IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2021

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7284 of 2021

1.Ms. S. SUSHMA, F/A 22 years
D/o. Mr. V. Senthil Kumar
G-11, Gaiety Palace
No. 1, Blackers Road
Chennai 600002.

2. Ms. U. SEEMA AGARVAL, F/A 20 years
D/o. Mr. R. Udhayakumar
G-11, Gaiety Palace
No. 1, Blackers Road
Chennai 600002. ..Petitioners

Vs.

1.Commissioner of Police,
Greater Chennai Police
No. 132, Commissioner Office Building
E.V.K. Sampath Road, Vepery
Chennai 600007.

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2. Commissioner of Police,
Madurai
Alagar Kovil Road
Madurai 625002.

3. Mr. V.Senthil Kumar

https://www.mhc.tn.gov.in/judis/

4. Mr. R.Udhaya Kumar

5. Inspector of Police,
Thallakulam Police Station,
Madurai.

6. Inspector of Police,
Avaniyapuram Police Station,
Madurai

7. Home Department, Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St. George, Chennai 600 009,
Tamil Nadu, India.

8. Tamil Nadu State Legal Services Authority,
Represented by its Member Secretary,
North Fort Road,
High Court Campus, Chennai - 600 104.

9. Ministry of Law, Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St. George,
Chennai 600 009,
Tamil Nadu, India.

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10. Ministry of Social Justice and Empowerment,
represented by Secretary Government of India,
Shastri Bhavan,
Dr. Rajendraprasad Road, New Delhi-110 001.

11. The Director,

https://www.mhc.tn.gov.in/judis/

Social Justice and Empowerment,
Shastri Bhavan,
Dr. Rajendra prasad Road,
New Delhi 110 001

12.National Medical Commission,
Represented by its Chairman,
Dwaraka, New Delhi-110077.

13.Indian Psychiatric Society,
Represented by its Plot 43,
Sector 55,Gurugram,
Haryana, India, Pin: 122003.

14. Rehabilitation Council of India,
Represented by its Member Secretary, B-22,
Qutub Institutional Area,
New Delhi - 110 016.

15. Department Of Higher Education,
Government of India,
Represented by its Joint Secretary,
122-C, Shastri Bhawan, New Delhi – 110001.

16. Department Of School Education & Literacy,
Represented by its Joint Secretary,
217-C, Shastri Bhawan, New Delhi – 110001.

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17.School Education Department,
Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St. George, Chennai 600 009,
Tamil Nadu, India.

18. Higher Education Department,
Government of Tamil Nadu,
Represented by Secretary to Government,
Fort St. George, Chennai 600 009,
Tamil Nadu, India.

19. The University Grants Commission (UGC),
Represented By Its Secretary,
Bahadur Shah Zafar Marg,
New Delhi-110.

20. All India Council for Technical Education,
Represented by its Advisor-1 (Approval)
7th Floor, Chandralok Building, Janpath,
New Delhi - 110 00.

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21. The National Council of Educational
Research and Training (NCERT),
Represented by its Director,
Sri Aurbindo Marg, New Delhi

22. Secretary To Government,

https://www.mhc.tn.gov.in/judis/

Union Of India,
Ministry Of Health And Family Welfare,
Nirman Bhavan, Near Udyog Bhavan Metro Station,
Mouland Azad Road, New Delhi-110001.

23. Ministry of Women and Child Development,
Represented by its Secretary,
Government of India. ..Respondents

[The following Departments/Institutions are also Suo Motu added as respondents 7 to 23 in this writ petition on 07.06.2021 since the guidelines given by this Court needs to be followed/implemented by the impleaded respondents.]

PRAYER**:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, Directing Respondent Nos. 1 to 3 to inquire with the parents of the Petitioners and instruct them not to interfere with the life of the Petitioners and consequentially, to grant the necessary Police Protection to the Petitioners.

सत्यमेव जयते

For Petitioner : Mr.S.Manuraj

For Respondents 1,2,5 & 6 : Mr.Hasan Mohammed Jinnah
State Public Prosecutor

For Respondent No.3 : Mr.Mithelesh

For Respondent No.4 : Mr.P.Thilak Kumar

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For Respondent Nos.7,8,9,17&18 : Mr.Shanmugasundaram
Advocate General
Assisted by
Ms.Shabnam Banu
Government Counsel

For Respondent Nos.10 to 16,
19,20,21, 22 &23 : Mr.Shankaranayanan
Additional Solicitor General
Assisted by
Mr.V.Chandrasekar
Central Government Standing Counsel

O R D E R

"There are many branches on the tree of life. There is no one way to be, and there is room for everyone to be who they are."

1. This Writ Petition has brought to light an important issue requiring de-stigmatisation and acceptance in the eyes of the society. This Court has, therefore, consciously refrained from adopting the usual course of disposing cases of this nature that knocks the doors of this institution.

2. The crux of the case is as follows. The Petitioners, a lesbian couple whose relationship was being opposed by their parents who are

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the 4th and 5th Respondents fled to Chennai from their respective houses in Madurai. The said Petitioners, with the support extended by certain NGOs and persons belonging to the LGBTQIA+ community managed to secure accommodation and protection, and were in search of employment to financially sustain themselves. Meanwhile,the 4th and 5th Respondents individually filed girl-missing-complaints before the 6th and 7th Respondent Police and two FIRs came to be registered. Having faced interrogation by the police at their residential premises, and apprehending threat to their safety and security, the Petitioners approached this Court seeking a direction to the police not to cause harassment and protection from any form of threat or danger to their safety and security from the 4th and 5th Respondents.

3. This Court, felt that the case required attention in detail and therefore, passed the following Order on 22.03.2021:

"5. The learned Government Advocate who took notice on behalf of the Respondent Police submitted that the Respondent Police will be instructed in this regard and the safety of the petitioners will be ensured.

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6. The case in hand requires to be dealt with more sensitivity and empathy and it is a sample case of how the society even now is grappling to come to terms with same-sex orientation. Considering the sensitiveness of the issue involved, this Court wants to hear the parties in camera.

Post this case on 29.03.2021 at 2:15 p.m. in His Lordship's Chamber."

4. On 29.03.2021, the Petitioners, the 4th and 5th Respondents and the 6th and 7th Respondent Police were present in-person before this Court with their representing counsel. The proceedings of the chamber hearing and the Order passed thereof is extracted herein under:

"3.This Court thought it fit to talk to the Petitioners and their parents in order to assess their mental status and to understand their stand, before proceeding further with the case.

4.The 1st Petitioner, is aged about 22 years and she has completed B.Sc. Mathematics and is presently pursuing M.B.A. in correspondence mode in Madurai Kamaraj University. The 2nd Petitioner, is aged about

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20 years and she is pursuing B.A. Tamil through correspondence mode in Madurai Kamaraj University. The Petitioners know each other for the last 2 years and both of them in unison stated that their friendship blossomed into love and they were very clear that both of them will be a partner to each other for life. The Petitioners did not mince any words and there was so much of clarity in what they wanted to convey.

5.The parents of the respective Petitioners, came to know about the relationship between the Petitioners, and it was not to their liking. There was opposition and the pressure started mounting, and hence, the Petitioners left Madurai on 09.02.2021, to Chennai. The Petitioners are presently supported by an NGO namely, International Foundation for Crime Prevention and Victim Care ("PCVC"). The Petitioners are searching for a job in order to financially sustain themselves.

6.This Court individually interacted with the parents of the respective Petitioners. The parents of the respective Petitioners obviously are shocked, and they are not able to immediately accept the relationship between the Petitioners. They were more concerned about the security of the Petitioners and were worried that the Petitioners should not get

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exploited. They were more eager to talk with their respective daughters, since they have not heard from them for more than a month.

7. This Court immediately requested the Mediation Centre to allot two cabins to enable the parents to have a one-to-one interaction with their daughters. They spent nearly an hour with their respective daughters in the Mediation Centre.

8. This Court thought it fit to refer the Petitioners and their respective parents to a counsellor who specialises in working with LGBTQI+ individuals. This move becomes very vital since this Court is moving into unchartered waters, and a report from a specialist will provide support to this Court to move forward in this case.

9. I personally spent some time in doing some research and collecting materials to arrive at a proper understanding of this issue. It would have been possible for me to pack my Order with a lot of research material and get applauded by the outside world for rendering a scholarly Order. There was a call from inside which kept reminding me that if I venture into such an exercise at this stage, it will only be hypocritical of me since the Order will not reveal my true and honest feeling about this very important issue. To be open, I am also trying to break my own

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preconceived notions about this issue and I am in the process of evolving, and sincerely attempting to understand the feelings of the Petitioners and their parents thereafter, proceed to write a detailed Order on this issue. That is the reason why I am trying to develop this case brick by brick and ultimately, construct something purposeful on this issue.

10. The request put forth by this Court was readily accepted by all concerned. This Court also requested Ms. Vidya Dinakaran, M.Sc. Counselling Psychology, to counsel the parties and the request was readily accepted by the specialist. The parties were informed that the counselling will take place during the third week of April 2021, and that they will be intimated the exact date, time and venue through their counsel.

11. This Court after spending sufficient time with the parties prima facie got an impression that the parties will work towards a peaceful resolution, and what is required for the present is an understanding of the issue in hand. The parents were informed that the present status quo will be maintained and the Petitioners will continue to be under the protection of the above said organisation. The parents were ready for this arrangement and the only request made by them was that they should have

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regular interaction with the Petitioners. The Petitioners also agreed to interact with their parents on a regular basis.

12. Mr. Thilagar, Special Sub-Inspector of Police was present from Thallakulam Police Station. Mr. Sankar, Sub-Inspector of Police was present from Avaniyapuram Police Station. Both the officers were informed that the girl missing complaint which is pending in their police station must be immediately closed. The learned Government Advocate submitted that the police will not interfere in this issue any longer, and that the complaints will be immediately closed.

13. The learned counsel appearing on either side requested this Court to continue hearing this case since this Court has interacted with the parties, and it will be more convenient for the parties to put forth their grievance even in the future hearings and by regularly monitoring this case, this Court can resolve the issue at the earliest.

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14. This Court requests Ms. Vidya Dinakaran, M.Sc. Counselling Psychology to send a report to this Court in a sealed cover preferably on or before 26.04.2021.

15. Considering the request made by the counsel appearing on either side, the Registry is

directed to place this Order before the Hon'ble Chief Justice and get the necessary permission on the administrative side.

16. Post this case, for further hearing on ***28.04.2021."***

5. On 28.04.2021, the matter came up for hearing and this Court passed the following Order:

"Pursuant to the earlier orders passed by this Court on 29.03.2021, the matter has been placed before this Court as "specially ordered case", after obtaining appropriate orders from the Hon'ble Chief Justice.

2.The petitioners as well as their respective parents were directed to attend counselling before Ms.Vidya Dinakaran, Counselling Psychologist. On the request made by this Court, the Psychotherapist also readily accepted to counsel the parties.

3. A Report has been sent by Ms.Vidya Dinakaran in a sealed cover. The report is set out under four heads. The first part of the report explains the falsified notions of sex, gender, sexual orientation and the report explains as to how those terms must be understood. The second part of the

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report deals with the mental status and the observations made after counselling the petitioners on 13.04.2021. The third part of the report deals with the mental status and the observations made, while counselling the parents of the first petitioner on 14.04.2021. The fourth part of the report deals with the mental status and the observations made, while counselling the parents of the second petitioner on 16.04.2021.

4. Insofar as the petitioners are concerned, the psychologist has opined that both the petitioners perfectly understand the relationship they have entered into and there is absolutely no confusion in their minds about the same. It is also observed that they have lot of love and affection for their parents and their only fear is that they may be coerced into separation. According to the psychologist, such a scenario will cause a lot of mental trauma to the petitioners. It has also been observed that the petitioners wanted to continue their education and work simultaneously, to take care of themselves and they also wanted to be in touch with their family members. The petitioners are also willing to wait for their parents, whom they fervently hope will understand the relationship at some future point of time.

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5.Insofar as the parents of the petitioners are concerned, it is observed that they are more concerned about the stigma attached to the relationship in the society and the consequences it may ensue on their family. They also apprehend that they will be looked down upon by the society and their own community. The parents are also very much concerned about the safety and security of their respective daughters. One more interesting observation that has been made in the report is that the parents would rather prefer their daughters to live a life of celibacy, which according to them will be more dignified than having a partner of the same sex. They also have serious confusions regarding the lineage, adoption and other normal consequences that follow a heterosexual relationship and as to how the same would apply in a case of same sex relationship.

6. The learned counsel appearing on either side submitted that the petitioners are continuously in touch with their parents and they are talking on a regular basis over phone. It was also brought to the notice of this court that the petitioners have the continued support of the NGO.

7. The learned counsel appearing on behalf of the petitioners submitted that pursuant to this Court

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taking cognizance of the Writ Petition, the petitioners are safely taken care by the NGO and they also continue to talk with their parents on a regular basis. That apart, there is no threat exerted by the police after this Court intervened in this matter. The learned counsel requested this Court to issue certain guidelines to deal with cases of similar nature, so that persons involved in same sex relationships are treated with dignity and their safety is also ensured.

8. In the considered view of this court, there has been an appreciable progress shown in this case, due to the co-operation extended by the petitioners and their respective parents. This Court must place on record its appreciation to Ms.Vidya Dinakaran for having readily accepted the request made by this Court, to counsel the parties. It must be seen how far the earlier counselling has impacted the minds of the parents and how far they are able to understand the relationship between the petitioners. Obviously, the evolution cannot take place over night and it requires continuous effort to bring in a change. Therefore, this Court deems it fit to direct the parents of the petitioners to undergo one more round of counselling with Ms.Vidya Dinakaran, Counselling Psychologist.

9. This Court once again requests Ms.Vidya

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Dinakaran to fix some date during the month of May 2021 and conduct one more counselling for the parents of the petitioners and submit a report before this Court. The learned counsel appearing on behalf of the parents shall co-ordinate and intimate a convenient date and considering the ongoing pandemic, the counselling can be held through video conferencing.

10. Insofar as the request made by the learned counsel for the petitioners for setting out guidelines in cases of this nature is concerned, I want to give myself some more time to churn. Ultimately in this case, the words must come from my heart and not from my head, and the same will not be possible if I am not fully "woke" on this aspect. For this purpose, I want to subject myself for psycho-education with Ms.Vidya Dinakaran and I would request the psychologist to fix a convenient appointment for the same. I honestly feel that such a session with a professional will help me understand same-sex relationships better and will pave way for my evolution. If I write an order after undergoing psycho-education, I trust that the words will fall from my heart.

11. It is brought to the notice of this Court that despite the directions issued by this Court, the police

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are yet to close the First Information Report. The learned Government Advocate assured that the First Information Report will be closed immediately and reported before this Court

12.** Post this case for further hearing **on 07.06.2021 at 2:15 pm."

6. Consequent to the Order dt. 28.04.2021, the 4th and 5th Respondents each attended another session of counselling with Ms. Vidya Dinakaran, Counselling Psychologist and a report dt. 21.05.2021 came to be submitted by the said Ms. Vidya Dinakaran before this Court. The report conveys the following in brief summation:

- Parents of both the Petitioners feel great amount of shame, fear and social disdain upon them because of their respective daughter's homosexual relationship.

- Both parents expressed exhaustion in dealing with the litigation and felt let down that their daughters have not paid heed to their sentiments and beliefs and are ready to let go of them to live as they wish. However, this did not come from a place of acceptance but from a sense of hopelessness and

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unwillingness that they had no say in their decision any more.

- Both parents expressed concern over the safety, security and future of their children. However, they also expressed their belief that their daughter's homosexual relationship would cause damage to their future.
- One of the Petitioner's parents expressed that the happiness is fundamental to them and that they accept her despite them differing in their opinions about homosexuality and the social exclusion that they apprehend to face due to the same.

The above summation reveals the fact that there is no substantial or marked change noticed in the attitude of the parents during the second counselling session. At the best, one of the parents had the heart to let their daughter alone to live their life even though they were not able to accept their same-sex relationship with the other Petitioner. Even though the counselling of the parents did not ultimately end up with the desired result, this Court atleast has the satisfaction of making all efforts to assuage their feelings, and to ensure that they were not left in the lurch in this journey. This Court must place on record its appreciation for the

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parents of the Petitioners who willingly cooperated to undergo counselling and to make an effort to understand the same-sex relationship of their respective daughters.

7. Pursuant to the Order dt. 28.04.2021, I underwent a session of psycho-education under Ms. Vidya Dinakaran on 07.05.2021, and I deem it fit to extract the entire report for the sake of transparency, and understanding and awareness of all stakeholders, herein under:

> *"The organic flow of the session was possible because of the openness with which the client came in and the honesty with which thoughts and beliefs were shared.*
>
> *The session began with the client expressing the lack of narratives around homosexuality and how the mere understanding of this orientation poses difficulty due to the lack of exposure or personal experience. The need for this session arose from the need to further the understanding of the lived experiences of a homosexual couple. He shared how the subtleties and emotions surfacing, in this case, demands the usage of a lens that is well-aware of the narrative.*
>
> *A misconception that came to the forefront*

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was how homosexuality is very often viewed only with a sexual connotation (i.e.), a relationship confined only to sex. The client expressed how listening to the petitioners was when he realised the flawed notion he had and how two women came to be seen as a couple by the end of that discussion for him.

He came in with the awareness of the prejudice he holds. This was deepened by understanding how no two heterosexuals in a relationship will be judged immediately as being together only to engage in sex and it shouldn't be different for any two people with any other orientation.

He believed that even a couple of words of truth and understanding is more valuable than writing a scholarly order in cases like these. The discussion also covered the responsibility he holds now, the awareness that he needs to bring within himself before he paves way for that in the society. The result of all such processes undertaken is to enable the judgement to arise from the heart and not just from a superficial understanding on a cognitive level. It was recognised how the role of a system as powerful

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as this, stepping with the mindset to unlearn, understand and enabling a change of this nature instils hope in the queer communities.

A major part of the session addressed the problematic binary understanding of sex, gender and sexuality.

This problem has its genesis when a new-born child is assigned a male or female sex based on the genitalia, with no inclusivity of people born with organs that do not fit what the 'normative' bodies offer (i.e.) intersex. It is also to be noted that intersex is a term that not only refers to the external sexual anatomy but also internal organs and chromosomes leading to the identification of intersex anatomy much later in life. It is a form of coercion when very often such individuals have the binary system thrust upon them in the form of gender reassignment surgeries.

The issue gets intensified when the child is gendered based on the normative idea of sex as mentioned above. This comes with the norms relating to the roles and ways of expression that is expected out of the assigned gender eg: Any person assigned female comes with an innate quality of politeness and desire to sacrifice, or

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any person assigned male should never break down and offer protection to everyone in the family.

What this leads to is the blemished notion that heterosexuality is the only natural orientation that can arise out of the binary system. A notion that goes along with this is any sexual relationship that doesn't result in procreation is not the 'right' or a valid relationship.

This understanding formulates a rigid way of being which is considered 'normal'. Anything that falls out of this structure is looked at as shameful, abnormal or even abominable. This leads to a heteronormative understanding (i.e.) a biased notion that attraction between people of the opposite sex is the only acceptable relationship, thus debasing homosexuality. This heteronormativity is upheld not only through overt behaviours but also through invisible yet impactful subtleties. Hypothetically if a child's genitals are not revealed the exposure that will be presented to them will be varied and expansive, with right to autonomy. And why should it be any different when it is known. The understanding of this by the client was evident

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when he said he realises how someone's genitals does not determine whom they will be attracted to.

The client questioned how something that is so authentic forms an exceedingly small percentage in the society and why it is rather treated as a 'new' phenomenon. Homosexuality existed ever since the existence of any other orientation. There are enough references to this even in Hindu scriptures, mythologies and in the iconography of temples.

Queer individuals incur losses that a hetero-normative individual never has to endure.

Because of the stigmatised notions, any exposure to what lies beyond heteronormativity is limited. Adding to this is the erasure of any available queer narratives with absolutely no representation even in the present education system. A more evident cause for this is the loss of sense of safety that comes with wearing a queer identity on one's sleeve.

The moment a queer person puts out their identity the safest place for any human being: their own homes, can turn into a hostile environment. So how they will be treated in a

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normativity society can be imagined. With truly little to no support, queer people are forced to navigate life away from home. The brutality of constantly having to consciously hide their identity at every corner they turn is unimaginable. A heteronormative individual does not have to pay attention to their identity or how he/she is seen by others.

The invisibility of queer lives also plays a significant role here. Queer folks face a constant battle of whether to out themselves in a potentially homophobic group or continue to invisibilise themselves and be invisibilized. And the latter has been true for many homosexual individuals who are coerced into living a heteronormative life. The homonegativity can be witnessed in every direction they turn to like loans, jobs, housing, all of it starting with same-sex marriage not even recognised by the law and hence considered illegitimate. Forces that are supposed to offer protection turn out as potential dangers. There are incidences beyond count in police stations when queer individuals who seek support and protection are met with demeaning dialogues. All these reasons contribute to suicide and self-harm amongst the

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queer community, the rate of which is manifold when compared to cis individuals with heterosexual identity. The client shared how the shift towards financial independence by the queer folks enable them to hold their ground stronger than ever before and to even uproot themselves if need be.

The client also expressed how the first two orders were welcomed by the members of the community. He said that he was able to understand how the community was yearning for the smallest amount of hope on an institutional level. He recollected how youngsters from many parts of the world expressed their happiness about the direction the case has been taking. They also questioned the client on why his order included counselling for the petitioners, pointing out that it might give the impression that people in same-sex relationship have an issue and hence will have to undergo counselling, it is rather those who find it difficult to understand such relationship who need it more.

The client recollected addressing this thought with the petitioners themselves stating that they both had absolute clarity concerning

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the relationship and it was to develop that clarity in himself that he wanted them to undergo counselling. The intent was only to obtain an understanding through a professional's lens. He in fact added how mindful he was, when he did not ask the petitioners to attend the second round of counselling in his subsequent order.

He reinstated that the overwhelming responses from youngsters initiated him to think how there can be such a level of acceptance if something is considered to be abnormal by another group of people. It is only recently that young people with the support of informed organisations raise voice against the injustices faced by a queer person.

He realised that there is something fundamentally misunderstood by him and part of the society. And what matters more is the well-being of the upcoming generations and work must be done for their well-being as the rigidity held by some people cannot be changed.

The client also shared his belief that an institution is something that is supposed to work for the betterment of the society and hence is not separate from it. A judge is a public servant

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and hence the work is directed at the well-being of the society and if that can't be achieved then the person is unfit to hold such a position.

What was also addressed in the session was the pathologization of any other gender or sexuality that lies outside the binary system. The diagnostic guidelines and interventions suggested were dehumanising. These interventions were built on the false belief that homosexuality is a 'condition', that the problem was either in the person's genitals or their brain and that it can be 'cured'. Not only is the practice unethical but are extremely detrimental to the physical and psychological health of the individual.

The subtle and overt ways in which patriarchy is benefited due to heteronormativity was also looked at. Looking at this case in hand, this becomes evident when the family shows a willingness to accepting their daughter had she fell in love with a 'Man' and provide him with monetary comfort. They even questioned what they will do with all the property in their daughter's name as there is no male in the family to pass it onto now. It was surprising to see how it didn't occur to them that the property

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was intended for their daughter and it doesn't concern whom she chose as a partner.

Another backward notion that came into the discussion is how an act of sex that involves only penile penetration is recognised as 'normal' and anything else is debased. The client also pointed out to the significance of the role of sex in a heterosexual marital relationship and how emotional intimacy and satisfaction derived by both the partners are of prime importance. He shared how an unsatisfactory sexual relationship brings about disharmony in married life and wanted to understand how the same works in a same-sex relationship.

The reflection that followed only revealed that it was logical to think what predicts sexual satisfaction in a relationship remains the same for any orientation. For example, lack of open communication, an individual's mental health, history of trauma or abuse, physical factors etc can be present in any relationship. But what needs to be accounted for is the unique stressors a queer couple might face which can impact their sexual relationships. Such stressors can include internalised stigma related to being a sexual minority, stress due to invisibilisation,

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lack of safe space, and limited accessibility to support systems. The negative belief about the sexual minority that contributes to this mainly is the assumption that penile penetration/ intercourse is the only means of obtaining pleasure and hence pleasure in a lesbian relationship doesn't exist or if it does, it is perverted. This is interwoven with another problematic societal notion that a marital relationship must involve procreation for it to be considered legitimate. This devalues any sexual relationship that doesn't involve penile-vaginal intercourse.

At the end of this discussion, the client verbalised the awareness here stating that sexual pleasure can be obtained in several ways and intercourse is just one of them (even in a heterosexual relationship) and not the ultimate goal. He added that this lack of awareness or understanding itself creates a lot of misconceptions and one needs to have open conversations around these topics too.

The client spoke about his involvement in reading and sometimes adhering to religious and spiritual texts. He recollects one of the followers who bases his beliefs on Bhagavata

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Purana stating that the purpose of human life is to reach the Supreme or the Atman and the only way to do that is through procreation and hence only that must be the purpose of sex and any other desire is perverted. To this discussion it was added that several Indian philosophical resources talk about desire being an integrative part of life, one such being the 4 Purusharthas or Principles guiding a human being - Dharma, Arth, Kama and moksha of which the kama refers to the sensual aspect (of which sexual pleasure is one).

The client added that he has never come across any verse in the Gita or Bhagavata Purana that condemns homosexuality, it only talks of love and integrity as a necessity for a healthy relationship and does not state a presence of a man and woman as the requirement for the same.

Towards the end, the client spoke about how this case and the intricacies of it have always been at the back of his mind ever since it was brought to him. He questioned his responsibility and purpose here which helped him refrain from just stating that the petitioners are adults and hence have the right to choose

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the partners and pass the judgement then and there. He also shared that he is grateful and blessed for this responsibility falling on his lap. This institutional power that he holds needs to be used to convey all that has been misperceived about homosexuality and pave the way forward. He shares his understanding that his views and comments might be condemned by some people in the society but there is an upcoming society that is more aware and inclusive which will benefit from this work.

One of the client's colleagues expressed that he, the client, is having a session with one psychotherapist but there are various scientific studies present too and that he hopes what is derived from the session matches those inferences. The client shared that he is aware of a lot of materials present and yet it doesn't impact the level of acceptance present in the society.

He adds that it's easy to quote scholarly articles but to work through it myself and reveal what he gained in the process is what will be more relatable and impactful. What stood out here was when the client said that "I am the society, with all the misconceptions present.

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Now I'm working through it and engaging the process of unlearning, so it is me who needs to convey this understanding to the rest of the society that stands where I once stood". He shared that he is accounting for the resources and scholarly materials through the help of his interns.

He spoke about the need to involve the parents of the petitioners in the scheme of things and that it is important and there is a responsibility to enable them to understand the relationship their daughters are in. He empathised with the disbelief and confusion the parents experienced which helped him to get through them. Towards the end of the session, the client expressed that he feels a lot of emotions and can sense a churning happening within him.

What is needed is not just supportive practice followed by such institutions but an affirmative one and the proceedings of this case is a step towards that."

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8. After gaining a great amount of insight and understanding from Ms. Vidya Dinakaran, I felt that a further interaction with person(s) who belong to the LGBTQIA+community would be greatly instrumental to

help myself understand the ground realities, the emotions, social discrimination and exclusion, and several other difficulties faced by the community. Therefore, an interaction was scheduled with Dr. L.Ramakrishnan, Vice President, SAATHII, Ms. Shanmathi, PCVC, Dr. Trinetra Haldar Gummaraju, Digital-Content Creator, Actor, MBBS Intern – Kasturba Medical College and her mother Ms. Haima Haldar. Dr. Trinetra, a transwoman herself generously accepted to share her journey and lived experiences, and the same furthered my wholistic understanding of the LGBTQIA+ community. I invited Dr. Trinetra to submit a report post our interaction and she submitted a detailed report not only limited to our interaction and her experience but also an informed one based on her research and knowledge on the subject. I deem it fit and relevant to extract the same herein under:

> *"Our interaction began with Justice Venkatesh requesting that I share my journey and lived experiences in brief. In response, I elucidated that I was assigned male at birth by virtue of biological sex, but ever since I was old enough to form memories, around age 3-4, I was comfortable calling myself a girl and despised doing all that was expected of me as a boy – stereotypical colours, toys, games boys*

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are conditioned to show preferences for, were outright rejected by me. The Mayo Clinic states that most children typically are able to recognize and label stereotypical gender groups, such as girl, woman and feminine, and boy, man and masculine, between ages 18 and 24 months. Most also label and categorise their own gender identity by age 3 years. A child is able to articulate these preferences eventually, and at this age, I would state clearly that I was a girl and liked to behave as one usually might. While many children go through a phase of experimenting with gender expression and most parents may amuse themselves by dressing up their children in attire considered their "opposite", my "phase" never ended. It only seemed to become more rigid that I did, in fact, identify as a girl and preferred traditionally feminine gender expression.

When I was four years old, a group of Hijra individuals visited our home when my brother was born. I remember my parents sending me indoors when I asked why there was singing and dancing, why these individuals appeared different than I'd witnessed so far. My questions were met with hostility, awkwardness, and

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reprimanding. I had realised then that there was something about their non-conformity I could relate to, but also that this non-conformity was taboo, something never to be brought up or discussed openly. Any new attempt at non-conformity to my assigned gender would be met with hostility moving forwards, especially from neighbours. This is woefully common in the childhoods of LGBTQIA+ individuals – the expression of non- conformity/non-normative behaviour is met with mockery, ridicule, and more often than we'd like to admit, physical and sexual violence. To be disowned by natal family is not an uncommon scenario.

Before I could count fractions, I was regularly called "point-five", meaning half-man-half-woman. I would find myself regularly beaten up at the playground, routinely mocked and harassed by teachers and fellow-students.

Justice Venkatesh at this point questioned if any external effort goes into making somebody feel homosexual/gender non-conforming, to which I reply – absolutely not. Such truths – of our gender identities and sexual orientations – are deeply felt and visceral. They cannot be changed by external manipulation and

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intervention. Scientists too, after all, attempted aversion therapy for decades to cure homosexuality and transgender people of their so called "illnesses". Shocks administered with homosexual pornographic stimuli, chemical castration, electro convulsive therapy, religious and spiritual "treatments" to scare demons away – eventually, cisgender heterosexual scientists, individuals that always created the rules for our kind, had to admit they were approaching non-conformity the wrong way.

A study conducted by the Kerala Development Society on behalf of the National Human Rights Commission states that 99% of all transgender persons have faced social rejection on more than one occasion. 52% face harassment at the hands of classmates and 15% at the hands of teachers.

Alan Mathison Turing (23 June 1912 – 7 June 1954), an English mathematician, computer scientist, logician, cryptanalyst, philosopher, and theoretical biologist was highly influential in the development of theoretical computer science, and is widely considered to be the father of theoretical computer science and artificial intelligence. Turing played a crucial role in

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cracking intercepted coded messages that enabled the Allies to defeat the Nazis in many crucial engagements, including the Battle of the Atlantic. It is hard to estimate the exact effect Ultra intelligence had on the war, but Professor Jack Copeland has stated that this work shortened the war in Europe by more than two years and saved over 14 million lives. Turing was prosecuted in 1952 for homosexual acts; the Labouchere Amendment of 1885 had mandated that "gross indecency" was a criminal offence in the UK. He accepted chemical castration treatment with Diethylstilbestrol (a synthetic carcinogenic drug) as an alternative to prison. Turing died in 1954, 16 days before his 42nd birthday, from cyanide poisoning. An inquest determined his death as a suicide. In 2009, following an Internet campaign, British Prime Minister Gordon Brown made an official public apology on behalf of the British government for "the appalling way he was treated".

It is unfortunate that such pseudoscience is peddled to worried and anxious parents of LGBTQIA+ children even today by quacks and self-serving doctors as false hope, many of

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whom continue to practice conversion therapy – a group of therapies directed at "correcting" non-heterosexual and non-cisgender people to their so called "normal" counterparts - with full impunity, often aided by law enforcement. Families also resort to taking their children to practitioners of alternative medicine. Ayurveda, Yoga, Unani, Homeopathy and other forms of healthcare practices are commonly attempted to try and treat trans and gender non-conforming people. Religion becomes a source of additional, unchecked violence with parents often forcing exorcist and other rituals upon their queer children. Corrective rape of lesbian women and trans masculine persons is not uncommon, one of the most brutal outcomes of queer phobia, wherein attempts are made to force heteronormativity upon queer people through sexual assault. Appropriate criminalization of the aforementioned is absolutely imperative. When I began puberty around age 13-14, I began to find myself attracted to boys. Curious and unaware, I used the internet to discover gender and sexuality. I had continued to dress up throughout my childhood and adolescence in utmost secrecy –

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putting on jewellery, make-up and sarees to feel some semblance of congruence with myself, something a poorly educated psychiatrist too had deemed unnatural and disordered at age 10, when my parents had finally decided to speak to a psychotherapist about my non-conforming behaviour. Doctors too, I would realise many years later in medical college, weaponize science to justify their queer phobic/transphobic attitudes. Coming out to my parents at this time proved to be an enormous shock. With a complete lack of education regarding gender and sexuality, my parents were wholly unable to see my non-conformity as a variation of the natural, just as was the case with classmates, teachers, and others. It would take them ten whole years to understand the nuances of gender and sexuality, and accept that their first born son was in fact, their daughter. It is now that we all know what the science indicates – gender identity, gender expression, biological sex and sexual orientation operate independently of one another, and one does not necessarily indicate the other. According to Bruce Bagemihl, author of the book Biological Exuberence: Animal Homosexuality

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and Natural Diversity, same-sex behaviour (comprising courtship, sexual, pair-bonding, and parental activities) has been documented in over 450 species of animals worldwide. Clownfish, wrasses, moray eels, gobies and other fish species are known to change sex, including reproductive functions. A school of clown fish is always built into a hierarchy with a female fish at the top. When she dies, the most dominant male changes sex and takes her place. Some animal species exhibit sequential hermaphroditism (it is to be noted that "hermaphrodite" is largely an outdated term for intersex variations in human beings). In these species, such as many species of coral reef fishes, sex change is a normal anatomical process. A rough estimate of the number of hermaphroditic (meaning capacity to produce both male and female gametes) animal species is 65,000. Parthenogenesis is a natural form of asexual reproduction in which growth and development of embryos occur without fertilization by sperm. In animals, parthenogenesis means development of an embryo from an unfertilized egg cell. The New Mexico whiptail (Aspidoscelis neomexicanus) is a female-only species of lizard found in the

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southwestern United States in New Mexico and Arizona, and in northern Mexico in Chihuahua. Unfertilised eggs are laid, and they hatch eight weeks later. Why then are LGBTQIA+ human beings pathological? It is time society and its institutions collectively realise how myopic we are in our understanding of nature. Draconian legislations like Section 377 once sought to criminalise non heterosexual relations, justifying that such activity was "against the order of nature". Nature does not maintain the so-called purity of caste, nature freely intermingles with itself in ways we cannot fathom and rarely study. Nature does not enforce Victorian morality. Nature has always stood for diversity, and it is time that the legal framework of the country follows suit. I stated that in medical college, I was able to come to the conclusion that I was in fact, a transgender woman with a predominantly heterosexual orientation (therefore explaining my attraction to men). Psychological counselling can be a great tool to help an individual and their family come to terms with queer identity, but it is extremely unfortunate that psychiatry and psychology too as fields have been complicit in perpetuating queerphobia. I began

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to find vast amounts of transphobic and homophobic literature in medical textbooks – a haunting realisation that our medical textbooks are just as draconian as our legislations. In India, after the erstwhile Medical Council of India (MCI) decided to review the country's medical curriculum after more than two decades, it created the 'Competency Based Undergraduate Curriculum for the Indian Medical Graduate' in 2018. It was expected that this curriculum would incorporate modern scientific beliefs and would not pathologize as it once did. But the MCI failed expectations - currently, for undergraduate students studying Forensic Medicine in their MBBS, the medical curriculum describes "sodomy", "lesbianism" and oral sex as sexual offences, and "transvestism" (cross-dressing) as a "sexual perversion". This is despite the Hon'ble Supreme Court's verdicts in the cases of National Legal Services Authority v. Union of India, Navtej Singh Johar v. Union of India, Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of Indian and Ors. It is absolutely imperative, therefore, that directions be issued to the National Medical Council and State Medical Councils to incorporate medical and

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legal updates in their curricula, and all pathologisation and criminalisation of non-heterosexual relations, gender non-conformity, gender incongruence, transgender identity and gender expression be removed. They must be fully normalised, decriminalised, and depathologised – especially in the subjects of Forensic Medicine and Obstetrics and Gynaecology where they regularly feature. Further, unscientific and misogynistic colloquial terms like "defloration", and the inclusion of the unscientific and violent "two-finger-test" must stop. When changes in curricula are difficult, it must be mandated that medical colleges collaborate with NGOs and NPOs to inculcate gender and sexuality literacy as early as possible in undergraduate medical training, before unscientific and outdated information has already been disseminated through the 4.5 years of MBBS training. Such dissemination leads to large scale negligence at the hands of doctors, with many refusing to treat LGBTQIA+ persons, physically examine or operate upon them, or be medically negligent upon initiating therapies.

Justice Venkatesh discussed his understanding

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of the aforementioned concepts, fully acknowledging that it was arguably absurd to discriminate on the basis of gender identity and sexual orientation, and that should an individual be fully supported, there is absolutely no difference between the capabilities of a cisgender-heterosexual person and a member of the LGBTQIA+ community. When asked about her experiences of raising a transgender child, Mrs Haima Haldar, my mother, stated that parents are unfortunately products of their circumstances. Sex education in schools is thoroughly lacking, and very rarely are parents fully literate with regards to gender and sexuality when their child is ready to come out. More often than not, this leads to disastrous outcomes. Natal families become the seat of violence against LGBTQIA+ children, often leaving them no choice but to flee such an environment in search for safety. In this process, they are often encountered with queer phobic institutions – namely law enforcement, shelters, and doctors. The ugly nexus that operates against queer individuals with full impunity must be stopped. At every level, there must be sensitisation and criminalisation of harassment

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and violence. Further, it is extremely important that chosen family be acknowledged as a legitimate support system, one that is deemed as valid as natal family. It is often these systems of chosen families – partners, Hijra-gharanas, and other non-traditional systems that become primary sources of emotional and financial support. Such systems need to be recognised in the eyes of the law. Non-heterosexual couples must have the support of the State to enjoy as many privileges as their heterosexual counterparts including the right to marry, adopt, share and inherit property, etc. Simultaneously, it was stated that an accepting natal family can be the difference between life and death for many queer individuals. A study, namely Suicide and Suicidal Behaviour Among Transgender Persons conducted by The of Mental Health and Neuro Sciences, Bengaluru stated that 50% of Indian transgender persons have attempted suicide at least once before their 20th birthday. Gender-based victimization, discrimination, National Institute bullying, violence, being rejected by the family, friends, and community; harassment by intimate partner, family members, police and public; discrimination and

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ill treatment at health-care system are the major risk factors that influence the suicidal behaviour among transgender persons. A supportive natal family could drastically improve physical and mental health outcomes for queer, trans, and gender non-conforming children. While her journey may have been difficult, Mrs Haldar stated that once she had access to the necessary information, acceptance was easy. If this process was aided by the Judiciary and Legislature, perhaps families would have fewer excuses and hurdles in their path to accepting their LGBTQIA+ children. A parent's or family's support could mean immeasurable boosts in the self-esteem and overall development of LGBTQIA+ persons, giving them the tools required to succeed in any field of their choice and lead fulfilling lives. Mrs Haldar stated that it is time society moved toward modernity and away from superstition, orthodox belief systems, and unfounded fears. Justice Anand Ventakatesh intently listened to the exchange of thoughts, acknowledging that there is a fundamental flaw in how entire generations including his own grew up believing in falsehoods, fully ignorant of their cisgender-

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heterosexual privileges, woefully unaware of the pains and traumas faced by LGBTQIA+ individuals. He also acknowledged that listening to lived experiences was a powerful means of understanding the lives of queer individuals, and that the institutions of this country have absolutely no right to interfere in aspects of one's identity which are but natural, and integral to their overall existence. It is perhaps time that the pillars of democracy, law enforcement, the medical fraternity all acknowledge the errors of their ways, and make reparations. He concluded by requesting all participants to draft summaries of their points to take into consideration.

My mother, Mrs Haldar and I thank Justice Venkatesh for his time and keen observations, and conclude that we are confident in his ally ship and support to the LGBTQIA+ community to deliver an order that effectively safeguards the rights and freedoms of this vulnerable population."

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Even though the above was arranged as an interactive session for my proper understanding, I found it to be another psycho-educational session which actually cleared a lot of my personal misconceptions on the issue.

This is more so due to the fact that I got the opportunity to interact with a transwoman who has successfully broken the shackles laid by the society on the LGBTQIA+ community, and is going to render her services as a successful medical doctor. She has the strength of not only pulling herself up in the society but also is proving to be an inspiration and support to all those in the LGBTQIA+ community who are struggling to make a mark. This session ultimately convinced me that I must change all my preconceived notions and start looking at persons belonging to the LGBTQIA+ community as they are. I must frankly confess that the Petitioners, Ms. Vidya Dinakaran and Dr. Trinetra became my gurus who helped me in this process of evolution and pulled me out of darkness (ignorance).

9. In light of the facts and circumstances, this Court puts before itself a question as to why it indulged in an elaborate and what could be construed as an "out-of-the-box" exercise of involving psycho-education and professional counselling psychology in deciding this matter. Speculations may arise that this Bench made such an attempt due to its notion that homosexuality or being part of the LGBTQIA+ community was something to be dealt with as a psychological anomaly. The answer is in the negative. This Court need not have spent its time to test or negate

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the legitimacy or naturality of homosexual relationships, since the Hon'ble Supreme Court has already done such an exercise in ***Navtej Singh Johar v. Union of India and Ors***, reported in ***2018 (10) SCC 1*** in which it has held that homosexuality is neither unnatural nor is it a "*mental disorder or a disease*". As a matter of judicial discipline, this Court is bound by even *obiter dicta* of the Hon'ble Supreme Court. This Court derives great strength from the views and observations of the Apex Court in the judgment mentioned *supra*.

10. Unlike regular litigations, the present case has given this Court, not only an opportunity but also a vested responsibility to weigh the cause for inclusivity and justice against discrimination by heretofore social understanding of morality and notions of tradition. That being said, I also felt that I remove the "Lordship's" hat and instead wear the hat of the average commoner in the society, who have not given thought to understand or accept, who are attempting to understand, who totally refuse to understand or accept the LGBTQIA+ community. I have no hesitation in accepting that I too belong to the majority of commoners who are yet to comprehend homosexuality completely. Ignorance is no justification for normalizing any form of discrimination. Therefore, I

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https://www.mhc.tn.gov.in/judis/

took upon myself, the vested responsibility and the duty to deliver justice in all its forms and spirit, of cutting across personal prejudices and notions and setting forth to, at the least, educate myself lest my ignorance interfere with in guiding homosexuality and the LGBTQIA+ community towards social justice. I believe in all honesty and sincerity that even if my endeavor inspires, informs and changes a small collective of persons in understanding and accepting the LGBTQIA+ community, I would have achieved in delivering justice in its true spirit against discrimination and towards inclusivity.

11. Since I have never personally encountered or had the need or opportunity to understand and appreciate the emotions and the very nature of persons belonging to the LGBTQIA+ community, the facts of the case led me to an unknown territory. I realized, after a one-on-one interaction with the Petitioners, that it was I (us), who has to set off on a journey of understanding them and accepting them and shed our notions, and not they who have to turn themselves inside out to suit our notions of social morality and tradition. This necessitated that I record my journey from venturing into uncharted waters to educating myself and trying to understand that the nature of relationship, love and bond between

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homosexual persons and the LGBTQIA+ community at large is equally as pure, legitimate and real as that experienced and shared by cis-heterosexual persons.

12. To begin with, if someone had approached me saying that they are attracted to or are in a relationship with a person of the opposite sex, I would have had no difficulty in understanding them, since I have experienced the same personally. Similarly, I would have probably had no difficulty in understanding or sharing someone's happiness, joy or anguish and sadness. This is because, I have personally experienced those emotions as well. Such parallels can be drawn endlessly. I have never personally known homosexual persons, and 'what do any other know about the shoes he has never walked', for I have not walked in their shoes. The society and my upbringing have always treated the terms "homosexual", "gay", "lesbian" as anathema. A majority of the society would stand in the same position of ignorance and preconceived notions. I have, at the best, read or come across people talking about the LGBTQIA+ community, but not to an extent where it made a positive impact on me or influenced me.

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13. Growing up, the societal impact has a lot of bearing in our understanding of relationships right down to our subconscious, and we involuntarily vouch only those relationships which the society deemed "fit and proper". As we evolve, forming individual ideas and ideologies, our exposure and assimilation of facets heretofore unknown, ideas and ideologies ingrained in us conflict with our own understanding, acceptance and convictions. On the positive side, conflict of ideologies and defiance to blind endurance of societal norms have paved the way for numerous reforms in society, even though over periods in history such conflicts were at the cost of the lives of those whose ideologies defied blind observance of societal practices. The issue on hand has been contending for acceptance for some decades. These relationships for most part have been barred and even criminalised by some societies. Over decades, the LGBTQIA+ community have come together by way of organisations with a request to the society not to at the least, interfere with their choice of sexual orientation, gender identity, gender presentation and gender expression even if the society refuses to recognise such choices. The voice of this community is now getting louder and stronger and the society can no more turn a deaf ear and a time has come to make that change.

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14. If I have to figuratively describe the change in my perspective from right at the start of the conversation and to the time it ended, the Petitioners described their love and companionship in exact terms of how two cis-heterosexuals, in my understanding would have addressed their relationship. Whatever they said sounded very natural and made me question myself as to where the conflict actually arises. This change happened within mere duration of 15 minutes.

15. Therefore, as mentioned earlier, the only reason for referring the Petitioners to counselling was to enable myself to understand something more about this relationship from a professional. To reiterate my position, I am venturing into unchartered territory and without my understanding the issue, the final outcome will only be half-baked and ineffective. Upon going through the report of the psychotherapist, I gained better understanding than I had at the commencement of the proceeding and that the second phase involved a further counselling for the parents and a psycho-educational session for myself explains that it had nothing to do with assessing where the Petitioners stand.

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16. When two persons of the same sex are friends and continue that relationship for their entire life, this world does not see anything abnormal in that relationship. In fact, no one has any conflict or objection when that relationship continues and in fact, they encourage such a friendship. Such friendship is treated to be one of the greatest of relationships between two human beings. The actual confusion starts when the same two individuals slightly alter their stand and instead of being just friends, get involved in a partnership i.e. a homosexual relationship which in normal parlance is understood as same-sex relationship.

17. Even live-in-relationships have not been given any legislative sanctity so far and the parties involved can get in and get out of the relationship at any given point of time without any legal consequences. The scenario as it stands today does not make any difference to heterosexuals involved in a live-in-relationship and two homosexuals in a relationship. Both these relationships as they stand today do not have any legal sanctity and it is not recognised by any existing law. However, the society does not have any problem in recognising a live-in

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relationship between two cis-heterosexuals, but it is hell bent against same-sex relationships. It is therefore clear that the actual problem is not the fact that the law does not recognise a relationship but that the sanction that is accorded by the society is not available. It is only for this reason, I strongly feel that the change must take place at a societal level and when it is complemented by a law there will be a remarkable change in the outlook of the society by recognising same-sex relationships. For a proper understanding we can recall how persons with differential abilities and mental illnesses were treated by this society some time back, and how the awakening in the society complemented with enactment of appropriate laws have brought in a huge change in recognising the rights of such differently abled persons, and the attempts made to bring these persons also within the level playing field.

18. The issue on hand is very important and requires awakening in the society, and law, by itself, may not be able to achieve the desired result. A law cannot be effective without it being acknowledged by the society and such an awakening in the society is not going to happen overnight. It requires regular deliberation and it has to necessarily fall out very strongly from the constitutional institutions and I believe that the

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judiciary and particularly the constitutional courts have a major role to play in spreading this awareness and awakening the society. I sincerely hope that the legislature also starts evincing more interest on this very important issue. This is more so since people, especially the present generation have started talking more about it and they are desperately wanting to find a solution at least to the extent that persons of the LGBTQIA+ community are left to live peacefully. Till the legislature comes up with an enactment, the LGBTQIA+ community cannot be left in a vulnerable atmosphere where there is no guarantee for their protection and safety. This gap is now sought to be filled in by way of issuing guidelines till law takes over and guarantees safety and protection.

19. Before this Court ventures to issue a slew of directions by way of mandamus, this Court is duty bound to trace the constitutional rights and their guarantee thereof that are available to the Petitioners and all those belonging to the LGBTQIA+ community. This Court cannot proceed to issue directions to the State and its instrumentalities unless such directions are based on legal rights. In view of the same, this Court proceeds to trace the relevant provisions under the Constitution of India,

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1950 (hereinafter referred to as "the Constitution") which guarantees such a right.

20.Article 14 of the Constitution embodies a guarantee 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. While the expression "*equal protection of the laws*" is evidently drawn from the 14th Amendment of the U.S. Constitution, the expression "*equality before the law*" undoubtedly has its origins to the concept of the rule of law formulated by Professor A.V. Dicey. This was pointed out by Rajamannar, CJ in the Full Bench judgment of this Court in ***V.G. Row v. State of Madras*** reported in ***AIR 1951 Madras 147***. Adverting to Article 14 of the Constitution, the learned Chief Justice observed:

> *"This Article, in my opinion, relates to two different concepts. One is "equality before the law" & the second "equal protection of the laws". Two obligations are cast upon the State, that is, to secure to a person equality before the law & also to give equal protection of the laws to the person. The expression "equality before the law" is not used in the American Constitution, though "equal protection of the laws" occurs in the 14th*

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Amendment. The expression "due process of law" is used in a more elastic sense as to include equality before the law & also equal protection of the laws. Though in the 5th Amendment of the American Constitution, equal protection of the laws is not specifically mentioned it is specifically stated, however; in the 14th amendment as it was thought that there should be an implication in that direction so far as the State legislation was concerned. Prof. Dicey in his Law of the Constitution treats "equality before the law" as one of the three meanings of the expression "rule of law" which formed the fundamental principle of the English Constitution. He defines it at p. 202. Edn. 9 as meaning:

"The equal subjection of all classes to the ordinary law of the land administered by the ordinary law Cts; the 'rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals; there can be with us nothing really corresponding to the 'administrative law' (droit administratif) or the 'administrative tribunals' (tribuna

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uxadministratifs) of France. The notion which lies at the bottom of the 'administrative law' known to foreign countries is, that affairs or disputes in which the Govt. or its servants are concerned are beyond the sphere of the civil Cts. & must be dealt with by special & more or less official bodies. This idea is utterly unknown to the law of England & indeed is fundamentally inconsistent with our traditions & customs."

In other words, this expression implies in my opinion that the Legislature should not make a distinction between the rich & the poor, official & non-officials, & make discrimination on any other basis between one subject & the other. All must be treated as equal before the law."

21. Having thus declared a general guarantee of equality in Article 14, the Constitution particularizes the equality principle in the two succeeding provisions viz., Articles 15 & 16, which are a species of the genus contained in Article 14. Article 16 of the Constitution is not relevant for the present purpose and is, therefore, not adverted to. Article 15(1) of the Constitution embodies a constitutional injunction against the

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State forbidding any discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

22. For quite some time, the law was to the effect that a person complaining of discrimination was required to plead and establish that such discrimination complained of was "only" on account of any of the grounds set out in Article 15(1). In particular, the word "*sex*" occurring in this Article was construed to mean gender simpliciter, i.e., male and female. There exists, in law, a distinction between sex and sexual orientation, as was pointed out by the Hon'ble Supreme Court in ***NALSA v. Union of India*** reported in ***2014 (5) SCC 438***. Adverting to the concept of "sexual orientation", it was observed:

> *"Sexual orientation refers to an individual's enduring physical, romantic and/or emotional attraction to another person. Sexual orientation includes transgender and gender-variant people with heavy sexual orientation, and their sexual orientation may or may not change during or after gender transmission, which also includes homosexuals, bisexuals, heterosexuals, asexual, etc. Gender identity and sexual orientation, as already indicated, are different concepts. Each person's self-*

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defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity."

23. In order to appreciate the controversy raised in this case, it is necessary to briefly trace the development of Article 15 of the Constitution and to notice the developments across the globe on the interpretation of similar non-discriminatory provisions.

24. Soon after the First War of Indian Independence in 1857, Queen Victoria issued a proclamation in her capacity as the Queen Empress of India on 01.11.1858. The proclamation contained the early version of the equality guarantee, which ran as follows:

"And it is Our further Will that, so far as may be, Our Subjects, of whatever Race or Creed, be freely and impartially admitted to Offices in Our Service, the Duties of which they may be qualified, by their education, ability, and

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integrity, duly to discharge."

After the reign of Queen Victoria, her successor King Edward VII reiterated the guarantee of equality to the subjects of the Crown. His proclamation dated 02.11.1908 contained the following statement:

> *"No man among my subjects has been favoured, molested or disquieted by reason of his religious belief or worship. All men have enjoyed protection of the law. The law itself has been administered without disrespect or to usages and ideas rooted in your civilisation."*

25. The next development was the passing of the Government of India Act by the British Parliament in 1935. Section 298 (1) of the said Act was as follows:

> *"No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India."*

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A similar guarantee against sex discrimination was guaranteed in Section 275 of the Government of India Act, 1935. Interestingly, the Statutory Commission, which reported on the Draft of the Act, did not find its inclusion to be of any use observing *"Abstract declarations are useless unless there exists the will and the means to make them effective."*

26. Article 15(1) of the Constitution largely captures Section 298 of the Government of India Act, 1935 with the important addition of sex as a prohibited ground of discrimination. That Section 298 of the Government of India Act, 1935 is the precursor of Article 15 of the Constitution is further clear from the identical expressions "*on grounds only of*" occurring in both provisions. In the early cases, it is clear that the Courts accorded a textual interpretation to this provision, meaning thereby that the person complaining of a violation of Article 15 of the Constitution had to show that the alleged discrimination was only (or rather solely) on that particular ground.

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27. The inclusion of the word "only" occurring in Draft Article 9 (present Article 15) appears to have drawn the ire of several of the members of the Constituent Assembly who called for its deletion. The

Constituent Adviser, Dr. B.N Rau, proffered a strange reason for its retention. He argued:

> *"There are advantages in retaining this wording. For example, suppose because of discrimination against Indians in South Africa, India decides to discriminate against South African Europeans in India. Such discrimination would be on the grounds of race, but not on grounds only of race: the Constitution as it stands, would permit it, but not if it is amended as proposed."*

Scholars have rightly criticised the aforesaid example of Dr. Rau observing, quite rightly, that the language of Draft Article 9 made it clear that it would apply only to citizens and not to foreigners, with the result that the comparison with South Africans was wholly out of place. Thus, the mystery of the word "only" in Article 15(1) of the Constitution appears to hinge on an example that was entirely inaccurate in the first place.[1]

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1See Dr. Sanjay Jain and Dr. Shirish Deshpande, Fair Sex and Unfair Treatment, Some Reflections on Constitutional Design and Institutional Response With Special Reference to India, in Feminism in the Sub-Continent and beyond challenging laws and changing laws, Ed: Jaya Sagade, Eastern Book Company, Pp 3-50.

28. In construing Section 298(1) of the Government of India Act, 1935, the Privy Council in ***Punjab Province v. Daulat Singh*** reported in ***AIR 1946 PC 66*** laid down the following test:

> *"In their (Lordships) view, it is not a question of whether the impugned Act is based only on one or more of the grounds specified in s. 298, sub-s. 1, but whether its operation may result in a prohibition only on these grounds. The proper test as to whether there is a contravention of the sub-section is to ascertain the reaction of the impugned Act on the personal right conferred by the sub-section, and, while the scope and object of the Act may be of assistance in determining the effect of the operation of the Act on a proper construction of its provisions, if the effect of the Act so determined involves an infringement of such personal right, the object of the Act, however laudable, will not obviate the prohibition of sub-s. 1."*

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29. After the advent of the Constitution, the construction of Article 15(1) came up for consideration before the Calcutta High Court in ***Sri Mahadeb Jiew v. Dr. B. B. Sen*** reported in ***AIR 1951 Cal 563***, wherein it was observed thus:

> *" Article 15(1) of the Constitution provides, inter alia, -- The State shall not discriminate against any citizen on grounds only of sex. The word 'only' in this Article is of great importance & significance which should not be missed. The impugned law must be shown to discriminate because of sex alone. If other factors in addition to sex come into play in making the discriminatory law, then such discrimination does not, in my judgment, come within the provision of Article 15(1) of the Constitution. Equality of sex as embodied in the constitutional guarantee of Article 15(1) of the Constitution draws only this limit that sex by itself alone will not be a ground of discrimination by the State. Superadded to sex, if there are proprietary considerations, then the discrimination cannot be said to be on the ground of sex alone."*

In the context of Article 15(1) of the Constitution, the test and the construction put upon the words "*grounds only of*" in Section 298(1) of the Government of India Act, 1935 by the Federal Court in ***Daulat Singh*** (cited *supra*) were cited and approved by the Hon'ble Supreme Court in ***State of Bombay v Bombay Educational Society*** reported in ***AIR 1954 SC 561***.

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A similar view was taken by a Division Bench of the Punjab and Haryana High Court in ***Raghubans Saudagar Singh v. State of Punjab*** reported in ***AIR 1972 P&H 117,*** wherein it was observed thus:

> *"(14) Equally obvious it is, however, that the Constitution bars a discrimination on the ground of sex alone. The language of Article 16(2) and Article 15(1), as regards the present point, is in pari-materia. In both the Articles salient significance attaches to the use of the word "only". What is forbidden is discrimination on the ground of sex alone. However, when the peculiarities of sex added to a variety of other factors and considerations form a reasonable nexus for the object of the classification, then the bar of Article 15 and 16(2) cannot possibly be attracted. "*

30.When things stood thus, the global jurisprudence on sex, sexual orientation and gender identity witnessed a sea change. In the Canadian case of ***James Egan v. The Queen*** reported in ***1995 2 SCR 513***, two homosexuals mounted a challenge to the Old Age Security Act, which accorded pension to spouses whose income fell below a stipulated amount when they reached the age of 60. Section 15 of the Canadian

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Charter declared:

> *"**15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."*

It was contended that as Section 15 protected only "sex" and not "sexual orientation", the challenge ought to fail. Rejecting this argument, the Canadian Supreme Court held as under:

> *"**175.** Homosexual couples as well as homosexual individuals have suffered greatly as a result of discrimination. Sexual orientation is more than simply a "status" that an individual possesses. It is something that is demonstrated in an individual's conduct by the choice of a partner. The Charter protects religious beliefs and religious practice as aspects of religious freedom. So, too, should it be recognised that sexual orientation encompasses aspects of "status" and "conduct" and that both should receive protection. Sexual orientation is demonstrated in a person's choice of a life partner, whether heterosexual or homosexual. It*

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follows that a lawful relationship which flows from sexual orientation should also be protected. The European Parliament, in its legislation prohibiting discrimination on the basis of sexual orientation, specifically sought to address the discrimination faced by homosexuals not only as individuals but as couples: Resolution on Equal Rights for Homosexuals and Lesbians in the European Community (A3-0028/94). These studies serve to confirm overwhelmingly that homosexuals, whether as individuals or couples, form an identifiable minority who have suffered and continue to suffer serious social, political and economic disadvantage.

178. *From the foregoing review, it can be seen that many legislators have recognised sexual orientation as a prohibited ground of discrimination. Similarly, judicial opinion has overwhelmingly recognised that sexual orientation is an analogous ground to those set out in s. 15(1). In my view, there can be no doubt that sexual orientation is indeed a ground of discrimination analogous to those enumerated in s. 15(1). It now remains to be seen whether the distinction on the basis of this analogous ground constitutes discrimination.*

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31. In South Africa, Section 9(3) of the Constitution of South Africa specifically listed "sexual orientation" as one of the prohibited grounds of discrimination. In ***National Coalition for Gay and Lesbian Equality v. The Minister of Justice*** reported in ***1998 ZACC 15***, the Constitutional Court of South Africa outlawed the offence of sodomy as being violative of Section 9(3), inter alia, observing as under:

> *"The concept of sexual deviance needs to be reviewed. A heterosexual norm was established, gays were labelled deviant from the norm and difference was located in them. [Minow above n 8 argues that equality for those deemed different is precluded by five unstated and unacceptable assumptions namely that: Difference is intrinsic not a comparison; the norm need not be stated; the observer can see without a perspective; other perspectives are irrelevant; and the status quo is natural, uncoerced and good. Her focus was principally on disability rights, but the critique would seem to apply to the manner in which gay conduct has been described.] What the Constitution requires is that the law and public institutions acknowledge the variability of human beings and affirm the equal respect and concern that should be shown to all as they are. At*

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the very least, what is statistically normal ceases to be the basis for establishing what is legally normative. More broadly speaking, the scope of what is constitutionally normal is expanded to include the widest range of perspectives and to acknowledge, accommodate and accept the largest spread of difference. What becomes normal in an open society, then, is not an imposed and standardised form of behaviour that refuses to acknowledge difference, but the acceptance of the principle of difference itself, which accepts the variability of human behaviour."

32. Even in the United Kingdom, there was a conscious break from the Victorian puritanism when in ***Ghaidan v. Godin Mendoza*** reported in ***2004 UKHL 30***, the House of Lords upheld the judgment of the Court of Appeal holding that discrimination based on sexual orientation was unacceptable. Then in 2006, a distinguished group of human rights experts assembled at Yogyakarta in Java and drafted and developed a set of principles (commonly alluded to as the Yogyakarta Principles). For the purposes of the present case, the following principles may be noticed:

"1. The right to the universal enjoyment of human rights.—All human beings are born free

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and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights.

States shall:

(a) embody the principles of the universality, interrelatedness, interdependence and indivisibility of all human rights in their national constitutions or other appropriate legislation and ensure the practical realisation of the universal enjoyment of all human rights;

(b) amend any legislation, including criminal law, to ensure its consistency with the universal enjoyment of all human rights;

(c) undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity;

(d) integrate within State policy and decision making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.

2. The rights to equality and non-discrimination.—Everyone is entitled to enjoy all human rights without discrimination on the basis

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of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.

Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

States shall:

(a) embody the principles of equality and non- discrimination on the basis of sexual

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orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles;

(b) repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same-sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;

(c) adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;

(d) take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;

(e) in all their responses to discrimination on the basis of sexual orientation or gender

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identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;

(f) take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression."

33. Given the significant developments across the globe, as set out *supra*, it was only a matter of time before the interpretive tensions surrounding the expressions "*on grounds only of*" in Article 15 of the Constitution would soon appear before the Indian Courts. Given the paradigm shift in the jurisprudence of gender, gender identities and sexual orientation across the globe, could it still be successfully maintained that the prohibited classification on the ground of "sex" in Article 15(1) of the Constitution did not and could not include sexual orientation?

34. The first salvo was fired in ***Naz Foundation v. Government of***

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the NCT of Delhi reported in ***2010 Cr LJ 94***, where the constitutional validity of Section 377 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") was called into question before a Division Bench of the Delhi High Court. The High Court declared that Section 377 of IPC, in so far as it criminalised consensual sexual acts of adults in private, were violative of Articles 21, 14, 15 of the Constitution. The High Court, taking a cue from the Canadian Supreme Court's decision in ***James Egan's case*** (cited *supra*), held that "sexual orientation" was a prohibited ground analogous to "sex" in Article 15(1) of the Constitution. Speaking for the Court, Chief Justice A.P Shah held:

> *"We hold that sexual orientation is a ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by Article 15. Further, Article 15(2) incorporates the notion of horizontal application of rights. In other words, it even prohibits discrimination of one citizen by another in matters of access to public spaces. In our view, discrimination on the ground of sexual orientation is impermissible even on the horizontal application of the right enshrined under Article 15."*

More importantly, the Court identified personal autonomy as the golden

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thread running across all the prohibited grounds in Article 15 of the Constitution, observing:

> *"Thus, personal autonomy is inherent in the grounds mentioned in Article 15. The grounds that are not specified in Article 15 but are analogous to those specified therein, will be those which have the potential to impair the personal autonomy of an individual."*

35. The aforesaid decision was taken on appeal before the Hon'ble Supreme Court in ***Suresh Kumar Kaushal v. Naz Foundation*** reported in ***2014 (1) SCC 1***, and the decision of the Delhi High Court was reversed without affording any comment on the High Court's interpretation of Article 15 of the Constitution. About the same time, in ***NALSA v. Union of India*** reported in ***2014 (5) SCC 438***, another two-judge bench of the Hon'ble Supreme Court examined a grievance of the transgender community who claimed a legal declaration that non-recognition of their gender identity than the one assigned to them at birth (as male or female) violated their rights under Articles 14 and 21 of the Constitution. The Court, after a careful appraisal of the global jurisprudence and the Yogyakarta Principles, upheld the claim of the

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transgenders observing, inter alia, as under:

> ***"82.*** *Article 14 has used the expression "person" and Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender-neutral" evidently refer to human beings. Hence, they take within their sweep hijras/transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one's personal self, based on self-identification, not on surgical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender."*

In a marked departure from the line of reasoning adopted in ***Suresh Kumar Kaushal's case***, (cited *supra*) the Apex Court in ***NALSA*** (cited *supra*) opined as under:

> *"**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*

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"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.

36. In view of the aforesaid observations of a co-ordinate two-judge bench, review petitions were filed to re-examine the law laid down in ***Suresh Kumar Kaushal's*** case. These review applications were directed to be placed before a Constitution Bench in ***Navtej Singh Johar v. Union of India*** reported in ***2018 (1) SCC 791***. The Constitution Bench in ***Navtej Singh Johar v. Union of India*** reported in ***2018 (10) SCC 1***, overruled the decision in ***Suresh Kumar Kaushal*** and approved the decision of the Delhi High Court in ***Naz Foundation*** (cited *supra*). Adverting to Article 15(1) of the Constitution and the formalistic interpretation of the expression "*on grounds only of*" Dipak Misra CJ observed

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"*This formalistic interpretation of Article 15 would render the constitutional guarantee against discrimination meaningless. For it would allow the State to claim that the discrimination was based on sex and another ground ("Sex plus") and hence*

outside the ambit of Article 15. Latent in the argument of the discrimination, are stereotypical notions of the differences between men and women which are then used to justify the discrimination. This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context. For example, a rule that people over six feet would not be employed in the army would be able to stand an attack on its disproportionate impact on women if it was maintained that the discrimination is on the basis of sex and height. Such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics."

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37. In her concurring judgment, Indu Malhotra, J., rightly noticed that the elements running across the prohibited grounds in Article 15(1) of the Constitution were those over which the person has no control. In other words, they are what Professor Robert Wintemute (Sexual Orientation and Human Rights, OUP, 1995) termed as "*immutable*

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characteristics".[1] Malhotra, J reasoned that any discrimination based on these grounds would undermine the personal autonomy of the individual. The learned Judge also held that the word "sex" is not merely restricted to the biological attributes of the individual but also their "sexual identity and character" as well as "sexual orientation" (See paragraph 638.2 of the report). In his concurring judgment Chandrachud, J traced the protection to the constitutional values of liberty, dignity, autonomy and privacy guaranteed under Article 21 of the Constitution. The learned judge pointed out that the right to privacy is intrinsic to liberty, central to human dignity and the core of autonomy. These values are integral to the right to life under Article 21 of the Constitution. The Court concluded that a meaningful life is a life of freedom and self-respect and nurtured in the ability to decide the course of living.

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

1Also see John Gardner, On the Ground of Her Sex(uality), Oxford Journal of Legal Studies, Vol 18, 1998, pp 167-187.

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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 trans-woman (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

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protect the rights of the petitioners, which are constitutionally guaranteed under Articles 14,15 and 21.

39. Before rounding out the discussion, it is necessary to notice a recent decision of the United States Supreme Court in ***Bostock v. Clayton County, Georgia*** reported in ***2020 SCC Online US SC 2***. Title VII of the Civil Rights Act, 1964 makes it unlawful for an employer to refuse to hire or discharge an employee or to otherwise discriminate against an individual because of, inter alia, sex. The argument of the employer before the Supreme Court was predictable enough. The employers turned to Title VII's list of protected characteristics—race, colour, religion, sex, and national origin. Because homosexual and transgender status cannot be found on that list and because they are conceptually distinct from sex, the employers reasoned, they are implicitly excluded from Title VII's reach. Put another way; if Congress had wanted to address these matters in Title VII, it would have referenced them specifically.

40. Rejecting these arguments, the Court made the following pertinent observations:

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"The statute's message for our cases is equally simple and momentous : An individual's homosexuality or transgender status is not relevant to employment decisions. That's because it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex. Consider, for example, an employer with two employees, both of whom are attracted to men. The two individuals are, to the employer's mind, materially identical in all respects, except that one is a man and the other a woman. If the employer fires the male employee for no reason other than the fact he is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. Put differently, the employer intentionally singles out an employee to fire based in part on the employee's sex, and the affected employee's sex is a but-for cause of his discharge. Or take an employer who fires a transgender person who was identified as a male at birth but who now identifies as a female. If the employer retains an otherwise identical employee who was identified as female at birth, the employer intentionally penalises a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth. Again, the

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individual employee's sex plays an unmistakable and impermissible role in the discharge decision.

We agree that homosexuality and transgender status are distinct concepts from sex. But, as we've seen, discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second. Nor is there any such thing as a "canon of donut holes", in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule. And that is exactly how this Court has always approached Title VII. "Sexual harassment" is conceptually distinct from sex discrimination, but it can fall within Title VII's sweep. Oncale, 523 US., at 79-80. Same with "motherhood discrimination." See Phillips, 400 US., at 544. Would the employers have us reverse those cases on the theory that Congress could have spoken to those problems more specifically? Of course not. As enacted, Title VII prohibits all forms of discrimination because of sex, however they may manifest themselves or whatever other labels might attach to them."

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41.The aforesaid discussion would demonstrate that the time-worn aids of literal and pedantic construction which plagued the early jurisprudence of Article 15 of the Constitution no longer holds sway today. The "grounds" enumerated in Article 15 of the Constitution are not water-tight compartments to be viewed divorced from discrimination which is the sheet anchor of the provision. The grounds are merely instruments to find and eliminate discrimination and are, therefore, a means to an end. Discrimination is not a self-referencing concept. A meaningful attempt to identify and eliminate discrimination must necessarily involve the identification and protection of the constitutional values of personal autonomy, dignity, liberty and privacy.

42. The discussion *supra* leads this Court to the final portion of this judgment namely, framing of guidelines and issue of directions for proper recognition of the rights of the LGBTQIA+ community and to ensure their safety and security to lead a life chosen by them. This Court expects the respective departments/authorities and institutions to implement these guidelines in letter and spirit not for the sake of complying with a judicial fiat but to ensure that this society evolves, and the LGBTQIA+ community is not pushed out of the mainstream of the

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society.

43. This Court proceeds to issue the following interim guidelines/directions:

A. The police, on receipt of any complaint regarding girl/woman/man missing cases which upon enquiry/investigation is found to involve consenting adults belonging to the LGBTQIA+ community, shall upon receipt of their statements, close the complaint without subjecting them to any harassment.

B. The Ministry of Social Justice & Empowerment (MSJE), has to enlist Non-Governmental Organizations (NGOs) including community-based groups which have sufficient expertise in handling the issues faced by the LGBTQIA+ community. The list of such NGOs along with the address, contact details, and services provided shall be published and revised periodically on the official website. **Such details shall be published within 8 weeks from the date of receipt of copy of this order**.

C. Any person who faces an issue for the reason of their belongingness to the LGBTQIA+ community may approach any of the enlisted NGOs for safeguarding and protecting their rights.

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D. The concerned NGO in consultation with the MSJE, shall maintain confidential records of such persons who approach the enlisted NGOs and the aggregate data shall be provided to the concerned Ministry bi-annually.

E. Such problems shall be addressed with the best-suited method depending on the facts and circumstances of each case be it counselling, monetary support, legal assistance with the support of District Legal Services Authority, or to co-ordinate with law enforcement agencies about offenses committed against any persons belonging to the LGBTQIA+ community.

F. With specificity of issue of accommodation, suitable changes are to be made in existing short stay homes, *Anganwadi* shelters, and "*garima greh*" (a shelter home for transgender persons, the purpose of which is to provide shelter to transgender persons, with basic amenities like shelter, food, medical care and recreational facilities. Besides, it will provide support for capacity-building/skill development of persons in the community, which

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will enable them to lead a life of dignity and respect) to accommodate any and every member of the LGBTQIA+ community, who require shelters and/or homes. **The MSJE shall make adequate infrastructural arrangements in this regard, within a period of 12 weeks from the date of receipt of copy of this order.**

G. Such other measures that are needed for eliminating prejudices against the LGBTQIA+ community, and channelizing them back into the mainstream shall also be taken up. **The Union and State Governments respectively, in consultation with such other Ministries and/or Departments shall endeavour to device such measures and policies.**

H. For the sake of creating awareness, this Court is suggesting the following sensitization programs to be conducted by the concerned Ministry of the Union/State Government(s). This list is only indicative and not exhaustive.

S.No	Stakeholder	Sensitization Programme	Concerned Department/

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			Government
1.	Police and Prison Authorities	Programs at regular intervals on steps to be taken for protection from and prevention of offences against the LGBTQIA+ community. Conduct sensitization about legal rights of LGBTQIA+ community at regular intervals. Not limited to the above programs, sensitization programs are to be conducted for police personnel creating awareness about the *Offences and Penalties* as stipulated under *Chapter VIII* of *The Transgender Persons (Protection of Rights) Act, 2019* and compliance of Rule	Home Department, Government of Tamil Nadu

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		11 of the *Transgender Persons (Protection of Rights) Rules, 2020.* Outreach programs to be conducted by the NGOs with community support to put forth first-hand problems faced in the hands of law enforcement agencies, and to train them in providing effective assistance. Ensure that transgender and gender-nonconforming prisoners are housed separately from cis-men prisoners to eliminate chances of sexual assault by the latter on the former.	
2.	District and State Legal Service	Awareness programs periodically to be conducted	Tamil Nadu State Legal Services

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	Authorities	in association with NGOs and community support, to understand and provide effective legal services to them. Such awareness programs shall be conducted in relation to the rights of transgender persons and prohibition of discrimination against them under *The Transgender Persons (Protection of Rights) Act, 2019.* The benefit of free legal aid to be extended for the members of the LGBTQIA+ community. Inclusion of issues faced by the LGBTQIA+ community in	Authority, Ministry of Law, Government of Tamil Nadu.

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		Lok Adalat.	
3.	Judiciary	To conduct awareness programmes for Judicial Officers at all levels in coordination with the enlisted NGOs and community support and to provide suggestions/ recommendations to ensure non-discrimination of persons belonging to the LGBTQIA+ community.	MSJE, Tamil Nadu State Judicial Academy, Ministry of Law, Government of Tamil Nadu.
4.	Physical and Mental Health Professionals.	Assistance to LGBTQIA+ community and their environment, by affording Physical and Mental health support who are facing stigma and discrimination from society.	National Medical Commission, Indian Psychiatric Society, Rehabilitation Council of India.

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		Mental health camps and awareness programs to understand gender, sexuality, sexual orientation and promote acceptance of diversity. Prohibit any attempts to medically "cure" or change the sexual orientation of LGBTIQA+ people to heterosexual or the gender identity of transgender people to cisgender. To take action against the concerned professional involving themselves in any form or method of conversion "therapy", including withdrawal of license to	

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		practice. Sensitization programs as provided by Rule 10(7)(b) of *Transgender Persons (Protection of Rights) Rules, 2020* shall be in addition to the above said.	
5.	Education Institutions	Effective change in curricula of Schools and Universities to educate students on understanding the LGBTQIA+ Community. Outreach programs to be conducted in association with NGOs and members of the LGBTQIA+ Community. Through Parents-Teacher Association (PTA) meetings, sensitize parents on issues of LGBTQIA+ community and	National Medical Commission, Ministry of Education, Government of India, School Education Department, Government of Tamil Nadu, Department of Higher Education, Government of Tamil Nadu, UGC, AICTE, National and State Councils for

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		gender nonconforming students, to ensure supportive families. Amendment of necessary policies and resources to include students belonging to LGBTQIA+ community in all spheres are Schools and Universities. E.g. 1.Ensure availability of gender-neutral restrooms for the gender-nonconforming student. 2.Change of name and gender on academic records for transgender persons. 3. Inclusion of 'transgender' in addition to M and F gender columns in application forms	Education Research and Training (NCERT, SCERT)

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		for admission, competitive entrance exams, etc. Appointment of counselors who are LGBTQIA+ inclusive, for the staffs and students to address grievances, if any, and to provide effective solutions for the same. In addition to the above, the appropriate government shall take effective steps to implement measures in relation to transgender persons as stipulated by Chapter VI of *The Transgender Persons (Protection of Rights) Act, 2019* and Rule 10 of the	

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		Transgender Persons (Protection of Rights) Rules, 2020.	
6.	Health workers	Non-pathologizing of gender-diverse children, intersex children, and LGBTQIA+ youth. Sensitization and orientation of *Anganwadi* Workers and similar personnel on transgender issues, and involve themselves in assisting the parents of LGBTQIA+ youth.	Ministry of Women and Child Development; Health and Family Welfare, Government of India.
7.	Public and Private workplace/ institutions	Awareness programs and workshops, with the help of LGBTQIA+ members/workers, for inclusion of LGBTQIA+ community, amongst the	Government Of India And Government Of Tamil Nadu

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		employees. Such awareness programs shall also include sensitization on prohibition of discrimination as provided in *The Transgender Persons (Protection of Rights) Act, 2019* and relevant rules under *Transgender Persons (Protection of Rights) Rules, 2020.* Suitable changes in hiring policies for inclusivity. Setting up and enforcement of Human Resource policies to make them LGBTQIA+ community-friendly. Support members of the LGBTQIA+ community in	

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		case of any grievance. Extension of benefits, e.g., insurance to members of the LGBTQIA+ community. To adopt suitable policies that address non-discrimination on grounds of sexual orientation, including sexual harassment of persons belonging to the LGBTQIA+ community, in workplace.	
8.	Parents of LGBTQIA+ members	Understanding and accepting children of diverse gender expressions, sexual orientation, gender identities and gender presentation. Provide peer support for parents of members belonging to the LGBTQIA+ community through support groups.	MSJE

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43. The issue involved in the present Writ Petition requires regular monitoring and follow up with various concerned departments to ensure that the directions issued by this Court is executed and enforced. In view of the same, this Court is inclined to keep this Writ Petition pending and issue continuing mandamus from time to time after hearing the parties concerned.

44. Post this case on **31.08.2021**, for passing further Orders. In the meantime, the learned Advocate General representing the State and other State Government Departments, the State Public Prosecutor representing the police and the learned Additional Solicitor General representing the Union of India and other Central Government Departments and Institutions shall ensure that the concerned departments file their reports on the steps and measures taken by them to implement the interim directions issued by this Court.

07.06.2021

Internet: Yes/No
Index: Yes/No

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KP/PJL

To

1.Commissioner of Police,
Greater Chennai Police
No. 132, Commissioner Office Building
E.V.K. Sampath Road, Vepery,
Chennai-600007.

2.Commissioner of Police,
Madurai,
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Madurai-625002.

3.Inspector of Police,
Thallakulam Police Station,
Madurai.

4.Inspector of Police,
Avaniyapuram Police Station,
Madurai.

5. Secretary to Government,
Home Department,
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6. Member Secretary,
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North Fort Road,
High Court Campus, Chennai - 600 104.

7. Secretary to Government,
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Tamil Nadu, India.

8. Secretary Government of India,
Ministry of Social Justice and Empowerment,
Shastri Bhavan,
Dr. Rajendraprasad Road, New Delhi-110 001.

9. The Director,
Social Justice and Empowerment,
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10. The Chairman,
National Medical Commission,
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11. Indian Psychiatric Society,
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12. Member Secretary,
Rehabilitation Council of India,
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New Delhi - 110 016.

13. Joint Secretary,
Department Of Higher Education,
Government of India,
122-C, Shastri Bhawan, New Delhi – 110001.

14. Joint Secretary,
Department Of School Education & Literacy,
217-C, Shastri Bhawan, New Delhi – 110001.

15. Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009,
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16. Secretary to Government,
Higher Education Department,
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17. Secretary,
The University Grants Commission (UGC),
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18. All India Council for Technical Education,
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19. Director,
The National Council of Educational
Research and Training (NCERT),
Sri Aurbindo Marg, New Delhi

20. Secretary To Government,
Union Of India,
Ministry Of Health And Family Welfare,
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21. Secretary,
Ministry of Women and Child Development,
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