-country adoption of Indian children.
 - (v) Registered Overseas Citizens of India shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India.
 - (vi) Registered Overseas Citizens of India shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India
 - (vii) Parity with Non-Resident Indian in respect of entry fees to be charged for visiting the national monuments, historical sites and museums in India;
- Pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:- (a) doctors, dentists, nurses and pharmacists;
- (b) advocates;
 - (c) architects;
 - (d) chartered accountants;
- (viii) Parity with Non-Resident Indian to appear for the All India Pre-medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.
 - (ix) “State Governments should ensure that the OCI registration booklets of OCIs are treated as their identification for any services rendered to them. In case proof of residence is required, Overseas Citizens of India may give an affidavit attested by a notary public stating that a particular/specific address may be treated as their place of residence in India and may also in their affidavit give their overseas residential address as well as e-mail address, if any”

34. Will any other benefit be granted to an OCI?

Any other benefits to an OCI will be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B(1) of the Citizenship Act, 1955.

35. Is the OCI entitled to voting rights?

No.

36. Is the OCI entitled to hold constitutional post in India?

No.

37. Is the OCI entitled to hold Government posts in India?

No, except for the posts specified by an order by the Central Government.

38. If a person is already holding more than one nationality, can he/she apply for OCI? Yes.

39. What are the advantages of the OCI when compared to PIO cardholders ?

- (i) An OCI is entitled to life long visa with free travel to India whereas for a PIO card holder, it is only valid for 15 years.
- (ii) A PIO cardholder is required to register with local Police authority for any stay exceeding 180 days in India on any single visit whereas an OCI is exempted from registration with Police authority for any length of stay in India.
- (iii) An OCI gets a specific right to become an Indian Citizen as per Section 5(i) and (ii) of the Citizenship Act, 1955. whereas the PIO card holder does not have this.

40. Whether an OCI be entitled to apply for and obtain a normal Indian passport which is given to a citizen of India?

No. Indian Passports are given only to Indian citizen.

41. Whether nationals of Commonwealth countries are eligible for the OCI?

Yes, if they fulfill the eligibility criteria.

42. Can a person renounce OCI?

Yes. He/she has to declare intention of renunciation in Form XXII to the Indian Mission/Post where OCI registration was granted. After receipt of the declaration, the Indian Mission/Post/FRROs shall issue an acknowledgement in Form XXII A.

43. Do the applicants who have applied on the earlier prescribed application form have to apply again in the new form?

No. All such applications will be considered for registration as an OCI without seeking fresh applications and fees.

44. Can an OCI holder undertake Research work in India?

Yes, after getting prior approval/special permission from MHA.

45. Whether foreign military personnel are eligible for grant of OCI?

NO, foreign military personnel either in service or retired are not entitled for grant of OCI.

46. Whether civil Govt. servant working in Ministry of Defence as IT engineers/civil contractors entitled for OCI?

NO.

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

C.M.A. NO. _____ OF 2021

IN

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

... PETITIONERS

VERSUS

Union of India & Ors.

... RESPONDENTS

**APPLICATION UNDER SECTION 151 OF THE CODE OF CIVIL
PROCEDURE, 1908 SEEKING PERMISSION TO FILE
LENGTHY SYNOPSIS & LIST OF DATES**

MOST RESPECTFULLY SHOWETH:

1. Vide the accompanying Writ Petition under Article 226 of the Constitution of India, the Applicants/Petitioners seek *inter alia*, a declaration that a same-sex spouse of foreign origin of an Indian Citizen or Overseas Citizen of India ('OCI') cardholder is entitled to apply for registration as an Overseas Citizen of India under Section 7A(1)(d) of the Citizenship Act, 1955, and the legal recognition of all same-sex or non-heterosexual marriages under the applicable statutes in India, especially secular legislations for marriage. The Petitioners No. 1 and 2 are married in New York, with Petitioner No.1 being an Overseas

Citizen of India, and Petitioner No.2 being his American husband. The Petitioner No.3 is an Indian citizen and queer rights activist. The Applicants/Petitioners seek marriage equality as an essential part of the fundamental rights to equality, life and freedom.

2. The Applicants pray that the accompanying Writ Petition be considered as a part and parcel of this application and crave leave of this Hon'ble Court to refer and rely upon the same. The detailed facts and contents of the accompanying Writ Petition have thus not been reproduced herein for the sake of brevity.
3. The Applicants have shortened the list of dates and synopsis as much as possible. However, on account of the complexity of facts and the length of time under examination, the present list of dates and synopsis are necessary to provide this Hon'ble Court a holistic view of the case so that complete justice is done to the Applicants. It is for this reason that the Applicants pray for an exemption from filing lengthy synopsis & list of dates.
4. That the present application has been filed bona fide and in the interest of justice.

PRAYER

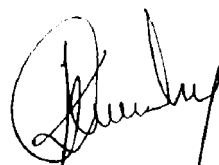
In view of the above, it is respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Allow the present application and permit the Applicants to file lengthy synopsis and list of dates; AND

- (b) Pass such further and other orders as the court may deem fit in the circumstances of the present case may require.

APPLICANTS

THROUGH COUNSEL



Karuna Nundy

**With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi**

[Redacted]
[Redacted]

Date:05.07.2021 Place: New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI CIVIL
EXTRAORDINARY JURISDICTION
C.M.A.NO. _____ OF 2021 IN
WRIT PETITION (CIVIL) NO. ____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors. Petitioners

Versus

Union of India & Ors. Respondents

AFFIDAVIT

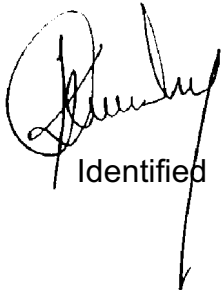
I, Mr. Joydeep Sengupta, S/o Mr. Subir Sengupta, aged about 44

[REDACTED]

[REDACTED], do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 1 in the present case. I state that I am conversant with the facts of the present case and as such I am competent to swear and affirm this affidavit.
2. That the accompanying application(s) have been drafted by my counsel based on instructions received from me. The contents of Paras 1 to 4 of the accompanying application(s) are true and correct to the best of my

knowledge. Nothing material has been concealed in the accompanying application(s).


Identified

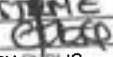
- . 3. The documents/ Annexures filed along with the accompanying application(s) are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified at Washington, DC, United States of America on this 1st day of July, 2021 that the contents of my foregoing affidavit are true and correct to my knowledge or have been derived from the records of the case. No part of it is false and nothing material has been concealed therein.


DEPONENT

STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME 2021
THIS 1 DAY OF JULY
BY CHRISTINE POLO

NOTARY PUBLIC



**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

C.M.A. NO. _____ OF 2021

IN

WRIT PETITION (CIVIL) NO. _____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

... PETITIONERS

VERSUS

Union of India & Ors.

... RESPONDENTS

**APPLICATION UNDER SECTION 151 OF THE CODE OF
CIVIL PROCEDURE, 1908 FOR EXEMPTION FROM FILING
OF ORIGINAL/CERTIFIED/DIM/ LEGIBLE/TRUE TYPED
COPIES OF THE ANNEXURES**

MOST RESPECTFULLY SHOWETH:

1. Vide the accompanying Writ Petition under Article 226 of the Constitution of India, the Applicants/Petitioners seek inter alia, a declaration that a same-sex spouse of foreign origin of an Indian Citizen or Overseas Citizen of India ('OCI') cardholder is entitled to apply for registration as an Overseas Citizen of India under Section 7A(1)(d) of the Citizenship Act, 1955, and the legal recognition of all same-sex or non-heterosexual marriages under the applicable statutes in India, especially secular legislations for marriage. The Petitioners No. 1 and 2 are married in New York,


with Petitioner No.1 being an Overseas Citizen of India, and Petitioner No.2 being his American husband. The Petitioner No.3 is an Indian citizen and queer rights activist. The Applicants/Petitioners seek marriage equality as an essential part of the fundamental rights to equality, life and freedom.

2. The Applicants pray that the accompanying Writ Petition be considered as a part and parcel of this application and crave leave of this Hon'ble Court to refer and rely upon the same. The detailed facts and contents of the accompanying Writ Petition have thus not been reproduced herein for the sake of brevity.
3. That various annexures have been filed to substantiate the Applicants'/Petitioners' pleadings, and are vital for a complete appreciation of the facts and circumstances of the present case. Through the present application the Applicants are seeking exemption from filing original/certified/dim/ legible/ true typed copies of the annexures annexed with the Petition due to paucity of time and considering the situation of the Covid pandemic. Also due to the fact that the matter requires urgent attention. It is submitted that should the original/clear/certified copies of any of the annexures be required by this Hon'ble Court at any stage of the proceedings, the Applicants will produce them forthwith.
4. That the present application is bona fide and in the interest of justice.

PRAYER

In view of the above, it is respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Exempt the Applicants from filing Original/Certified/Dim/Legible/True Typed copies of the Annexures
- (b) Pass any other/orders which this Hon'ble Court may kindly deem fit and proper in the interest of justice.

APPLICANTS

Karuna Nundy
With Ruchira Goel, Utsav Mukherjee,
Ragini Nagpal and Abhay Chitravanshi
Advocates for the Petitioners
B-1/33A, Top Floor, Hauz Khas, New Delhi

THROUGH COUNSEL

Date:05.07.2021 Place: New Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI CIVIL

EXTRAORDINARY JURISDICTION

C.M.A.NO. _____ OF 2021 IN

WRIT PETITION (CIVIL) NO. ____ OF 2021

IN THE MATTER OF:

Mr. Joydeep Sengupta & Ors.

..... Petitioners

Versus

Union of India & Ors.

..... Respondents

AFFIDAVIT

I, Mr. Joydeep Sengupta, S/o Mr. Subir Sengupta, aged about 44

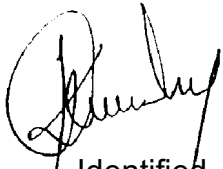


 do hereby solemnly affirm and state as under:-

1. That I am the Petitioner No. 1 in the present case. I state that I am conversant with the facts of the present case and as such I am competent to swear and affirm this affidavit.

2. That the accompanying application(s) have been drafted by my counsel based on instructions received from me. The contents of Paras 1 to 4 of the accompanying application(s) are true and correct to the best of my

knowledge. Nothing material has been concealed in the accompanying application(s).


Identified

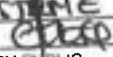
3. The documents/ Annexures filed along with the accompanying application(s) are true copies of their respective originals.


DEPONENT

VERIFICATION

Verified at Washington, DC, United States of America on this 1st day of July, 2021 that the contents of my foregoing affidavit are true and correct to my knowledge or have been derived from the records of the case. No part of it is false and nothing material has been concealed therein.


DEPONENT

STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME 2021
THIS 1 DAY OF JULY
BY CHRISTINE POLO

NOTARY PUBLIC



VAKALATNAMA

**IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) No. of 2021**

IN THE MATTER OF:-

Mr. Joydeep Sengupta & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

United States of America, the Petitioner No. 1 in the above matter do hereby appoint and retain:-

Ms. Karuna Nundy

With Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi

Offices: B-1/33A, Top Floor, Hauz Khas, New Delhi – 110016

Hereinafter called "Advocates" to be our Advocates in the above-noted case and authorize them:

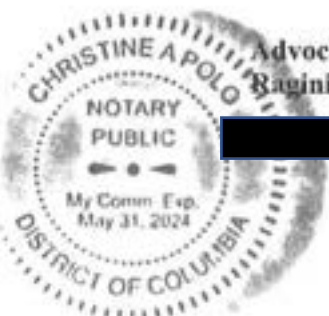
To act, appear; plead in the above noted case before this Court or in any other court in which the same may be tried or heard, also in appeals from the same, and to do all the following acts, deeds and things, or any of them, (jointly and severally) and also ratify anything already done on my behalf that is to say:

1. To sign, verify and present and send notices, replies, rejoinders, pleadings, appeals, cross-objections or petitions for execution, review, revision, other petitions or affidavit or other documents as shall be deemed necessary or advisable for the prosecution of the case or in relation thereto in all its stages.
2. To appear, act, and plead in the above-mentioned case in any court or tribunal etc., in which the same be heard or tried in the 1st instance or in appeal or review or revision or execution or in any other stage of its progress until its final decision.
3. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise to or in any manner relating to the said case.
4. To receive documents, papers, records, orders etc. and to do all other acts all things, which may be necessary or proper to be done for the progress and in all course of the prosecution of the said case.
5. To employ any other legal practitioner, advocate or consultant authorizing him to exercise the power and authority hereby conferred on the Advocate (s) whenever she/they may think fit to do so and in consultation with the undersigned.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these present the contents of which have been understood by me/us this 15th day of July, 2021.

Accepted, Satisfied and Certified

Advocate(s) (Ms. Karuna Nundy, Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi) B-1/33A, Top Floor, Hauz Khas, New Delhi



STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 1 DAY OF JULY 2021
BY CHRISTINE A. POLO
NOTARY PUBLIC

Signature of the Client
Mr. Joydeep Sengupta

PETITIONER NO. 1

VAKALATNAMA

**IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) No. of 2021**

IN THE MATTER OF:-

Mr. Joydeep Sengupta & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

retain:-

Ms. Karuna Nundy

With Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi

Offices: B-1/33A, Top Floor, Hauz Khas, New Delhi – 110016

Hereinafter called "Advocates" to be our Advocates in the above-noted case and authorize them:

To act, appear; plead in the above noted case before this Court or in any other court in which the same may be tried or heard, also in appeals from the same, and to do all the following acts, deeds and things, or any of them, (jointly and severally) and also ratify anything already done on my behalf that is to say:

1. To sign, verify and present and send notices, replies, rejoinders, pleadings, appeals, cross-objections or petitions for execution, review, revision, other petitions or affidavit or other documents as shall be deemed necessary or advisable for the prosecution of the case or in relation thereto in all its stages.
2. To appear, act, and plead in the above -mentioned case in any court or tribunal etc., in which the same be heard or tried in the 1st instance or in appeal or review or revision or execution or in any other stage of its progress until its final decision.
3. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise to or in any manner relating to the said case.
4. To receive documents, papers, records, orders etc. and to do all other acts all things, which may be necessary or proper to be done for the progress and in all course of the prosecution of the said case.
5. To employ any other legal practitioner, advocate or consultant authorizing him to exercise the power and authority hereby conferred on the Advocate (s) whenever she/they may think fit to do so and in consultation with the undersigned.

IN WITNESS WHEREOF I/We do hereunto set my/our hand to these present the contents of which have been understood by me/us this 12 day of July 2021.

Accepted, Satisfied and Certified

Advocate(s) (Ms. Karuna Nundy, Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi) B-1/33A, Top Floor, Hauz Khas, New Delhi

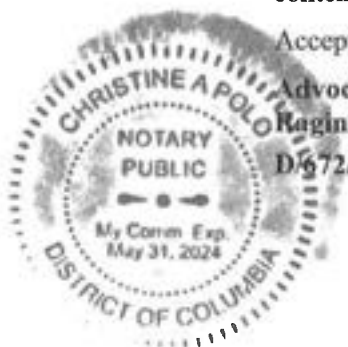
D/672/2000

STATE OF DISTRICT OF COLUMBIA
COUNTY OF DISTRICT OF COLUMBIA
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 12 DAY OF JULY 2021
BY CHRISTINE POLO
NOTARY PUBLIC

**Signature of the Client
Mr. Russell Blaine Stephens**

h to

PETITIONER NO. 2



VAKALATNAMA



IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL EXTRAORDINARY JURISDICTION
WRIT PETITION (CIVIL) No. _____ of 2021

IN THE MATTER OF:-

Mr. Joydeep Sengupta & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

in the above matter do hereby appoint and retain:-

Ms. Karuna Nundy

With Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi

Offices: B-1/33A, Top Floor, Hauz Khas, New Delhi – 110016

Hereinafter called "Advocates" to be our Advocates in the above-noted case and authorize them:

To act, appear, plead in the above noted case before this Court or in any other court in which the same may be tried or heard, also in appeals from the same, and to do all the following acts, deeds and things, or any of them, (jointly and severally) and also ratify anything already done on my behalf that is to say:

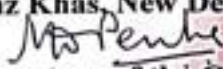
1. To sign, verify and present and send notices, replies, rejoinders, pleadings, appeals, cross-objections or petitions for execution, review, revision, other petitions or affidavit or other documents as shall be deemed necessary or advisable for the prosecution of the case or in relation thereto in all its stages.
2. To appear, act, and plead in the above-mentioned case in any court or tribunal etc., in which the same be heard or tried in the 1st instance or in appeal or review or revision or execution or in any other stage of its progress until its final decision.
3. To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise to or in any manner relating to the said case.
4. To receive documents, papers, records, orders etc. and to do all other acts all things, which may be necessary or proper to be done for the progress and in all course of the prosecution of the said case.
5. To employ any other legal practitioner, advocate or consultant authorizing him to exercise the power and authority hereby conferred on the Advocate (s) whenever she/they may think fit to do so and in consultation with the undersigned.

IN WITNESS WHEREOF I/~~We~~ do hereunto set my/~~our~~ hand to these present the contents of which have been understood by me/~~us~~ this First day of July, 2021.

Accepted, Satisfied and Certified

Advocate(s) (Ms. Karuna Nundy, Ms. Ruchira Goel, Mr. Utsav Mukherjee, Ms. Ragini Nagpal, Mr. Abhay Chitravanshi) B-1/33A, Top Floor, Hauz Khas, New Delhi
D/672/2000

Email :- _____


Signature of the Client
Mr. Mario Leslie Dpenha

PETITIONER NO. 3

:: Verify e-Court Fee Receipt

Receipt Details

Note : This Receipt has been generated 0 days ago.

Government of NCT OF DELHI e-Court Fee Receipt	
Issue Date & Time	: 04-JUL-2021 13:23:14
Name of The Acc	: RAGINI NAGPAL
Location	: NCT OF DELHI
Receipt Type	Court Fee Receipt
Name of Litigant	: MR JOYDEEP SENGUPTA & ORS
e-Court Fee Receipt No	: DLCT0414G2123N525
e-Court Fee Amount	: 250 (Rupees Two Hundred Fifty Only)
Status	: Not Locked

Back



Muskan Tibrewala <[REDACTED]@gmail.com>

Advance Service of W.P.- Mr. Joydeep Sengupta & Ors. Vs. Union of India & Ors.

Gmail - Advance Service of W.P.- Mr. Joydeep Sengupta & Ors. Vs. Union of India & Ors.

Utsav Mukherjee <utsav2395@gmail.com>

5 July 2021 at 11:19

To: [REDACTED]@gmail.com, cg.newyork@mea.gov.in, kirtimansingh.cgsc@gmail.com
Cc: Karuna Nundy <[REDACTED]@gmail.com>, Ragini Nagpal <[REDACTED]@gmail.com>, Muskan Tibrewala <[REDACTED]@gmail.com>, Abhay Chitravanshi <[REDACTED]@gmail.com>, Ruchira Goel <[REDACTED]@gmail.com>

Dear Sir/Ma'am,

I'm addressing this email to you on behalf of Ms. Karuna Nundy, Counsel for the Petitioners- Mr. Joydeep Sengupta, Mr. Russell Blaine Stephens and Mr. Mario Leslie Dpenha for advance service of the writ petition in the fresh matter, Mr. Joydeep Sengupta & Ors. Vs. Union of India & Ors. before the Hon'ble High Court of Delhi. Please take notice that the Registrar has allowed this matter to be listed for tomorrow, i.e. 06.07.2021.

Best Regards,
Utsav Mukherjee,
Associate Adv.,
Chambers of Ms. Karuna Nundy,
Advocate, Supreme Court of India

 10.43am FINAL WRIT PETITION JOYDEEP & ORS (1).pdf
24340K

