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## Human Rights Issues in India: Predicating on Equality & Discrimination

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*The nature of humanity, since time immemorial, always seems to be bridled by a dualistic path, where one path is associated with oppression and exploitation, whereas on the contrary, the other path is simmering with the consideration of equity, liberty, and justice. However, the clamouring voice concerning the recognition of the second path is ultimately the byproduct of increasing waltzing by humanity onto the first path, which proliferates detrimental violation and indiscriminate violence concerning the rights of humans. Therefore, to salvage humanity from the clutches of exploitation, the exigency for the world to recognise certain sets of rights that will flourish in the march toward equity, liberty, and justice was nothing short of a necessity. These reforms, henceforth, were manifested in the form of the 1948 Universal Declaration of Human Rights, which became the foundational document for human rights law. The nation of India, which had retained its freedom from the long-standing history of British colonization and is the victim of the exploitation of oppression condoned by them, has also come to realize the utmost significance and necessity these values of human rights hold. Yet, the point of contention still lingers as the presence of multifaceted issues and challenges still hampers its proper implementation. Be it the presence of patriarchal perseverance or the existence of casteist discrimination, Indian society is still lagging in endorsing the values of human rights. Therefore, the main purpose of this paper is to identify the issues and challenges prevailing in India that impede its ability to follow the path of human rights, mainly based on equality and discrimination, so that an image can be derived that displays the current realities of India.*

**Keywords:** *caste, patriarchy, lgbtq, religion.*

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## INTRODUCTION

The notion of 'Human rights' is very novel, having only gained such widespread prominence after the conclusion of World War II, and with the establishment of the Universal Declaration of Human Rights in 1948.<sup>1</sup> This moment marks a critical turning point for humanity as it recognizes the overdue rights of an individual and the dignity they hold, just for them being born as humans without any sort of compromises associated with it. This universal declaration is a precursor that emphasizes global stability, independence, equity, and justice as the primary principles for sustaining every individual's unalienable human rights. It stressed the inherent dignity of all humanity and advocated for the cooperation, consensus, and concord of every government to bring about an end to all sorts of prejudice against fellow humans worldwide and to foster an environment that is conducive to the protection of all of our inalienable rights. India is also one of the many countries, which has tried to advocate these principles of human rights in its functionalities so that the people of the nation could be uplifted from the scars of oppression and deprivation prevalent in the Indian society.

India's staunch commitment to bolstering human rights has encountered notable changes, strongly influenced by the history of imperial rule. Human rights atrocities were pervasive throughout the bleak period of British colonial authority in India, yet it would not be untrue if one argues that the ubiquity of human rights violations was present even before, when colonial rule was a thought. The Indian citizens were victimized and subjugated by the British because of the prevalence of prejudiced laws determined by social standing and race. The 1919 Jallianwala Bagh massacre, wherein British troops sprayed fire on an innocent civilian gathering in an orderly way, serves as a sobering reminder of the horrors committed against the people of India throughout the period in question.<sup>2</sup> Therefore, to remedy the failure of colonial rule

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<sup>1</sup> Burns H. Weston, 'Human Rights' (*Encyclopædia Britannica*, 17 June 2024)

<<https://www.britannica.com/topic/human-rights>> accessed 19 June 2024

<sup>2</sup> Mark Cartwright, 'Jallianwala Bagh Massacre' (*World History Encyclopedia*, 21 October 2022)

<[https://www.worldhistory.org/Jallianwala\\_Bagh\\_Massacre/](https://www.worldhistory.org/Jallianwala_Bagh_Massacre/)> accessed 19 June 2024

brought, the measures taken up by the leaders to bring necessary reforms by acknowledging human rights were nothing short of revolutionary. That is why the Indian Constitution<sup>3</sup>, which was ratified in 1950 and established the fundamental freedoms and rights of all citizens, opened an entirely fresh chapter in India's quest for human rights with the country's independence. It guaranteed freedom, justice, and equality to everyone, irrespective of their socio-economic status, gender, caste, or creed, thereby providing them with a sense of relief from the atrocities condoned by imperial rule by stirring up the fresh air simmered in freedom and liberty. Furthermore, the Supreme Court of India and the High Courts established in different states also established a strong legal framework to protect the foundation and substance of human rights. The essentiality of the preservation of human rights in India has gained even more traction when one encounters the rising segregation within the nation, which hollows its unity within the nation. Indian soil houses a multitude of people under its shade, each varying in their culture and ethnicity, thereby representing the diversity and plurality spread throughout the confines of the nation. However, the presence of such diversity somehow creates lacunae among the people, leading to segregation, and discrimination and resulting in human rights violations. The presence of patriarchal notions, the undying caste discrimination, the soaring communal tension, the seclusion of LGBTQ from the ambit of marriage, etc. are a few such examples that make the need for human rights more viable.

Even though the necessity for proper implementation of human rights is prominent in India, there are still various discerning factors that would render all human rights useless. Therefore, the purpose of this article is to identify all the possible impediments on the path of human rights, basically in the context of equality and discrimination, so that a picture could be painted about the current realities of India.

### **ISSUE OF DISCRIMINATION & EQUALITY**

The endeavour of safeguarding human rights in India is a perpetual affair that demands unshakable commitment and persistent attempts to overcome enduring difficulties. The path has been littered with both accomplishments and tragedies. Although the nation has travelled quite a distance in defending the rights of its people, an array of issues still needs to be

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<sup>3</sup> Constitution of India 1950

addressed, and coordinated efforts must be made. One of the prevailing issues that hollow out the attempt to establish human rights is 'discrimination,' whose presence defeats the values of equality and justice. When India retained its freedom, one of the valuable aspects our leaders put priority on was eradicating the presence of discrimination in any form so that the masses could live their lives without any form of compromise associated with it. However, the negative aspects of cultures and traditions that have based their values on discrimination are still lurking underneath society, preventing the nation from achieving a path based on human rights.

### THE PATRIARCHAL BASED DISCRIMINATION

The presence of patriarchal notions is a primary example of this. In our Indian society, male dominance has been the norm since time immemorial, irrespective of our diverse cultural and religious values. Moreover, the cultural and religious values, which are considered a blessing by the major dominant section of society also curse the women in obeying the ways of the men. A long history of tradition and culture has a significant influence in perpetuating patriarchy in society. It would not be an overestimation to assert that cultural and religious belief is the main conduit for authority and the core element that fosters patriarchy. Considering the pervasiveness of religious and cultural practices are the primary source of social norms and the most significant manual of societal code of conduct in any community, patriarchy is usually accepted as the standard. Regarding Hindu culture and religion, the centuries-old practice of Sati, or women sacrificing themselves onto their husbands' funeral pyres, stemmed from the concept that a woman's life is meaningless without a husband for companionship. Despite not being specifically mentioned or supported in the Hindu texts, sati was practised regularly in various Hindu communities. This was because it followed the accepted notion of the 'ideal' bride, as embodied by Goddess Sati, who killed herself to spare her husband, Lord Shiva, the shame her father had imposed upon him.<sup>4</sup> Fortunately, the intervention was made by the British imperial rule and later by the independent government of India to abolish such practice, otherwise, the patriarchal notion would still be roaming around in its extreme. Furthermore, the legal text of Manusmriti also condoned women as less rational beings with little regard for the

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<sup>4</sup> Nishat Amber, 'What Is the Role of Religion in Furthering the Patriarchal Agenda?' (*Feminism in India*, 05 November 2018) <[https://feminisminindia.com/2017/06/22/religion-furthering-patriarchal-agenda/#google\\_vignette](https://feminisminindia.com/2017/06/22/religion-furthering-patriarchal-agenda/#google_vignette)> accessed 19 June 2024

depth of reason. Manu also painted women in the light of prostitutes, whose nature is to seduce men in this world.<sup>5</sup> These only serve as a few examples but they are enough to connote the patriarchal presence of hitherto societal notions, which can trespass into this modern world as well. There is no denying that Hinduism also incorporates feminism, where female goddesses are cherished on par with male gods and are considered an integral aspect of society,<sup>6</sup> but they all backpedalled in later years, when manual work became popularized or external invasions became prevalent, pushing men to ultimately become the dominant section of society.

Besides the religion of Hinduism, Islam, which forms the largest minority religion in India, also incorporates some practices that dwell on patriarchy. The profanity of Islam has been challenged various times, and according to the many popular beliefs, Islam is considered anti-women, yet it should also be recognized that many of the practices that Islam perpetuates provide equal standing to women in contrast to other religions, like acknowledging the consent of the women as an essential factor at the time of marriage to grant that marriage success,<sup>7</sup> and the practice of mahr, which is provided to the bride by the husband as a token of respect.<sup>8</sup> However, to condone the paramountcy of human rights, an encompassing remedy has to be applied to liberate women from the clutches of suppression, as Islam is still simmering with various provisions that tangle them under patriarchy. One such case is Talaq-ul-bidder, a regressive practice that is demeaning towards the rights of women, as it allows men to get an instantaneous divorce by pronouncing talaq three times, either orally, by writing, by phone, or by text message, giving no scope to women to have a say in this regard.<sup>9</sup> However, due to the good graces of the judiciary and legislature, triple talaq is now prohibited in India, through the exceptional judgment in the

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<sup>5</sup> Meena Kandasamy, 'Why Feminists Must Join the Movement against the Manusmriti' *The Wire* (24 October 2020) <<https://thewire.in/caste/why-feminists-must-join-the-movement-against-the-manusmriti>> accessed 19 June 2024

<sup>6</sup> Debanjali Bhattacharjee, 'Hinduism and Women: Glimpses from a Feminist Perspective' (*Welsh Women's Aid*, 20 October 2021) <<https://welshwomensaid.org.uk/news/hinduism-and-women-glimpses-from-a-feminist-perspective/>> accessed 19 June 2024

<sup>7</sup> Shahnaz Huda, 'The Concept of Consent in Muslim Marriage Contracts: Implication for women in Bangladesh' (2005) 16(2) *Dhaka University Law Journal* <<https://journal.library.du.ac.bd/index.php/DULJ/article/view/1537/1446>> accessed 19 June 2024

<sup>8</sup> Paras Diwan, *Family Law – Hindu, Muslims, Christians, Parsis Jews* (11th edn, Allahabad Law Agency 2018)

<sup>9</sup> Vageshwari Deswal, 'Law criminalizing triple talaq- a momentous occasion for Muslim women in India,' (*Times of India Blog*, 03 August 2019) <<https://timesofindia.indiatimes.com/blogs/legally-speaking/law-criminalizing-triple-talaq-a-momentous-occasion-for-muslim-women-in-india>> accessed 10 February 2024

Shayra Bano<sup>10</sup> case and the enactment of the Muslim Women (Protection of Rights on Marriage) Act 2019<sup>11</sup> respectively. Moreover, Muslim women are considered eligible to marry when they attain puberty, which, in this liberalized world, seems regressive and redundant, as it snatches away the opportunity of women from other aspects of life besides marriage.

Therefore, a conclusion could be drawn that the never-dying cultural and religious beliefs of Indian people are also inclusive of thorns besides roses that pricked upon the rights of women, leading to violations of the principles of human rights. Having undergone years of legislative action and a constitution that assures equal privileges for men and women, such as Articles 15<sup>12</sup> and Article 16<sup>13</sup>, which prohibit discrimination based on sex, gender discrimination is still deeply entrenched in Indian society and exerts a catastrophic impact on the lives of women. Gender inequality persists all too close to home amid considerable economic gains, displaying its irreversible and irretrievable nature. This could be evident, be it in the form of the literacy level of girls as compared to males or in the form of their employment level as compared to men; be it in the rising crimes against them or the lack of leeway in civil affairs, discrimination and inequality persist. Therefore, this became a pertinent issue for the state if it wanted to create a breakthrough concerning the achievement of human rights.

### **THE CASTE-BASED DISCRIMINATION**

Besides the perseverance of gender discrimination, another cultural tradition that subjugates society with discrimination is the practice of the caste system. In India, caste prejudice has a bearing on an individual's capacity to access work, medical care, and schooling, along with other social aspects of health. Caste is a convoluted framework involving social stratification centred around ceremonial purity, and even though the caste system was created by Hindus, today, almost all Indians, regardless of their religion, identify with caste. As the prejudice predicated on caste becomes unbearable, many people belonging to lower castes find themselves surrendering themselves to other religions like Islam and Christianity. However, despite making such a conversion to another religion to escape from ascriptive and occupational

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<sup>10</sup> *Shayara Bano v Union of India & Ors* (2017) 9 SCC 1

<sup>11</sup> Muslim Women (Protection of Rights on Marriage) Act 2019

<sup>12</sup> Constitution of India 1950, art 15

<sup>13</sup> Constitution of India 1950, art 16

hierarchies,<sup>14</sup> discrimination based on caste never ceased to exist, and most importantly, it has also cursed other religions to the detriment of stratification. The system allowed privileged groups to suppress the lower castes while bestowing several benefits on the upper castes. The religious concept of karma, which holds that a person's position in life is decided by their actions in past lifetimes, is typically used to justify social differences, and until death occurs, one is regarded as an integral part of whatever caste into which they were born, yet the exact hierarchy within a caste may change over time and between different geographical areas. In the caste system, the Dalits occasionally referred to as 'untouchables,' are marginalized members of society who face prejudice based on their caste, but still, the appropriate remedy for the prevention of such practices has not yet come into being, resulting in the defeat of the values of human rights. According to Beena Pallical, the National Campaign on Dalit Human Rights in India General Secretary, 'the Dalit community in India along with other South Asian nations, endures human rights violations, marginalization, and exclusion for the rest of their lives from birth. They inhabit the lowest social strata in society since they are rigidly 'ranked' following their descent.'<sup>15</sup> All such exclusions and discrimination arise due to the flowing narrative of Dalits being impure as compared to the other sections of society, which is why they are referred to as untouchables. Due to such notions, Dalits encounter almost complete marginalization in society. It is strictly prohibited for 'untouchables' to venture over the boundary separating their area of residence from that of the upper castes. They are unlikely to go to the same temples, use the same water sources, or sip tea from different cups in different tea shops. Children from Dalits are often made to sit in the back of the classroom.<sup>16</sup> Furthermore, there is also a huge detest among the upper caste people to marry someone outside of their caste if they belong to the lower strata of society, as it would taint the sanctity of their caste. All these instances are mostly confined to rural areas, where the penetration of education and modernity still hasn't reached par with urban areas. There is also no denying that urban areas also reek of casteism, which suppresses the people and leads them to discriminate against one another. Therefore, known as India's 'hidden apartheid,' caste still entirely divides entire villages and throughout numerous

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<sup>14</sup> Amber (n 4)

<sup>15</sup> 'The Dalit: Born into a life of discrimination and stigma' (OHCHR, 19 April 2021)

<<https://www.ohchr.org/en/stories/2021/04/dalit-born-life-discrimination-and-stigma>> accessed 19 June 2024

<sup>16</sup> Human Rights Watch, *Caste Discrimination: A Global Concern* (2001)

Indian regions. Even though Article 17<sup>17</sup> was incorporated into the constitution as a way to abolish untouchability or reservations were provided to represent the exclusive section of society, the problem of caste persists and hinders the path to achieving and recognizing human rights for all. Thus, the prevailing segregation halts society from realizing the true sense of equality and advocating the principles of human rights.

### **DISCRIMINATION BASED ON MAJORITARIAN-MINORITY PERSPECTIVE**

The facets of discrimination do not end with patriarchy and caste, as the issue of inequality is also displayed in how the majority and minority interact with each other and how the politicization of their issues furthers the challenges of discrimination. The most dominant issue among majoritarians and minorities is reflected based on religion, where Hinduism forms the majority and Islam and Sikhism form the minorities. Their interactions with each other, as well as the meddling of politics in their affairs, lead to discrimination and gross violations of human rights. Being a land of diversity, human rights also found themselves in peril when prejudice based on religious basis started to initiate in India, primarily by the scars left by the partition in 1947 and now based on the politicization of religion, where religion is being used as a tool as a vote bank to acquire power, resulting in a breach of harmony. Religious minorities and ethnic communities are feeling increasingly vulnerable as a result of the escalating tendencies of communal violence. The majority of tyranny, fear, and discrimination are experienced by Muslims and Sikhs in particular. Events in the region of Kashmir, Punjab, Uttar Pradesh, Bihar, Gujarat, and other places between the 1990s and 1991 offer abundant proof and a taste of the devastating effects of the sectarian virus in all of its forms. Muslims, Sikhs, and other minorities are protected under the Constitution, which guarantees freedom, equality, tolerance, and perfect justice. However, despite the many protections in place, prejudice towards minorities is also on the rise at a time when religious fundamentalism is on the edge of turning into religious bigotry, xenophobia, and narrow-mindedness.<sup>18</sup> It has been evident that in the wake of farmer protests a significant number, of the authorities have been demonizing Sikh protestors, who constitute a minority population, and have undertaken investigations into their possible ties to separatist

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<sup>17</sup> Constitution of India 1950, art 17

<sup>18</sup> Ram Ahuja, *Social problems in India* (Rawat Publication 1992) 103



organizations. Pro-government media, senior BJP officials, and their supporters on social media started blaming the Sikhs after hundreds of thousands of farmers of various religions started demonstrating against the government's new farm rules in November 2020. They allege that Sikhs pursue a 'Khalistani' objective, alluding to the Sikh separatist uprising in Punjab during the 1980s and 1990s. In addition to violating their human rights, this also goes against Article 19<sup>19</sup>, which gives them the right to peaceful protest. Additionally, in December 2019, the government approved a citizenship law that prejudices against Muslims and establishes citizenship based on religion for the first time.<sup>20</sup> Moreover, the open remarks made by the leaders of the country under the garb of election also instigate communal hatred towards the Muslim community. Recently, to accumulate the vote bank of Hindus, Narendra Modi, the prime minister of India, also labelled Muslims as an 'intruder', which creates an atmosphere of division and excludes the rights of minorities from the protection of human rights.<sup>21</sup> Thus, when the issue of communalism, where majoritarians started to dominate the minorities under the guise of prejudice became apparent, the human rights of that country became irrelevant.

## DISCRIMINATION BASED ON SEXUAL ORIENTATION

Throughout the last ten years, there has been a noticeable rise in global awareness of human rights concerning LGBTQ individuals. Even in India, a soaring demand has been igniting to provide relaxation to queer people in terms of the principle of human rights. Within the confines of its legal system, India, with its diverse and rich cultural heritage, has long struggled with the question of LGBTQ rights. From the prohibition of same-sex relationships to the fight for marriage equality and adoption rights, the LGBTQ community has encountered numerous legal hurdles stemming from legislation and social conventions from the colonial era. Even with the tremendous advancements of late, there are still great obstacles standing in the way of equality and complete legal recognition.<sup>22</sup> The most prominent one is the question of the legality of

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<sup>19</sup> Constitution of India 1950, art 19(1)(b)

<sup>20</sup> 'India: Government Policies, Actions Target Minorities' (*Human Rights Watch*, 19 February 2021) <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>> accessed 19 June 2024

<sup>21</sup> 'Narendra Modi Ramps up the Muslim-Baiting' (*The Economist*, 16 May 2024) <<https://www.economist.com/asia/2024/05/16/narendra-modi-ramps-up-the-muslim-baiting>> accessed 19 June 2024

<sup>22</sup> Rennie Joy, 'LGBTQ Community Legal Challenges in India: Legal Challenges Faced by LGBTQ+ Couples in India: Progress and Remaining Hurdles' *The Times of India* (15 May 2024)

marriage between same-sex couples. The institution of marriage in contemporary India is fundamentally modelled around tenacious heteronormative notions and stringent gender constructs, which not only render such social associations devoid of gender inclusivity but also instill ridicule and utter denunciation towards the queer community and foster insecurity among its members. The struggle for resurgence and proliferation of liberal ideas in the recent past has rendered some relief to members of the queer community through recognition of third-gender identity, decriminalization of queer intercourse, and conferring certain entitlements by way of landmark judicial pronouncements accompanied by meagre legislation on this behalf. The ever-existing foundational requisition put forth by the community has been that of socio-legal recognition of their marriages, although this demand has recently been turned down on the judicial front.<sup>23</sup> The legislation about same-sex marriage continues to be a major obstacle in the purview of attaining human rights. Because same-gender unions are not regulated by Indian marriage laws, which are strongly moulded by religious norms and traditions, homosexuals are not allowed to enjoy certain privileges enjoyed by married couples, such as property ownership, inheritance, or even child adoption, as they are not entitled to marry, thus being differentiated from heterosexual couples. This exclusion came into conflict with human rights, according to Article 16 of the UDHR<sup>24</sup> and Article 23(2) of the International Covenant on Civil and Political Rights<sup>25</sup>, the underlying principle of the right to marry is being violated. However, it is still up for debate whether same-sex couples are covered by these rights. Domestic courts, treaty committees, organizations founded on the United Nations charter, such as the Human Rights Council (HRC) of the United Nations (UN), and civil society have all presented different interpretations of Article 16 and Article 23(2). It is still being contended by various people whether such a right comprises homosexual people or merely regards heterosexual couples as true humans. As in the ruling in *Joslin v New Zealand*,<sup>26</sup> for instance. The HRC concluded that the provision only protects heterosexual couples. The central argument in the case was whether same-sex couples have the equal legal right to marry under Article 23. The decision's justification

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<<https://timesofindia.indiatimes.com/life-style/relationships/love-sex/legal-challenges-faced-by-lgbtq-couples-in-india-progress-and-remaining-hurdles/articleshow/110137735.cms>> accessed 19 June 2024

<sup>23</sup> *Supriya Chakraborty & Anr v Union of India* (2023) 4 SCC 247

<sup>24</sup> Universal Declaration of Human Rights 1948, art 16

<sup>25</sup> International Covenant on Civil and Political Rights 1976, art 23(2)

<sup>26</sup> *Joslin v New Zealand* [2002] CCPR/C/75/D/902/1999

has drawn criticism for being overly succinct and inconsistent with standards of human rights treaty interpretation that the Human Rights Committee itself has previously clarified and the interpretation doctrine established by the Vienna Convention on the Law of Treaties.<sup>27</sup> However, from a neutral understanding, Human rights apply to all humans in the world, and it would not be wrong to contend that homosexual couples are no less than human, yet the debate persists and the right to marry for all is still being compromised. Therefore, discarding the right to marry to same-sex couples by the Supreme Court is equivalent to dwindling their position less than a human, thus resulting in the violation of human rights.

## CONCLUSION

Each individual's uniqueness acts as a grease for society to move forward, and their contribution should not be disregarded under the guise of prejudice and discrimination. To salvage their uniqueness, conformity with human rights takes an essential place under the political system, and efforts need to be made to mitigate such violations of human rights. In India, even though various human rights are promised to their citizens, their fulfillment is still on the path of obscurity. The issues mentioned above in the article are still dominant in society, and they will not be leaving soon until proper measures are taken, one of which is the dissemination of proper education irrespective of age. In a democracy, it is the people who are said to be the rulers, and if people are not educated enough or if they seem to be living under the veil of ignorance, the issues pertinent to human rights would still be sprouting without any remedies to solve them. That is why education becomes important, and most importantly, the 'right form of education' that would teach more about society and the prevailing problems persisting in it, along with the rights possessed by each individual, so that consciousness regarding human rights will prevail and sympathy will be drawn with the people who are prone to discrimination and human rights violations; otherwise, all such legal remedies will be for naught. Therefore, to remedy this failure of patriarchy, caste discrimination, religious communalism, and same-sex bias, the perspectives of the victimized sections need to be shared in the form of education to mitigate the rising trend of human rights violations and forge a path toward equality and fairness.

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<sup>27</sup> Paula Gerber et. al., 'Marriage: A Human Right for All?' (2014) 36(4) *Sydney Law Review* <[https://www.researchgate.net/publication/269390912\\_Marriage\\_A\\_Human\\_Right\\_for\\_All](https://www.researchgate.net/publication/269390912_Marriage_A_Human_Right_for_All)> accessed 19 June 2024