



**18TH NALSAR**

# **JUSTICE BODH RAJ SAWHNY MEMORIAL**

**MOOT COURT COMPETITION**

**M O O T P R O P O S I T I O N**

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## I. The Personal Laws of Bharathipura

1. The Republic of Bharathipura is a Union of States and governed by a Constitution that is by and large in pari materia with the Constitution of India.
2. Like India, its legal system and laws are based on the common law due to the experience of two hundred years of colonial rule by the British.
3. Almost all the colonial laws which were in force in India were also applied to Bharathipura.
4. Post independence, the Bharathipura took inspiration from law makers in India and passed laws which were by and large in pari materia with India's especially on aspects of family law.
5. This is because Bharathipura is a multi-ethnic, multi-religious nation where irrespective of the religion of the ruler, subjects were free to follow their own religious and community personal laws.
6. The major religious communities in Bharathipura were the Shan-tis, the Pandarens, and the Protoss.
7. As per the latest census in 2021, the Shan-tis were 56% of the population, the Pandarens 34%, the Protoss 9% and other communities/non-believers constituting the rest.
8. Each community has its own codified religious personal laws applicable to members of each community, with a Bharathipura Special Marriage Act, 1953 ('BSMA') applicable to marriages between members of different communities.

9. Save for the religious personal laws of the Pandarens, all other communities do not recognize the validity of queer marriages. Pandaren personal law only recognizes queer marriages between devout followers of the Pandaren religion and does not accept converts.
10. The properties of those who get married under this BSMA devolve through succession under the Bharathipura Succession Act, 1975 (BSA).
11. Both the Bharathipura SMA and Bharathipura Succession Act are in pari materia with Indian Special Marriage Act and the Indian Succession Act. It may be noted here that no equivalent of Section 19 and Section 21-A of the Indian SMA exists in the BSMA as no community in Bharathipura has any concept similar to a “Hindu Undivided Family”.
12. Courts in Bharathipura treat judgements from all common law jurisdictions as having strong persuasive value.

## II. Queer rights law reform

13. Bharathipura has an active queer rights movement that has been campaigning for two decades for legal recognition of LGBTQ+ relationships.
14. The State of Ghormania is one of the states of Bharathipura that has had a progressive attitude towards the rights of LGBTQ+ persons.
15. Ghormania was the first state to de-criminalise homosexuality through a legislative amendment in 2010 to the Bharathipura Penal Code, 1862 before the Parliament of Bharathipura did the same in 2018.

16. Following intensive public consultations, the Legislative Assembly of Ghormania passed the Family Law (Reform) Act, 2023 (FLRA) which permitted the registration of same-sex/gender relationships between consenting adults (above the age of 18).

17. The FLRA received the approval of the Governor of Ghormania on 31 January, 2023 and was notified on 1 February, 2023.

18. The FLRA stated that for all purposes, relationships registered under the law would be deemed to have the same legal status and consequences as a marriage between heterosexual couples under the BSMA.

19. The FLRA also contained provisions related to maintenance of partners and divorce as detailed in Annexure I.

### III. The saga of Kushim and Narmera

20. Kushim (a Shan-ti) and Narmera (a Pandaren) are a major lesbian couple who registered under the FLRA in Ghormania. Originally from other states in Bharathipura, they had moved to Ghormania to work in Beta Bank, a private sector bank where they met, fell in love, cohabited since 2022 and decided to register their relationship under FLRA once the law was notified.

21. Khushim and Narmera formally registered their relationship on 1 March, 2023.

22. Kushim being in a transferable job in Beta Bank was transferred in April, 2024 and posted in the city of Neerhalli in the state of Kenaria.



23. Narmera, pointing to the human resources policy of Beta Bank which allowed spouses to be transferred together if both were working in Beta Bank, also sought a transfer to Neerhalli. She pointed out that hers was also a transferable job according to the HR policy.

24. Beta Bank responded saying that the policy on transfer of spouses was only applicable to those married under the BSMA or any of the other religious personal laws, and not to those whose relationships were registered under the FLRA. Hence, they rejected Narmera's request for a transfer by letter dated 15 April 2024.

25. Narmera filed a writ petition before the High Court of Ghormania in May, 2024 under Article 226 of the Constitution of Bharathipura asking the High Court to hold Beta Bank's policy to be discriminatory against LGBTQ+ persons. Beta Bank responded arguing that the writ petition was not maintainable since it was a private entity regulated by the Reserve Bank of Bharathipura and therefore not an "authority".

26. The High Court agreed with Beta Bank and dismissed Narmera's Writ Petition.

27. Narmera immediately filed a Special Leave Petition before the Supreme Court of Bharathipura challenging the decision of the Ghormania High Court. By way of an interim order, the SC directed Narmera to be transferred to Neerhalli subject to her giving an undertaking that she would either resign or move back to Ghormania if the final verdict went against her.

28. In April 2025, Khushim and Narmera decided to adopt a child following the procedure under the Bharathipura Juvenile Justice

Act, 2002. It may be noted here that the BJJ and the Regulations thereunder are in pari materia with the Indian Juvenile Justice Act and regulations made thereunder.

29. However, when they applied to the Kenaria Adoption Resource Agency, in May 2025, it informed them that since they were not legally married they could not adopt a child in the state of Kenaria. Reference was made to Regulation 5.3 of the Adoption Regulations, 2023 made by the Bharathipura Government which stated that:

“No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship except in the cases of relative or step-parent adoption.”

30. When Khushim and Narmera showed their certificate of registration under the FLRA, they were informed by the KARA that this document had no legal sanctity in Kenaria.

31. Khushim and Narmera then approached the High Court of Kenaria seeking a writ of mandamus to the KARA to allow them to adopt a child in accordance with the JJ Act. Their writ petition also challenged the constitutional validity of Section 57 of the JJ Act and Regulation 5.3 of the Adoption Regulations for discriminating against LGBTQ+ couples.

32. The High Court in June 2025 dismissed their petition on the ground that the validity of their certificate of registration under the FLRA would only be valid in the State of Ghormania and could not bind the State of Kenaria or any other authorities therein. The HC also upheld Section 57 of the JJ Act and Regulation 5.3 of the Adoption Regulations stating that couples whose marriages were recognized under law were not on the

same footing as couples who were registered under the FLRA.

33. Khushim and Narmera then approached the Supreme Court by way of a Special Leave Petition challenging this judgement of the High Court.

34. Noting that a similar issue was raised in the petition filed by Narmera earlier, the Supreme Court clubbed both the petitions and also issued notice to the Union of Bharathipura given the importance of the matter.

35. The Union of Bharathipura entered appearance through the Attorney General for Bharathipura arguing that the State of Ghormania could not have passed the FLRA without Presidential approval and in any case, the FLRA could not have extra-territorial effect. The Supreme Court thereafter impleaded the State of Ghormania to defend the constitutional validity of its law and its extra-territorial application.

36. Given that substantial questions of constitutional importance arose, the Supreme Court granted leave to appeal and referred the matter to a constitution bench of five judges framing the following questions for determination:

- a. Did the Legislative Assembly of Ghormania have the legislative competence to enact the FLRA?
- b. If so, are other states obligated to recognize relationships registered under the FLRA?
- c. Are Section 57 of JJ Act and Regulation 5.3 of the Adoption Regulations unconstitutional for being discriminatory towards persons belonging to LGBTQ+ communities?

d. Can the High Court set aside the policy of Beta Bank for being discriminatory towards persons belonging to LGBTQ+ communities?

## Instructions

1. Counsel for appellants have to argue for Khushim and Narmera, and the State of Ghormania in both appeals, while counsel for respondents have to argue for the Union of Bharathipura, State of Kenaria, and Beta Bank.
2. Counsels are free to raise any further questions of law subject to the word limit requirements of the memorial.

