





STATEMENT OF CONDEMNATION AND SOLIDARITY AGAINST THE BAR COUNCIL OF INDIA'S RESOLUTION ON MARRIAGE EQUALITY

On 23rd April 2023, the Bar Council of India ('BCI') passed a Resolution on the ongoing marriage equality petitions, urging the Supreme Court to abdicate its role and defer the matter to the Parliament instead. The Resolution is ignorant, harmful, and antithetical to our Constitution and the spirit of inclusive social life. It attempts to tell queer persons that the law and the legal profession have no place for them. We, the undersigned, are queer and allied student groups across Indian law schools. As future members of the Bar, it has been alienating and hurtful to see our seniors engage in such hateful rhetoric. Many of us remember the feeling that we had when *Navtej Singh Johar* was decided: an intimately unforgettable affirmation of the law's emancipatory, liberatory, and transformative potential. It is in this spirit that we write this statement of condemnation and solidarity.

The BCI ought to respect the letter and spirit of the Advocates Act, 1961, which clearly defines the body's mandate based on its regulatory function. Nothing in the Act, as interpreted by the Supreme Court, empowers the BCI to pass comments on *sub judice* matters. The passing of this Resolution is entirely unwarranted and a deplorable attempt by the BCI to illegitimately create influence for itself. The BCI must re-familiarise itself with the role envisioned during its establishment, look at the state of the Indian legal profession, and devote its resources to more pressing challenges – rather than needlessly entering constitutional debates.

The ongoing case concerns the recognition of fundamental rights (to equality, freedom, and privacy) that queer persons *already* have under the Constitution. The BCI denies any role of fundamental rights in its Resolution, instead characterising marriage equality as a political decision. This shows their heinous indifference towards the reality of queer and trans persons living as second-class citizens in our country. Consequently, the BCI completely misses that fundamental rights cannot be made to suffer from the inaction of the legislature.






We are most troubled by the BCI's stunning disregard for constitutional morality. Our Constitution is a counterweight to majoritarianism, religious morality, and unjust public opinion. Constitutional morality dictates that marriage equality must not be made subject to the wishes of a casteist, cis-heteronormative, and patriarchal society. It is to save people from the worst scourges of public opinion that we have a Constitution in the first place. To subject fundamental rights to societal decisions is to betray the vision of morality our Constitution commits us to; it is to betray the Constitution itself. The Supreme Court has already warned of majoritarian bias and protected fundamental rights against its tyranny in *Puttaswamy*, holding that the exercise of fundamental rights is insulated from 'the disdain of majorities, whether legislative or popular.'

Having cited no real authority, the BCI blatantly concocts statistics of '99.9%' of Indians opposing same-sex marriage, to run the worn-out theory that queer persons constitute a 'miniscule minority'. This has already been rejected by the Supreme Court in *Navtej Singh Johar*. The usage of hateful rhetoric is consistent throughout the Resolution; the BCI feels no shame in calling demands for marriage equality 'morally compunctive' and 'a social experiment'. We condemn this hateful speech in the strongest possible terms.

Equally ignorant is the BCI's unsupported assertion that marriage has always been a union between 'biological' men and women based on procreation. This is a colonial reading of Indian history, culture, and civilisation – there is diverse evidence of queer love and marriage existing in various forms across Indian cultures since ancient times. The BCI ignores this evidence. Having appointed itself, in another overreach of power, as a 'mouthpiece of the common men', the BCI demonstrates how it is in fact a mouthpiece for a very specific class of men who have the privilege to make hegemonic statements on our culture without any form of accountability. Further, the law is settled on the protection of non-typical, non-procreative familial unions. By asserting marriage as a vessel for procreation, the BCI fails to realise that the biological faculty of procreation cannot be lorded over citizens as a prerequisite for fundamental rights in a democratic and rules-based society.

In condemning the BCI's Resolution, we pledge our continuing solidarity with the queer communities whose fights for liberation and emancipation extend far beyond this current petition. This includes the fight for horizontal reservation for transgender persons, the implementation of the *NALSA* judgement, and all



other struggles by the transgender community. We call upon the legal fraternity to disavow all discriminatory, parochial, and regressive beliefs that hinder the advance of peoples' movements towards justice. As students of law, we are proud to situate ourselves in history as a group that stood on the side of justice at this critical juncture. To quote the ever-inspiring motto immortalised by Dr B.R. Ambedkar: Educate, Agitate, Organise!

In solidarity,

Queer Collective and Philosophy Club, *National Law University Delhi*; Queer Alliance, Savitri Phule Ambedkar Caravan, and Feminist Alliance, *National Law School of India University*; Queer Collective and Students' Federation of India, *O. P. Jindal Global University*; QUoR, *University of Rajasthan*; Students' Federation of India, *Faculty of Law, Delhi University*; Pride, *Rajiv Gandhi National University of Law*; Wajood - Queer Supportive Alliance, *Dr. Ram Manohar Lohiya National Law University*; Queer and Allied Students, *Symbiosis Law Schools*; Queer Collective, *Tamil Nadu National Law University*; DSQA, *Damodaram Sanjivayya National Law University*; INARA - Queer and Ally Community, *National Law Institute University*; Gender and Sexuality Forum, *Gujarat National Law University*; Queer and Allied Students, *National Law University Sonapat*; Gender Studies Committee, *School of Law, CHRIST (Deemed to be University)*; Queer and Allied Students, *National Law University Odisha*; Queer Collective, Savitribai Intersectionality Study Circle, Student Executive Council, and Workers Welfare Society, *NALSAR University of Law*; Queer and Allied Students, Maharashtra National Law University, Mumbai; Queer and Allied Students, *West Bengal National University of Juridical Sciences*; Alliance for Queers, *Hidayatullah National Law University*; Student Bar Association, *School of Law, NMIMS Hyderabad*; Queer Collective and Dr. B.R. Ambedkar Study Circle, *National University of Advanced Legal Studies*; Queer and Allied Students, *University School of Law and Legal Studies*; Queer and Allied Students, *Vivekananda Institute of Professional Studies*; Queer Collective, *DY Patil School of Law*; Queer and Allied Students, *Ramaiah College of Law*; Queer and Allied Students, *Lords Universal College of Law*; Queer and Allied Students and Inclusivity and Equity Cell, *Kirit P Mehta School of Law, NMIMS Mumbai*; Queer and Allied Students, *ICFAI Law School, Hyderabad*; Queer and Allied Students, *National Law University Jodhpur*; Queer and Allied Students, *JSS Law College*; Diverse Sexuality and Gender Alliance, *HPNLU Shimla*; Queer and Allied Students, *Government Law College, Mumbai*; Queer and Allied Students, *ILS Law College, Pune*