



## Transgender Matrimony in India

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Gender identity refers to an individual's self-identification as a man, woman, transgender, or other identified category. Dealing with the legality of transgender identity, Justice Radhakrishnan once pronounced that - The self-identified gender can be either male or female or third gender. **Hijras** are identified as persons of the third gender and are not identified either as male or female. Gender identity, as already indicated, refers to a person's internal sense of being male, female, or transgender.

In one sense, the essence of Hindu philosophy is simple. Every individual is an embodied eternal *atman* (spirit or soul). Being distinct from the body — including its extended attributes like race, gender, and sexual orientation — every *atman* originates from the same Divine source and is therefore part of the same spiritual family, deserving the dignity of love, respect, and equal treatment.

### I. MYTHOLOGY

Perhaps the most famous example is that of Bhishma, whose treatment of Amba, a princess who later becomes the transgendered Shikhandi, ultimately leads to his physical demise. The story of Bhishma and Amba — as described in the Hindu sacred epic the Mahabharata — began when Bhishma took a vow of celibacy and renounced his right to become king of the Kuru dynasty so his father could marry the woman he loved. As a result, Bhishma's younger half brother, Vichitravirya, eventually inherited the throne instead and he started searching for eligible wives for his brothers. There he found the king of Kashi having three daughters - Amba, Ambalika, and Ambika.

Approaching Bhishma, she explained how she and Shalva had already given their hearts to each other, and that the *swayamvara* was actually pre-arranged for his victory.

Realising the situation, Bhishma refused to let her marry Shalva, whom she loved. But feeling inferior to Bhishma he refused to accept her and she went back to Bhishma for marriage and acceptance, but there also she was abandoned.

Therefore she was left alone and insulted. So instead of returning to her family home, she entered the forest and began performing severe austerities to attain the power she needed for revenge. Eventually gaining the favour of the god Shiva, she asked him to give her the ability to kill Bhishma. Granting Amba her wish, Shiva told her that in her next life she would indeed play a part in Bhishma's death. Determined to fulfill her goal as soon as possible, Amba immediately killed herself. Told by Shiva that she would eventually be transformed into a man, Drupada names her Shikhandi and raises her as a boy. In this version, a powerful being living in the forest does, in fact, transform her into a man. In other accounts, Shikhandi is born a male, but grows up transgender because Shiva gave her the ability to remember her past life.

Either way, as Shiva promised, Shikhandi does get the opportunity to be the cause of Bhishma's death towards the end of the Mahabharata during the war of Kurukshetra, and the issue of his gender plays a significant role. In other accounts, Shikhandi is born a male, but grows up transgender because Shiva gave her the ability to remember her past life.

Either way, as Shiva promised, Shikhandi does get the opportunity to be the cause of Bhishma's death towards the end of the Mahabharata during the war of Kurukshetra, and the issue of his gender plays a significant role.

Aware of Shikhandi's past life as Amba, the next day the Pandavas mounted an attack on Bhishma with Shikhandi leading the charge, followed closely by Arjuna, the most skilled fighter of the Pandavas. Refusing to engage Shikhandi in battle, Bhishma became vulnerable, which allowed Arjuna to take him down with a volley of arrows.

With Bhishma — the commander of the Kuru army — defeated, the Pandavas went on to win the war. And Shikhandi, whose gender was never an issue societally speaking, became remembered as a significant character who played a major part in overcoming the Kauravas. Today, many discriminate against people like Shikhandi, including Hindus. But true Hinduism means promoting love and respect based on equality of the soul, regardless of a person's gender, race, or sexual orientation.<sup>1</sup>

## **EVOLUTION OF TRANSGENDER COMMUNITY IN INDIA**

Transgender persons had been part of Indian society for centuries. There was historical evidence of recognition of “third sex” or persons not conform to male or female gender in near the beginning writings of ancient India. The concept of kama shastra is “**tritiya prakriti**” or “napumsaka” which has been an integral part of the Hindu mythology, folklore, epic and early Vedic and Puranic literatures. The term “napumsaka” had been used to denote the absence of procreative ability, presented by signifying difference from masculine and female markers. Thus, some of the early texts extensively dealt with issues of sexuality and the idea of third gender which was an established thought therein.

Transsexualism is an ancient phenomenon which became more widely known to the court only in 20th century because with the possibility of sex change surgery arising, transsexualism became visible. Transsexualism is a form of human diversity in sexual formation, reported since antiquity, in which an individual seeks to alter the individual's sexually differentiated body in order to bring it into sexual harmony with the individual's innate sexual identity or brain sex.

The very concept of Hijras and other Transgenders in India is not a new concept; they have been recognised in our ancient history as well. Transgender Community comprises of *Hijras*, eunuchs, *Kothis*, *Aravanis*, *Jogappas*, *Shiv-Shakthis* etc. and they, as a group, have got a strong historical presence in our country in the Hindu mythology and other religious texts.

In Hindu mythology, Bahuchara Mata who is a Hindu Goddess is considered as the patronage of the Hijra community in India. Though Hijras were recognised and given importance in our ancient custom and practices, the conditions have been deteriorating and becoming worse generation by generation.

## **Legal sanctions**

Gradually, transgender people are being recognized as members of the society at an equal footing. The Supreme Court has, through its various landmark judgements established that recognition of transgender rights is important. The most significant judgement is the NALSA v Union of India judgement, in which the Supreme Court affirmed the position of transgender people as legally being “the third gender” and therefore, they are entitled to all fundamental rights guaranteed by the Constitution.

Another notable case is Navtej Singh Johar v. Union of India which abolished S. 377 of the Indian Penal Code and paved way for legalizing sexual relationships between people of all genders. After this judgement, the next step for the community was for a law that would allow them to register their marriage under the law, thereby legalising the concept of **third-gender marriages**. However, that has not been the case yet.

## **Transgender Marriage in India**

In a landmark judgement in 2019, the Madras High Court interpreted the word “bride” under S. 5 of the Hindu Marriage Act and held that it includes transgender persons as well. Hitherto, a “bride” was a woman that too only on the day of her wedding. But with this judgement, a new ground has been established. The Madras HC relied on the three most important judgements for LGBTQ+ rights: the NALSA judgement, the K.S. Puttuswamy Case (privacy under A. 21) and the Navtej Singh Johar judgement.

The Court opined that they were only stating the obvious, and that they did not interpret anything additionally, since the right to marriage for transgender persons has always been present in this statute. This interpretation has paved way for the transgender community to lobby for their marriage rights.

Despite this judgement, the government has included no provisions related to the marriage of transgenders in the 2019 Transgender Persons (Protection of Rights) Bill that has been introduced by it as a protection mechanism of the trans community and aiming to pave the way for a more progressive legal system.

The Union Government has clarified its stance regarding LGBTQ+ marriages. In a 2021 case before the Delhi High Court, the government has said that the judgements of the Supreme Court in Navtej Singh Johar and K.S. Puttuswamy case does not mean that homosexuality has been legalized, contrary to popular belief. The Government has said that these judgements have only decriminalised a particular human behaviour. It also

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<sup>1</sup> <https://www.hinduamerican.org/blog/shikhandi-the-mahabharatas-transgender-warrior>

pleaded that it is in the legitimate interests of the state to limit marriages of same-sex individuals, as the conduct of marriage should be in the most “natural way”, implying that marriages should result in the procreation of a child. The Union also added that Courts cannot give legal recognition to LGBTQ+ marriages when the statute does not provide for it.

This takes us to the existing provisions and whether there is any scope of amendment in these existing provisions to account for transgender marriages. **S.5 of the Hindu Marriage Act mentions several conditions for a valid marriage under the law.** One of these conditions is that the parties should not be “within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two”. The “degree of prohibited relationship” can be prima facie interpreted as a relationship that is not approved or allowed by the caste, sect, community or society. If this was the case, then it would’ve been easier to legalize same-sex and transgender marriages since the Courts would interpret it liberally, and hold that LGBTQ+ relationships are not “prohibited”.

However that is not the case. “Degree of prohibited relationship” is defined under S. 3 (g) of the Act and mostly refers to close relatives and lineal descendants. Since “prohibited relationship” is clearly defined, it cannot be interpreted liberally to include marriages in the LGBTQ+ community.

S.4 of the Special Marriage Act discusses the conditions for a valid marriage. This Act was mainly enacted to give legal protection to inter-faith marriages if they are not recognized under the respective marriage laws of that religion. S. 4 (b) (ii) mentions that “neither party, though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children”. This provision also does not leave any scope for LGBTQ+ marriages, since it places a condition that the parties should be fit for procreation, which is not always possible in such marriages.

Therefore, the biggest challenge before the transgender community and the LGBTQ+ community, in general, is to secure marriage rights against the general notion of marriages for the procreation of a child. This can only be addressed by society accepting that marriages are not solely for raising children and families. *The problem is mainly the society’s stigma regarding transgender persons, which has hindered them from securing marriage rights. They have advanced their positions in society due to the liberalisation of society, but there is still a long way to go.*

### Social Distress of Transgenders

The Transgender be the class of LGBTQIA+ group. They belong to the marginalised cluster of the society that faces legal, social, cultural and economic difficulties. The issues faced by the Transgender community in India embody.

- 1) **Discrimination:** Discrimination is that the major drawback of Transgender. They’re discriminated against in terms of education, employment, diversion, justice etc.
- 2) **Disrespect:** They’re disrespected in every and each facet of life except in few cases like once the birth of a baby for his or her blessings or to bless the new wed couple.
- 3) **Downtrodden:** These people are treated badly or laden by people in power. They’re vulnerable to struggle for social justice thanks to their identity as Transgender.
- 4) **Child Nabbing:** This community invariably searches for those babies/ infants/ kids United Nations agency are born with this feature of Transgender. Once they are available to grasp, they struggle to nab the kid from their elders.
- 5) **Prostitution:** They’re forced to enter the profession of prostitutions by their community, friends or relatives. Even, in some cases, it’s seen that their elders are concerned about it.
- 6) **Forced to depart parental home:** Once their identity is known, they’re forced and pressurised to depart the parental home by the society as they can’t be a district and parcel of traditional community and sophistication.
- 7) **Unwanted attention:** People provide unwanted attention to the Transgender publicly. They struggle to form the scene by insulting, punishing, abusing or giving tongue to them.
- 8) **Rejection of entry:** they’re rejected to enter non-secular places, public places like hotels, restaurants, theatres, parks etc.
- 9) **Rape and verbal and physical abuse:** this is often the foremost Transgender people face. They’re vulnerable to face rape followed by physical and verbal abuse.
- 10) **Lack of instructional facilities:** Like traditional Transgenders, they’re not entitled to require education in colleges and faculties. Even in terms of education, they’re treated otherwise.
- 11) **Problems with STI and HIV AIDS:** The term “MSM” is used to describe men with men. As a result, the majority of transgenders have socio-economic problems like STI and HIV AIDS and are low in literacy. It aims at inadequate medical care.
- 12) **Trafficking in human beings:** Transgender is among the most neglected groups and is therefore also prone to the problem of trafficking in human beings.

**13) Social Exclusion:** The main issue in all the process is the social exclusion from society. They are excluded from social, cultural and economic participation.

In brief they are departed from the following perspectives:

- Economy, jobs and livelihoods
- Exclude the right to abuse
- Limited access to schooling, medical care and private care
- Limited access to government space, collectively
- Citizenship Rights
- Excluded from decisions
- Failed to provide a social safety framework
- Limited access to community services

Lack of adequate education and lack of employment opportunities, they are forced into sex work and begging. While some transgender manage to sustain their job inspite of stigma and discrimination in workplace, most of them resign their jobs without tolerating stigma and discrimination. A variety of multiple-level factors such as lack of adequate education, lack of employment opportunities, and lack of familial support put the male-born sexual minorities at risk of contracting HIV. Similarly, sexual and reproductive health needs are often not adequately addressed.

In particular, most transgender person does not get adequate state's support (except TamilNadu) for sex transition surgeries such as hormone administration, emasculation, and breast augmentation surgery. This explored the impact of discrimination and stigma on health care access for rural and urban transgender individuals. The research was conducted using with self-identified transgender individuals in the society.

Four major themes emerged in these discussions: (1) transgender individuals feel that health care providers' attitudes and behavior towards them belie a lack of personal respect and believe that their health care is compromised as a result; (2) transition health care is impeded by physicians and health insurance companies who do not recognize gender transition as medically necessary; (3) anti-trans discrimination in both rural and urban communities lead trans individuals to expect similar treatment from health care providers; (4) and participants prioritized the need to increase the number of health care professionals who are well educated on transgender health concerns, and the importance of advocacy and social support in facilitating health care access.

### **Transgender Rights**

The Indian Constitution enshrines notions of justice- socially, economically and politically. Article 14 of the constitution provides for right to equality, Article 15 prohibits discrimination on the ground of religion, race, nationality, gender or place of birth, Article 21 guarantees the right to privacy and personal dignity to all citizens and Article 23 prohibits human trafficking and other forms of forced labour. Moreover, the Universal Declaration of Human Rights provides that all people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly. However, the sad truth remains that despite the existence of ample rights to safeguard the human rights of transgenders both internationally and in the Constitution of India, they remain unenforced.

### **Mass media impact**

The representation of transgender people in popular media has been overwhelmingly problematic. Historical representations of transgender characters in fictional television have featured stereotypical and negative portrayals that do not accurately reflect the real experiences of transgender people. Both the quantity and quality of transgender representation across all forms of media is an issue. There is a dynamic relationship between popular culture and representation that manifests in four central ways. First, culture influences what kinds of storylines, characters, and challenging aspects of a television show are considered palatable for a wide range of audience members. Second, culture also influences what we as viewers are prompted to consider. Common tropes, or stereotypes, also allow viewers to be able to relate to what is happening in the shows we watch. Third, the way individuals are represented in popular culture, in turn, influences this same culture by addressing aspects of our existence that challenge us. And fourth, the quality of representations can be offset by the pure number of other representations of the same group.

Thus, and in the present moment, examining not only the quantity (or number of instances) of transgender representation, but also (and as important) their varying quality, is an especially important topic because negative portrayals of transgender people have historically overshadowed any positive or complex portrayals. Negative representations can be offset when there is a large number of representation of all kinds for that particular segment of the population. Two popular television shows that feature transgender characters and storylines: *Orange Is the New Black* and *The Fosters*. Both shows are set in the United States. *Orange Is the New Black* deals with the American prison system while *The Fosters* deals with the American foster care system. The shows therefore address with interactions between transgender and non-transgender characters as well as how the state itself treats gender non-conforming people in these institutions.

**Timeline of Reforms** :In 2009, appropriate directions were issued by the Election Commission to all provinces to amend the format of the registration forms to include an option of “others”. This enabled transsexual people to tick the column if they didn’t want to be identified as either male or female.

The Supreme Court in *National Legal Services Authority Vs. Union of India* (2014) recognized them as the “Third Gender”. In the landmark ruling, Justice K.S Radhakrishnan observed that “recognition of transgenders as a third gender is not a social or medical issue, but a human rights issue”.

The Rights of Transgender Persons Bill, 2014, was introduced as a private member’s Bill by the Dravida Munnetra Kazhagam MP Tiruchi Siva, and passed by the Rajya Sabha in April 2015.

HIV services for the community are rapidly improving in a targeted manner after the SC verdict. For example, the National Aids Control Organisation (NACO) reported that 2,40,000 hijras were provided with HIV prevention and treatment services in 2015, compared to 1,80,000 the previous year.

At the present, Lok Sabha has passed the Transgender Persons (Protection of Rights) Bill 2016. The bill will now be placed in Rajya Sabha.

### **Key Provisions of the Bill**

Prohibition against discrimination: the Bill prohibits discrimination of transgenders in relation to opportunities for education, job, health care services, and access to services etc. Right to be recognized as transgender: every person has a right to be recognized as a transgender. Procedure for transgender recognition: A certificate of identity has to be obtained from the District Magistrate, who will issue the certificate based on the District Screening Committee.

The committee will comprise of a Chief Medical Officer, District Social Welfare Officer, Psychologist or Psychiatrist, and a representative of transgender community. Right of residence: No transgender person shall be separated from parents or immediate family on the ground of being a transgender. Provision for establishment of National Council for Transgender Persons.

Penal Provisions: it criminalizes: (i) begging, forced or bonded labor (ii) denial of use of a public place; (iii) denial of residence in the household, village, etc.; (iv) physical, sexual, verbal, emotional and economic abuse.

### **Issues Faced by Transgender**

Lack of legal protection – They are subjected to custodial violence, dereliction of duty by state and overall apathy to their issues such as educational, residential, medical and employment.

Poverty – Lack of legal protection translates into unemployment for transgender people. They’re denied services and experience high rates of unemployment, housing insecurity and marginalisation.

Harassment and stigma – They are met with ridicule from a society and are considered mentally ill, socially deviant and sexually predatory.

Anti-transgender violence – They are forced for gender conformism, aversion based pseudo-psychotherapies, forced marriages, stripping, physical and verbal abuse and are pushed into prostitution by their own families.

Barriers to healthcare – Their exposure to basic health care is minimal as they are subject to apathy from medical fraternity with professionals lacking transgender health care competency.

### **BREAKING THE CEILINGS**

*“A marriage solemnised between a male and a transwoman, both professing Hindu religion, is a valid marriage in terms of Section 5 of the Hindu Marriage Act, 1955 and the Registrar of Marriages is bound to register the same. By holding so, this Court is not breaking any new ground. It is merely stating the obvious. Sometimes to see the obvious, one needs not only physical vision in the eye but also love in the heart.”* – Madras High Court.

The fundamental right of transgender persons to marry individuals of their choice was recently affirmed by the Madras High Court in *Arunkumar and Another. v The Inspector General of Registration and Ors.* (WP (MD) No. 4125 of 2019 and WMP (MD) No. 3220 of 2019). The High Court upheld a Hindu marriage between



Arunkumar and Sreeja (a transwoman) which the Registrar of Marriages, Tuticorin, had previously refused to register. The ground for refusal was that a trans woman would not qualify as a ‘bride’ under Section 5 of the Hindu Marriage Act, 1955 (HMA). The Court looked beyond the facts of the case to address issues of self-determination, personal autonomy and freedom of self-expression, culminating in the recognition of transgender persons’ right to marry.

At the outset, the Court clearly stated that a marriage solemnized between a Hindu male and a Hindu trans woman would be a valid marriage in terms of Section 5 of the HMA. The Court relied on the decisions of the Supreme Court in *NALSA v. Union of India*, Justice K. Puttaswamy v Union of India and *Navtej Singh Johar v Union of India* to reiterate that transgender persons have the right to self-identify their gender. It held that sex and gender are distinct, where a person’s sex is biologically determined at the time of birth, which is not the case with gender.

Next, the Court addressed the issue of marriage. It held that the term ‘bride’ in Section 5 of the HMA cannot have a ‘static’ or ‘immutable’ meaning and that statutes must be interpreted in light of the legal system as it exists today. The Court relied on Article 16 of the Universal Declaration of Human Rights on the right to marry and on the Supreme Court’s decision in *Shafin Jahan v Asokan K.M. and Ors.* where the right to marry a person of one’s choice was held to be integral to Article 21 of the Constitution.

Although this judgment is a major step forward both legally and socially for transgender persons, it is important to remember that it only upholds the right to marry for those persons who self-identify within the gender binary, and who are accordingly deemed to be in heterosexual relationships. The judgment does not, by any means, legalise same-sex marriage and LGBTQIA+ persons in same sex relationships have still not been accorded a fundamental right to marry under Article 21 of the Constitution of India.

#### **A transwoman is a ‘bride’ under Section 5 of Hindu Marriage Act, 1955**

Under the Hindu Marriage Act, Section 5 provides the conditions of a Hindu marriage, refers to “party” as “groom”, and “bride” and does not refer to any special specification of gender. Section 5 reads the following: The Status of Hindu Marriage. A marriage can be solemnised between any two Hindus, if the following conditions are met, namely:

1. Neither party has a life partner during the marriage;
2. At the time of the marriage, not the party,
  - Is ineffective of giving valid permission at the end of unsoundness of mind; or
  - Even if they can give legal recognition that has been plagued by such mental disorders or that has been disqualified from marriage and childbearing; or
  - Has repeatedly suffered from insanity or epilepsy;
3. The bridegroom has attained the age of twenty-one years and the bride of eighteen years at the time of marriage;
4. Those involved are not at the level of the forbidden relationship unless the custom or practice that governs each of them allows for marriage between the two;
5. The parties are not each other’s subordinates unless the custom or practice which governs each other allows them for marriage between the two;

The court rejected the State’s claim that a proselyte woman could not be considered a ‘bride’ under Section 5 and stated that the word ‘bride’ occurring from Section 5 of the Hindu Marriage Act, 1955, could not have a fixed or unchangeable meaning that the court is free to apply the current meaning of an enactment or law in present-day condition”.

The court noted that once the rights of transgender people are upheld by the Honorable High Court, in the real world, they will not be protected under the Hindu Marriage Act. one can have a civil marriage. One can also have a sacramental marriage. The applicant’s marriage was celebrated in a temple. Therefore, their fundamental right under Article 25 has also been violated in this case.

Considering the light in the March law, the word ‘bride’ from Section 5 of the Hindu Marriage Act, 1955 should include not only its meaning but also a transgender woman. It could also include an intersex/transgender person who calls himself a woman. The only consideration is how one sees herself.

#### **SAHODARI FOUNDATION**

Sahodari Foundation is a pioneer organization in India which has been voicing for transgender and gender non binary community of India since 2007. The organization is a movement, a family, and a team of transgender persons. Sahodari was founded by transgender rights activist, artist and writer Kalki Subramaniam ([www.kalkisubramaniam.com](http://www.kalkisubramaniam.com)).

Registered as an organisation in 2008, we have completed 13 years and have been very active in transgender rights advocacy in India. Since 2012, our focus was on legal recognition and we campaigned in many places in India among the Judiciary for legal recognition of the transgender community. In 2014, the Supreme court of India legally recognized the transgender community, Kalki Subramaniam – the founder of the organization was one of the strong activists behind the lobby for recognition. From 2017, our focus is on knowledge, education, livelihood, arts & literature and enabling technology for empowerment for transgender people in the country.

### **FIRST TRANSGENDER MARRIAGE**

It was a historic moment for the transgender community in Kerala as a transman and transwoman tied the knot in Thiruvananthapuram Thursday. Ishan (33), who underwent female to male surgery, married Surya (31), who has undergone male to female surgery. This is the first time a transwoman and trans man enter into married life in Kerala.

Ishan is a Muslim and Surya is an upper caste Hindu. Both took the vow as per the Special Marriage Act, in the presence of their family members and well-wishers from the transgender community. Surya is a TV actor and member of the State Board for Transgender Justice. Ishan is a member of Oasis, a self-help group for transgenders.

### **FIRST MATRIMONIAL SITE FOR TRANSENDER MARRIAGE**

The world's first matrimonial website for the transsexual community was launched in Chennai. A Chennai based transgender Kalki is the director and the founder of the website, [sahodari.org](http://sahodari.org), which is one of first websites in the world for transsexual marriages. Kalki said that the reason why she thought of launching this website was because the profiles of the members of the transsexual community were being rejected by popular matrimonial websites.

### **TRANSWOMAN BEING 'BRIDE' IN TERMS OF HINDU MARRIAGE ACT 1950**

Section 5 of the Hindu Marriage Act which provides the conditions for a Hindu Marriage, refers to “the party” as “bridegroom” and “bride” and makes no specific mention of the gender.

#### **SECTION 5- Condition for a Hindu Marriage**

A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party, –
  - (a) is incapable of giving a valid consent of it in consequence of unsoundness of mind; or (b) though capable of giving a valid consent has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children;
  - or
  - (c) has been subject to recurrent attacks of insanity or epilepsy;
- (iii) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

The Court rejected the State's contention that a transgender woman could not be viewed as a “Bride” under Section 5 and held that, “the expression “bride” occurring in Section 5 of the Hindu Marriage Act, 1955 cannot have a static or immutable meaning. ... the court is free to apply the current meaning of a statute to present day conditions”.

The Court observed that “When the right of the transgender persons to marry has been upheld by the Hon'ble Supreme Court, in the very nature of things, they cannot be kept out of the purview of the Hindu Marriage Act. One can have a civil marriage. One can also have a sacramental marriage. The petitioners' marriage was solemnised in a temple. Therefore, their fundamental right under Article 25 has also been infringed in this case”. “Seen in the light of the march of law, the expression “bride” occurring in Section 5 of the Hindu Marriage Act, 1955 will have to include within its meaning not only a woman but also a transwoman. It would also include an intersex person/transgender person who identifies herself as a woman. The only consideration is how the person perceives herself”.

### **CONTEMPORARY FIELD**

The transgender in India is possibly the most well known and popular third type of sex in the modern world. The Supreme Court declared for transgender as third gender. The third genders in India have emerged as

a strong faction in the LGBT rights. In the contemporary time the Government of India introduced so many welfare policy and schemes such as, census, documentation, issuing of the citizenship ID Cards, issuing passports, social-economical development and constitutional safeguards for the transgender people. The social, economic, political transformation, Housing, legal measures, Police Reforms, legal and constitutional safeguards to prevent human rights violations of the transgender community and institutional mechanisms to address specific concerns of transgender people.

Today, due to the rise in individuality and the express freedom given on expression, the rights of transgender people have been recognized and respected more than ever before in history. Some steps have been taken in the positive direction to ensure the basic rights of these people, who are often stereotyped by the society. Recently, 13 transgender people were recruited as police officers in the state of Chhatisgarh. Back in October 2017, the district administration of Bhopal inaugurated a public toilet exclusively for transgender people.

### **Suggestions**

Inclusive approach for Transgender must be planned and adopted by the Government and society. Legal and the law enforcement systems need to be empowered and sensitized on the issues of Transgender community. Provision of free legal aid, supportive education, and social entitlement must be ensured for the Transgender community at ground level as suggested by NALSA Judgement. Separate policies related to health care must be framed and communicated in all private and public hospitals and clinics. Liberal credit facilities and financial assistance must be ensured to start up their career as an entrepreneur or businessman.

### **Way Forward**

Certain provisions of Private member bill introduced in 2014 by Tiruchi Siva can also be incorporated such as reserving 2% of seats in education institutions funded by the government, formation of special employment exchanges for transgender people in government jobs, etc. The bill should be provisioned in such a manner that it is able to integrate transgender persons seamlessly into the fabric of everyday public life be it public spaces, at workplaces, and in normative domestic spaces. Policies and regulation alone won't help there is a need to increase awareness and inculcate sense of respect and acceptance for transgender community. Their grievance of being not included in policies formulation or decision making needs to be allayed and chances for their public participation should increase.

## **II. CONCLUSION**

Though, the transgender community was given high position in mughal period and facing many problems obstacles in British colonial rules. But now to safe guard the transgender communities there are many policy and schemes implemented by the government. Through this social economical status of the transgender community will be developed. The government should be eradicate the stigma, discrimination and human rights violation for the betterment of transgender community. If all this are brought in their day to day life, it would enlarge the growth of transgender community in India.

Transgenders are a part of our society and the issues faced by them are countless. However, despite the progressive judgements by the Hon'ble courts, the transgender community in India is still oppressed and does not find sufficient protection under the statutes. The current laws relating to transgender marriages, both in personal laws and ones specially designed for them such as the 2019 bill seem to be grossly inadequate in providing proper inclusive definitions and addressing the issues faced by them in a humane fashion.

Health research is lacking in key areas of transgender health, including the implementation of a medical curriculum that successfully incorporates transgender health care, and inadequate funding opportunities for transgender health research. Finally, anti-trans attitudes of health care providers can and should be addressed from within the health care profession through education, community advocacy for transgender rights, and the passage of trans-inclusive anti-discrimination laws.

India is a signatory to the Yogyakarta Principles, principle 24(E) of which encourages states to recognise same-sex marriage and accord it equal status to different-sex marriage, which, though non-enforceable, is a progressive path for the country to follow. It is the duty of the government to empathise with the problems of this oppressed community, grant them the rights they deserve, and articulate a comprehensive legislation that clearly outlines the governmental position on transgender marriage and their rights as partners and spouses. There exists an urgent need for the government to provide clarity on this issue to allow for the formation of a coherent policy framework.

The transgender community deserves a heartfelt apology from the society for the way they have been mistreated and the delay they have had to suffer in obtaining a redressal for all that they have suffered. They must not be subject to more of this ostracism owing to the majoritarian norm and should be granted the



Fundamental Rights that they have been guaranteed under the constitution of India. Being a part of Indian community, a place of no discrimination according to the constitution they got the right to marry and live a normal life like other citizens. Hence, transgender matrimony in India proves to be a success in legal terms with some loop holes in socio-cultural and religious aspect.

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