

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

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INTERNATIONAL JOURNAL

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THE JOURNEY OF SAME SEX MARRIAGE

FROM VEDAS TO MODERN ERA

Its recent conflicts to recognition in India and Proposed Solution

The Journey of same sex marriage from Vedas to Modern Era

Its recent conflicts to recognition in India and Proposed Solution.

Prepared by

Swapnil Raj, LLM (Chanakya National Law University, Patna)

Introduction

Indian culture is rich, unique, diverse and attracted by many people all over the world. It is deep-rooted, most valuable, rich informative, present and future oriented and a great advantage to the innovative ideas and thoughts to the world. Indian culture is extremely influenced by Vedic literature. It is religious and spiritual in nature and reflects the world as a whole at that period. Vedic literature is the basic root of Indian culture. It is said to be the treasure of immense knowledge and influenced by Indian culture and tradition. A unique feature of the Vedic literature is its adoption of humanistic approach to abstract, unique, confused and difficult subjects like third gender. The ethical, esthetical, social, political and economic aspects of life have been taken into account by the Vedas. Vedic literature is the backbone of Indian culture and society. It discussed each and everything under human life. It served as a great unifying force in the Indian sub-continent and all continents and still continues to hold immense authority in the sphere of spiritual, religious, social, economic and political relevant literature. In the entire Vedic literature names of a large number of Gods and Goddesses are mentioned. Broadly speaking the Vedic literature (Aparavidya) can be categorized as the Vedas and the Vedangas. The Vedas are considered to be the oldest literary records of the world and is generally regarded as the period 1500 BC to 500 BC.

The four types of Vedas are (i) Rigveda (ii) Yajurveda (iii) Samaveda (iv) Atharvaveda. These four types consist of four different classes of literary works¹. Each of these classes belong a greater or a smaller number of separate works, of which some have been preserved in their true form but many lost in time. These four classes are: Samhitas, Brahmanas, Aranyakas and Upanishads. Sometimes, the Aranyakas and Upanishads are treated as part of Samhitas/Brahmanas.² The Vendangas consists of the six knowledge streams required for understanding of the Vedas. They are: Shiksha, Kalpa, Vyakarana, Nirukta, Chada and Jyotisha. In addition to this each of the Veda consists of a secondary knowledge source called Upveda. Vedic literature is more transparent to deal human biology. In the Vedic literature the gender of the human being is precisely divided into three categories according to prakriti or nature. They are pums-prakriti or male, stri-prakriti or female, and tritiya-prakriti or the third sex (Svetasvatara Upanisad, Galva 108). Third sex people are also classified under a larger social category known as the —neutral gender. Its members are called napumsaka (not engage in procreation). Napumsaka people divided into five different categories, they are: children, the elderly, the impotent, the celibate, and the third sex. They were all considered to be sexually neutral by Vedic definition and were protected and believed to bring good luck and prosperity. This non reproductive category played an integral role in the balance of human society and nature. Vedic literature underlined that everything in nature in corporate and has a purpose, role, value and reason for existence. In Vedic literature human categories considered and assessed the entire being that includes the gross (physical) body, the subtle (psychological) body, and a unique consideration based upon social interaction (procreative status) (Wilhelm, 2004). These assessment and categories of the “tritiyaprakriti” is centuries before. But in the modern world the concept of third gender/transgender is first identified _Transvestite ‘in 1910 from the German sexologist Magnus Hirschfeld. _Transsexual’ was not identified until 1949, ‘transgender’ not until 1971, and ‘trans’ (a very British term) not until 1996 (Stryker & Whittle, 2006).³ The fact is that the third gender is a very common term in the ancient Indian Transgender Identity As hidden in Vedic Literature and Society, which mention to the highest Hindu population in the world.⁴

¹Introduction to Vedas, Vedangas, Jyotish Shastra and Vedic Astrology
<http://vedicheritage.gov.in/introduction/>

²Homosexuality - Hinduism
<http://modiejohnson.tripod.com/homosexuality.htm>

³Historical Evolution of Transgender Community in India <http://www.trp.org.in/wp-content/uploads/2015/10/ARSS-Vol.4-No.1-Jan-June-2015-pp.17-19.pdf>

⁴Transgender Identity As Hidden in Vedic Literature And Society
[http://www.ijhssi.org/papers/vol7\(1\)/Version-1/K0701016265.pdf](http://www.ijhssi.org/papers/vol7(1)/Version-1/K0701016265.pdf)

Unfortunately, transgender are not widely recognized and accepted in modern India, except in the Indian State of Tamil Nadu. In contemporary Indian society there has been much controversy and confusion concerning the physiology, psychology and position of transgender persons within the society. But in the Vedic society there were no any confusion related to the concept of third gender/transgender. In Vedic society each individual was seen as an integral part of the greater whole. To understand third gender individual's peculiar characteristics, physiological and psychological uniqueness, the ancient Vedic literature in India must help us, which have thoroughly analyzed and recorded all aspects of human life. People of the third sex are mentioned throughout the Vedic literature in different ways due to their physiological and psychological appearances and uniqueness. Vedic literature concerning everything about third gender like the causes of their birth, various characteristics, types, practices, problem, occupations etc. In Vedic society third gender citizens were neither persecuted nor denied their basic rights like modern Indian society. They were allowed to keep their own societies or town quarters, live together within marriage and engage in all means of livelihood never treated as out caste and untouchable like today. Gay men could either blend into society as ordinary males or they could dress and behave as females, living as transvestites (Galva 108). They are especially mentioned as being expert in dancing, singing and acting, as barbers or hairstylists, masseurs, and house servants. Vedic society was accepted their skills and capabilities with full support. And transvestites were invited to attend all birth, marriage, and religious ceremonies as their presence was a symbol of good luck and considered to be auspicious. In Vedic society they were not perceived to be a threat and ridicule in any way and were considered to be aloof from the ordinary attachments of procreation and family life. In this way they were awarded their own particular status, dignity and welcomed as a part of civilized Vedic society.

It's not about two people being gay: it's about two people who love each other and who have decided to commit to each other for the exact same reasons any other couple would get married.

"Transgender" is an umbrella term that describes people whose gender identity or expression does not match the sex they were assigned at birth. For example, a transgender person may identify as a woman despite having been born with male genitalia.

Historical Background of Transgender

The transgender population in India is a (in) visible population that is embedded in the Indian society from a very long time. Transgender are linked with the religious-cultural background and are considered demi-gods. Descriptions of transgender are in epics like Ramayana and Mahabharata (Nanda 1996; Krishna and Gupta 2002) and references of third gender are in Kamasutra also.⁵ Few characters mentioned in the epic Mahabharata include Arjuna as Brihannala (a eunuch teacher), Shikhandi (reborn as a man) who confronted Bhishma during the Kurukshetra war, and Lord Krishna as a woman marrying Arjuna's son Lord Aravan Hijras worship Goddess Bahuchara Mata (Barbara 1994; Nanda 1996; Lal 1999; Bakshi 2004; Hill and McBride 2007) and the temple is situated in Bahucharaji, Mehsana district, Gujarat, India.

Transgenders relate themselves to the Mohini avatar (a woman form) of Lord Krishna and Lord Shiva (in the form of Ardhanarishvara) (Nanda 1996; Lal 1999). Lord Ayyappa is said to be born to Lord Shiva and Lord Vishnu. Lord Vishnu took Mohini avatar (Goudriaan 1978; Doniger 1999) and Lord Ayyappa was born (Krishna and Gupta 2002; Kalra et al. 2010). Lord Shiva is represented in the image of Ardhanarishvara, or 'the Lord who is half woman'. Lord Shiva and Parvati together in one body are called as Ardhanarishvara (Krishna and Gupta 2002; Kalra et al. 2010).⁶ In various paintings and sculptures Lord Shiva's half body is female and half is male.

Transgenderism/Homosexuality in Vedas

Many Hindu scholars came forward to support Homosexuality, One of the renowned Hindu scholar "Sri Sri Ravishankar Prasad said that "Homosexuality has never been considered as crime in Hindu culture. In fact, Lord ayyappa was born of Hari –Hara (Vishnu & Shiva).

In Vatsyaan's Kamasutra, all this has been depicted as a totally inhibition and a crisis of health, but it must be certified that gay relations existed in ancient India too.⁷

⁵According to Transgender folklore, in the epic Ramayana when Lord Rama leaves for exile with Sita and Lakshmana, he is followed by people and at the banks of the river, at the edge of the forest he turns and appeals to his followers to wipe their tears and says 'men and women please go back and perform your duties'. He turns and never looks back. While returning back after fourteen years he finds a group of people still waiting for him. Upon questioning he realizes that the words 'men and women' were not meant for the group and hence they stayed back. This was the transgender group that waited for Lord Rama for fourteen years. Lord Rama blessed transgender for their devotion as they waited for his return for fourteen years (Lal 1999; Krishna and Gupta 2002).

⁶In one of the myths of the Hindu religion, Lord Shiva breaks off his phallus and tosses it and the phallus breaks in pieces and extends fertility over the entire earth. Though Lord Shiva loses the power to procreate, his phallus becomes a symbol of 'universal fertility' and therefore one can trace the cult of lingam (phallus) worship. This is seen as an exact description with hijras who themselves are impotent but bless others for fertility (Lal 1999).

⁷Sri Sri Ravi Shankar on Twitter: "Homosexuality
<https://twitter.com/srisri/status/410810667176697856>

1. According to a legend, Lord Shiva was conscious of Krishna with Raslila. For this, he took bath Yamuna and took the form of Gopi. He took the back of Krishna as Gopi and formed Rasli. Poonawala has called it the attraction of the same gender.
 2. According to legend, Shiva and Parvati once went to Lord Vishnu. On their sayings, Vishnu takes the form of Mohini. After this, Shiva becomes fascinated by Mohini. In Shiva Purana, Hanuman is said to be born with the transition of Shiva and Mohini.
 3. The monster whom Lord Shiva had blessed that whatever he would put his hand on, he would be consumed. Bhasmasur falls behind Shiva only. Shiva asked Lord Vishnu for help. Even though he was a man, he changed the form of a siren and placed Bhasmasur's hand on his head. Poonawalla says that it means that despite being a man, the man was spared.
 4. Arjun and Alpi's son Arvan are decided to send them to the battle field. His death was certain. He did not want to die unmarried. To fulfill his wish, Lord Krishna has a feminine form. Aravan married Krishna. He spent the night with God and he was killed in battleground the next day. While being a man, Shri Krishna mourned as a widow.
 5. Brhaspati Grah when came to know that his wife Tara has become pregnant with Chandra, he was angry and curse the child to be impotent. This child is a Buddha planet. Later, this impotent child marries as a woman.
 6. The story of two widows being pregnant in the Ramayana period is also prevalent. In it, both widows love each other and consume magical medicine to be pregnant.
 7. The Ramayana period itself mentions the relationships of monster women. It has been said that monster women loved other women and kissed them.
 8. A story is also narrated to Narada Muni. He wants to understand Lord Maya's magic. God sends them to the bath in a lotus tank. After bath, Narada forgets the past and becomes a woman. They are married to a king, who also have their children. That is, he also originally lives with a man through sex transformation while being a man.
"It is said in the Vedas that what is unnatural is also natural"
- **'Aravan Dev' is the god of kinars.** They even marry them once in a year. Aravan, Arjun and Nag were the sons of Princess Ulupi. Arjun married Ulupi. Ulupi gave birth to their son. After the birth of Aravan, Arjun left him.

- According to Shiva Purana and other scriptures, Pawan son Hanuman was born with the union of Lord Shiva and Vishnu's Mohini Avatar. Hanuman ji is considered as the form of Lord Shiva. Indeed, according to some scriptures, he is a part of Shiva and Vishnu.⁸
- The temple of **Khajuraho** is also famous for erotic idols. These temples have different significance because of these idols. When such idols were made in that period, then it is natural. This was also happening at that time.⁹

According to Ram dhari singh dinkar there is no concept of male female Lord shri Krishna says that everyone comes back to me there is no “Nar and nari“.

Transgender Position in modern era¹⁰

Transgender persons had been part of Indian society for centuries. There was historical evidence of recognition of “third sex” or persons not confirm to male or female gender in near the beginning writings of ancient India. The concept of “tritiyaprakriti” or “napumsaka” had been an integral part of the Hindu mythology, folklore, epic and early Vedic and Puranic literatures¹¹. 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. In fact, the Jain text even mentions the concept of “psychological sex”, which emphasized the psychological make-up of an individual, distinct from their sexual characteristics. Lord Rama, in the epic Ramayana, was leaving in the forest upon being banished from the kingdom for 14 years, turns around to his followers and asks all the ‘men and women’ to return to the city. Among his followers, the hijras alone did feel bound by this direction and decide to stay with him. Impressed with their loyalty, Rama sanctioned them the power to confer blessings on people on auspicious occasions like child birth and marriage, and also at inaugural functions which, it was supposed to set the stage for the custom of badhai in which hijras sing, dance and confer blessings. Aravan, the son of Arjuna and Nagakanya in Mahabharata, offer to be sacrificed to Goddess Kali to ensure the victory of the Pandavas in the Kurukshetra war, the only condition that he made was to spend the last night of his life in marriage. Since no woman was willing to marry one who was doomed to be

⁸A Long Journey towards Social Inclusion

https://gupea.ub.gu.se/bitstream/2077/32545/1/gupea_2077_32545_1.pdf

⁹Historical Evolution of Transgender Community in India

¹⁰Preeti Sharma, “Historical Background and Legal Status of Third Gender In Indian Society”, IJRESS, Vol.ED – 2 (12), December. 2012.

¹¹What does Hinduism say about homosexuality

killed, Krishna assumes the form of a beautiful woman called Mohini and married him. The Hijras of Tamil Nadu considered Aravan their progenitor and call themselves Aravanis.

Mughal Period

Hijras played a famous role in the royal courts of the Islamic world, particularly in the Ottoman empires and the Mughal rule in the Medieval India. They rose to well-known positions as political advisors, administrators, generals as well as guardians of the harems. Hijras were consider clever, trustworthy and fiercely loyal and had free access to all spaces and sections of population, thereby playing a crucial role in the politics of empire building in the Mughal era. The Hijras also occupied high positions in the Islamic religious institutions, especially in guarding the holy places of Mecca and Medina the person of trust, they were able to influence state decisions and also received large amount of money to have been closest to kings and queens. Thus hijra frequently state the role of their status in that period.

British Period

In the beginning of the British period in Indian subcontinent hijra used to accept protections and benefits by some Indian states through entry into the hijra community. Furthermore, the benefits incorporated the provision of land, rights of food and smaller amount of money from agricultural households in exact area which were ultimately removed through British legislation as because the land was not inherited through blood relations.

Criminalization Under the Colonial Rule

Through the onset of colonial rule from the 18th century onwards, the situation changed drastically. Accounts of early European travelers showed that they were repulsed by the sight of Transgenders and could not comprehend why they were given so much respect in the royal courts and other institutions. In the second half of the 19th century, the British colonial administration vigorously sought to criminalize the hijra community and to deny them the civil rights. Hijras were considered to be separate caste or tribe in different parts of India by the colonial administration. The Criminal Tribes Act, 1871,¹² this included all hijra who were concerned in kidnapping and castrating children and dressed like women to dance in public places. The punishment for such activities was up to two years imprisonment and a fine or both. This pre-partition history influences the

¹²Tmp 20966 Transgender Paper 1488766684 | Transgender
<https://www.scribd.com/document/327905779/Tmp-20966-Transgender-Paper-1488766684>

vulnerable circumstances of hijra in this contemporary world.

Criminalization And Marginalization During Post-Independence Era

However the Act was repealed in 1952 and its legacy continues and many local laws reflected the prejudicial attitudes against certain tribes, including against Hijras. Recently, the Karnataka Police Act was amended in 2012 to “provide for registration and surveillance of Hijras who indulged in kidnapping of children, unnatural offences and offences of this nature” (Section 36A), in a similar vein to the Criminal Tribes Act, 1871, According to Section 36A, Karnataka Police Act, 1964, Power to regulate eunuchs. Historical evolution of transgender community in india MUHGAL PERIOD (positions as political advisors, administrators, colest to kings and queens). BRITISH PERIOD: (the provision of land, rights of food and some amount of ariculture households) In contemporary times (supreme court - third sex , lgbti rights and social procation of welfare policy and schemes for transgender people) criminalization and marginalization post-independence (the criminal tribes act, 1871 and section 36a)¹³.

1. preparation and preservation of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences.

2. Piling objections by aggrieved eunuchs to the inclusion of his name in the register and for removal of his name from the register of reasons to be recorded in writing.

Contemporary Period

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.¹⁴Here Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third-gender:

¹³M. Michelraj ARSS Vol. 4 No. 1, Jan - June 2015

¹⁴National Legal Services Authority v. Union of India 2014 (5) SCC 438

Legal Recognition for Third Gender: In recognizing the third gender category, the Court recognizes that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc. is discriminatory to the third gender.

Legal Recognition for Persons transitioning within male/female binary: As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the "Psychological Test" as opposed to the "Biological Test". They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

Public Health and Sanitation: Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide those separate public toilets and other facilities. Further, they have been directed to operate separate HIV/Sero-surveillance measures for transgender people.¹⁵

Socio-Economic Rights: Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

Stigma and Public Awareness: These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies and social stigma.

The Court notes that these declarations are to be read in light of the Ministry of Social Justice and Empowerment Expert Committee Report on Issues Relating to transgender people.

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-economic

1. ¹⁵<https://www.lawctopus.com/>

development and constitutional safeguards for the transgender people. The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is a major initiative of the 11th Five Year

Plan period which brought employment opportunities for transgender people. The Ministry of Housing and Urban Poverty Alleviation is the National Urban Livelihood Mission and Healthcare facilities. The social, economic, political transformation, Housing, legal measures, Police Reforms, legal and constitutional safeguards to prevent human rights violations.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people in India face legal and social difficulties not experienced by non-LGBT persons. Sexual activity between people of the same gender is legal but same-sex couples cannot legally marry or obtain civil partnerships. On 6 September 2018, the Supreme Court of India decriminalized homosexuality by declaring Section 377 of the Indian Penal Code unconstitutional. The Court unanimously ruled that individual autonomy, intimacy, and identity are protected fundamental rights.

Homosexual Marriages: The Global Scenario

Gay marriage around the world

Countries that allow gay marriage or where it is legal in some jurisdictions



Source: Pew Research Center analysis. Map classifications as of Dec. 7, 2017.

PEW RESEARCH CENTER

¹⁶<https://www.weforum.org/agenda/2017/03/what-you-need-to-know-about-lgbt-rights-in-11-maps>

Australia's final parliamentary vote came on Dec. 7, just three weeks after more than 60% of Australians — voting in a nonbinding nationwide referendum — said they favored legalizing same-sex marriage.

And Austria saw a high court ruling on Dec. 5 that stipulated that gays and lesbians be given full marriage rights by 2019, unless the country's parliament enacts legislation countermanding the order.

Worldwide, roughly two-thirds of the countries that allow gay marriage – 17 of 26 – are in Western Europe. Still, a number of Western European nations, particularly Italy and Switzerland, do not allow same-sex unions. And, so far, no countries in Central and Eastern Europe have legalized gay marriage.

Along with New Zealand, Australia is only the second nation in the Asia-Pacific region to legalize same-sex unions. (Taiwan's highest court ruled in favor of gay unions this year, but gave the country's parliament two years to implement the ruling.) In Africa, only South Africa allows gays and lesbians to wed, which became legal in 2006.

In the Americas, five countries besides the U.S. – Argentina, Brazil, Canada, Colombia and Uruguay – have legalized gay marriage. In addition, some jurisdictions in Mexico allow same sex couples to wed.

Not surprisingly, same-sex marriage has advanced mostly in countries and regions where acceptance of homosexuality is high. In the U.S., for instance, 70% of adults in a survey conducted in June and July 2017 said that homosexuality should be accepted.¹⁷

Countries That Allow Transgender Marriage

The Netherlands (2000)

In December 2000, the Netherlands became the first country to legalize same-sex marriage when the Dutch parliament passed, by a three-to-one margin, a landmark bill allowing the practice. The legislation gave same-sex couples the right to marry divorce and adopt children. The legislation altered a single sentence in the existing civil marriage statute, which now reads, “A marriage can be contracted by two people of different or the same sex.”

Australia (2017)

On Dec. 7, 2017, the Australian Parliament passed legislation allowing gay and lesbian couples to legally wed. Passage came just three weeks after Australians voted in favor of legalizing same-sex marriage, by a 62% to 38% margin, in a non-binding, nationwide referendum. Along with New

¹⁷<http://www.pewresearch.org/fact-tank/2017/12/08/global-snapshot-sex-marriage/>

Zealand, Australia became the second country in the Asia-Pacific region to to make same-sex marriage legal.

Malta (2017)

Malta's parliament almost unanimously voted to legalize same-sex marriage in July 2017, despite opposition from the Catholic Church on the small Mediterranean island.

Germany (2017)

On June 30, 2017, Germany became the 15th European country to enact legislation allowing same-sex couples to wed. The 393-226 vote in the nation's Bundestag (or Parliament) came just days after Chancellor Angela Merkel surprised many by saying that members of her ruling Christian Democratic Union should be able to vote their conscience on the issue even though the party formally opposes same-sex marriage.

Colombia (2016)

On April 28, 2016, Colombia became the fourth country in Catholic-majority South America to legalize same-sex marriage, following Argentina, Uruguay and Brazil. The country's Constitutional Court, by a 6-3 vote, ruled that that "all people are free to choose independently to start a family in keeping with their sexual orientation ... receiving equal treatment under the constitution and the law," according to the wire service Agence France-Presse.

United States (2015)

Eleven years after same-sex marriage was first made legal in Massachusetts, the U.S. Supreme Court [ruled](#) that the Constitution guarantees it throughout the country. The 5-4 decision rests in part on the court's interpretation of the 14th Amendment, and states that limiting marriage only to heterosexual couples violates the amendment's guarantee of equal protection under the law. Before the ruling, 36 states and the District of Columbia had legalized same-sex marriage. See a timeline highlighting changes in state policies from 1995-2015.

Obergefell v. Hodges,¹⁸ is a landmark civil rights case in which the Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The 5-4 ruling requires all fifty states to perform and recognize the marriages of same-sex couples on the same terms and conditions as the marriages of opposite-sex couples, with all the accompanying rights and responsibilities.

¹⁸576 U.S. ____ (2015)

Greenland (2015)

Greenland, an autonomous territory of Denmark, was not subject to Denmark's same-sex marriage law, which was enacted in 2012. However, legislators in Greenland passed a bill in May 2015 to legalize same-sex marriage on the world's biggest island.

Ireland (2015)

On May 22, 2015, Catholic-majority Ireland became the first country to legalize same-sex marriage through a popular referendum. More than six-in-ten Irish voters (62%) voted "yes" to amend the Constitution of Ireland to say that "marriage may be contracted in accordance with law by two persons without distinction as to their sex."

*Zappone & Gilligan v. Revenue Commissioners & Ors*¹⁹ was a High Court case which was one of the first major events in the debate on the recognition of same-sex marriage in Ireland. The plaintiffs Ann Louise Gilligan and Katherine Zappone unsuccessfully sought recognition of their Canadian marriage.

While some Catholic Church leaders opposed the change, Dublin Archbishop Diarmuid Martin wrote a commentary in The Irish Times newspaper before the referendum, saying that he would not tell people how to vote and that he had "no wish to stuff my religious views down other people's throats." Irish Prime Minister Enda Kenny supported the "yes" campaign.

Finland (2015)

Same-sex marriage is become legal in Finland started in 2017. The Finnish Parliament approved a bill legalizing same-sex unions in November 2014, and Finland's president, Sauli Niinistö, signed the measure into law in February 2015. The bill started out as a "citizens' initiative" – a public petition with a reported 167,000 signatures.

Finland becomes the last of the five Nordic countries to legalize same-sex marriage, joining Denmark, Iceland, Norway and Sweden.

Luxembourg (2014)

On June 18, Luxembourg's parliament, the Chamber of Deputies, overwhelmingly approved legislation that will allow gay and lesbian couples to wed and to adopt children. The bill, which took effect in early 2015, was championed by the country's prime minister, Xavier Bettel, who is openly gay.

¹⁹[2006] IEHC 404 (also known as the KAL Case)

The changes are part of a larger rewrite of the tiny country's marriage laws – the first major overhaul since 1804. In addition to allowing same-sex couples to marry and adopt, the legislation sets the legal age of marriage at 18 and eliminates the existing requirement that couples who want to marry must first submit to a medical exam.

Scotland (2014)

On Feb. 4, 2014, the Scottish Parliament voted overwhelmingly to approve legislation legalizing same-sex marriage. In addition to allowing same-sex couples to wed, the measure gives churches and other religious groups the option of deciding whether or not they want to conduct such marriages. The two largest churches in Scotland – the Church of Scotland and the Roman Catholic Church – oppose same-sex marriage and lobbied against the bill.

The law took effect and same-sex couples began marrying in Scotland in December 2014.

England and Wales (2013)

On July 17, 2013, Queen Elizabeth II gave her “royal assent” to a bill legalizing same-sex marriage in England and Wales. The day before, the measure had won final passage in the British Parliament after months of debate. The law only applies to England and Wales because Scotland and Northern Ireland are semi-autonomous and have separate legislative bodies to decide many domestic issues, including the definition of marriage. While Northern Ireland's legislature in April 2014 voted down a measure that would have legalized same-sex marriage, the Scottish Parliament passed a bill to legalize same-sex marriage in February 2014.

The new law in England and Wales, which was a priority for British Prime Minister and Conservative Party leader David Cameron, allowed gay and lesbian couples to marry beginning March 29, 2014. However, the law prohibits same-sex weddings within the Church of England, which continues to define marriage as between one man and one woman.²⁰

Brazil (2013)

On May 14, 2013, Brazil's National Council of Justice ruled that same-sex couples should not be denied marriage licenses, allowing same-sex marriages to begin nationwide. (Previously, about half of Brazil's 27 jurisdictions had allowed same-sex marriage.)

The conservative Social Christian Party has appealed the Council of Justice's decision to the Supreme Court, and Brazil's legislature may still weigh in on the issue, leaving some uncertainty surrounding the future of same-sex marriage in the world's fifth-largest country.

²⁰Countries That Allow Gay Marriage Around The World
<http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/>

France (2013)

On May 18, French President Francois Hollande signed into law a measure legalizing same-sex marriage, making France the 14th country to grant gays and lesbians the right to wed. Although the bill had passed the National Assembly and the Senate in April, Hollande's signature had to wait until a court challenge brought by the conservative opposition party, the UMP, was resolved. On May 17, France's highest court, the Constitutional Council, ruled that the bill was constitutional.

In May 2012, Hollande was elected and his Socialist Party won majorities in both houses of France's legislature. True to their campaign promises, Hollande and the Socialists have pushed through a law that not only legalizes same-sex marriage but also gives gay and lesbian couples the right to adopt children—a provision that has drawn especially strong criticism from French Catholic leaders.²¹

While recent polls show that a majority of French adults support the law, opposition to the change has been intense. Since the beginning of 2013, several anti-gay marriage protests with occasionally volatile crowds numbering in the hundreds of thousands have taken place in Paris and elsewhere.

New Zealand (2013)

On April 17, the New Zealand Parliament gave final approval to a measure that legalizes same-sex marriage, making the Pacific island nation the 13th country in the world and the first in the Asia-Pacific region to allow gays and lesbians to wed. The measure won approval by a 77-44 margin in the country's unicameral legislature, including support from Prime Minister John Key, and was signed by the country's governor-general (a process known as royal assent) on April 19. The law took effect in August 2013.

In 2005, New Zealand enacted legislation allowing same-sex couples to enter into civil unions. The 2013 measure not only legalizes same-sex marriage but also allows for gay and lesbian couples to adopt children.

Uruguay (2013)

On April 10, the lower house of Uruguay's Congress passed legislation legalizing same-sex marriage, a week after the country's Senate did so. President José Mujica signed the bill into law on May 3, making Uruguay the second Latin American country to legalize same-sex marriage, following Argentina. Civil unions have been permitted in Uruguay since 2008, and gay and lesbian couples were given adoption rights in 2009.

²¹Countries That Allow Gay Marriage Around The World
<http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013/>

Uruguay is among the most secular countries in Latin America. A Pew Research Center study on the global religious landscape as of 2010 found that roughly four-in-ten Uruguayans are unaffiliated with a particular religion. About 58 percent of Uruguayans are Christian; in the Latin America-Caribbean region as a whole, 90 percent of the population is Christian.

Denmark (2012)

In June 2012, Denmark's legislature passed a bill legalizing gay marriage. The measure was enacted into law a few days later when Queen Margrethe II gave her royal assent to the bill.

In 1989, Denmark became the first country to allow same-sex couples to register as domestic partners. And in 2010, the country enacted a law allowing gay couples in registered partnerships the right to adopt children.²²

With the legalization of gay marriage, the Evangelical Lutheran Church in Denmark (which is the state church), is required to allow same-sex couples to marry in churches. However, no member of the church's clergy is required to perform the wedding of a gay or lesbian couple. In addition, the law leaves it up to other religious groups to determine whether or not to allow same-sex weddings in its churches.

Argentina (2010)

In July 2010, Argentina became the first country in Latin America to legalize same-sex marriage. In spite of vigorous opposition from the Catholic Church and evangelical Protestant churches, the measure passed both houses of the Argentine legislature and was signed into law by President Cristina Fernandez de Kirchner. The law grants same-sex couples who marry all the rights and responsibilities enjoyed by heterosexual couples, including the right to adopt children.

In the decade before the enactment of the same-sex marriage law, a number of local jurisdictions, including the nation's capital, Buenos Aires, had enacted laws allowing gays and lesbians to enter into civil unions.

²²Same-Sex Marriage: Redefining Legal Unions Around the World

Portugal (2010)

In June 2010, Portugal became the eighth country to legalize same-sex marriage. Its parliament had passed the measure legalizing gay marriage earlier in 2010. But following its passage, Portugal's president, Anibal Cavaco Silva, asked the Constitutional Court to review the measure. In April 2010, the Constitutional Court declared the law to be constitutionally valid. It was signed by Silva in May of that year and took effect one month later. Portugal's gay marriage law does not give married same-sex couples the right to adopt children.

Iceland (2010)

A measure legalizing same-sex marriage passed the Icelandic legislature in June 2010. Public opinion polls prior to the vote indicated broad support for the measure, and no members of the country's legislature voted against it. Iceland had allowed same-sex couples to register as domestic partners since 1996. A decade later, the parliament passed a measure allowing gay couples to adopt children.

After the new law took effect in late June 2010, the country's prime minister, Johanna Sigurdardottir, wed her longtime partner, Jonina Leosdottir, becoming one of the first people to marry under the statute.

Sweden (2009)

In April 2009, the Swedish parliament voted by an overwhelming majority to legalize same-sex marriage. Gay couples in Sweden had been allowed to register for civil unions since 1995.

The 2009 law allows gays and lesbians to marry in both religious and civil ceremonies, but it does not require clergy to officiate at such ceremonies. The Lutheran-affiliated Church of Sweden, to which roughly three-quarters of all Swedes belong, has offered blessings for same-sex partnerships since January 2007. In October 2009, the church's governing board voted to allow its clergy to officiate at same-sex marriage ceremonies.

Norway (2008)

Since January 2009, gay couples in Norway legally have been able to marry, adopt children and undergo artificial insemination. The new law, which was passed in 2008, replaced a 1993 law permitting civil unions. It passed despite resistance from members of the Christian Democratic Party and the Progress Party, as well as a public controversy over state funding for fertility treatments for lesbian couples.

The largest religious group in the country, the Lutheran-affiliated Church of Norway, initially voted to prohibit its pastors from conducting same-sex weddings. But the Church of Norway changed course and began sanctioning same-sex weddings in early 2017.

South Africa (2006)

The South African parliament legalized same-sex marriage in November 2006, one year after the country's highest court ruled that the previous marriage laws violated the South African constitution's guarantee of equal rights. The new law allows for religious institutions and civil officers to refuse to conduct same-sex marriage ceremonies, a provision that critics claim violates the rights of same-sex couples under the constitution.

The new measure passed by a margin of greater than five-to-one, with support coming from both the governing African National Congress as well as the main opposition party, the Democratic Alliance. However, the traditional monarch of the Zulu people, who account for about one-fifth of the country's population, maintains that homosexuality is morally wrong.

Spain (2005)

A closely divided Spanish parliament legalized same-sex marriage in 2005, guaranteeing identical rights to all married couples regardless of sexual orientation. The new measure added language to the existing marriage statute, which now reads, "Marriage will have the same requirements and results when the two people entering into the contract are of the same sex or of different sexes."

Vatican officials, as well as the Catholic Spanish Bishops Conference, strongly criticized the law, and large crowds demonstrated in Madrid for and against the measure. After the law went into effect, the country's constitutional court rejected challenges from two municipal court judges who had refused marriage licenses to same-sex couples. The high court ruled that the lower court judges lacked legal standing to bring the suits.

Canada (2005)

Same-sex couples in Canada gained most of the legal benefits of marriage in 1999 when the federal and provincial governments extended common law marriages to gay and lesbian couples. Through a series of court cases beginning in 2003, same-sex marriage gradually became legal in nine of the country's 13 provinces and territories. In 2005, the Canadian Parliament passed legislation making same-sex marriage legal nationwide. In 2006, lawmakers defeated an effort by the ruling Conservative Party of Canada to reconsider the issue, leaving the law unchanged.

Belgium (2003)

Beginning in 1998, the Belgian parliament offered limited rights to same-sex couples through registered partnerships. Same-sex couples could register with a city clerk and formally assume joint responsibility for a household. Five years later, in January 2003, the Belgian parliament legalized same-sex marriage, giving gay and lesbian couples the same tax and inheritance rights as heterosexual couples.

Support for the law came from both the Flemish-speaking North and the French-speaking South, and the law generated surprisingly little controversy across the country. The long-dominant Christian Democratic Party, traditionally allied with the Catholic Church, was out of power when the parliament passed the measure.

The 2003 law allowed the marriages of Belgian same-sex couples and recognized as married those from other countries where same-sex marriage was legal. Those provisions were broadened in 2004 to allow any same-sex couple to marry as long as one member of the couple had lived in Belgium for at least three months. In 2006, the parliament also granted same-sex partners the right to adopt children.²³

The only opposition in parliament came from the Christian Democratic Party, which at the time was not part of the governing coalition. After the law went into effect, the Protestant Church in the Netherlands, which then represented about 12% of the country's population, announced that individual congregations could decide whether to conduct same-sex marriage ceremonies. Although Muslim and conservative Christian groups continue to oppose the law, same-sex marriage is widely accepted by the Dutch public.

Legal Status of Homosexuals in India

Section 377 30 of the Indian Penal Code (1860) relates to Unnatural Offences and includes homosexuality within its domain. In India this Law relating to homosexuality was adopted from the British penal code dating to 19th century. Section 377 states:²⁴

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

²³

²⁴ KD GAUR Commentary on Indian Penal Code

Similarly section 292 of IPC refers to obscenity and there is ample scope to include homosexuality under this section.

Also section 294 of Indian Penal Code, which penalizes any kind of "obscene behaviour in public", is also used against gay men.

It is important to note here that in England the offence of homosexuality between consenting partners has been abolished by the Sexual Offenders Act 1967 (that is in the country of origin of this law) whereas in India, the consent is quite immaterial for constituting an offence as defined under this section.

Thus in India it is primarily section 377 which explains and defines unnatural offences. It was the section which makes Homosexuality illegal with life imprisonment or with imprisonment for ten years with fine.

Activists Movement in India

Transgender rights activists have been battling against Section 377 for a decade. In 1994, lesbian and gay groups filed a petition challenging the law in the Delhi High Court. The case has dragged on for five years and has evoked strong reactions.²⁵ In 1996 even members of the Indian lesbian collective Stree Sangam made a presentation on domestic-partnership laws to a government conference on marriage and family law.²⁶ It was "perhaps the first time that a lesbian/gay group [attempted] to create public opinion on the issues in such a forum," the group said in a letter to the gay magazine *Trikone*.²⁷

In Feb 99 there was second national LGBT 55 conference Indian National Gay Conference YAARIAN -99. Similarly the attacks on the film 'Fire' and 'Girlfriend' have led a number of organizations to set up the campaign for Lesbian Rights. 56 The petition, filed by the voluntary organization, argued that it is wrong for homosexuality to be a punishable offence in 21st century India.²⁸

²⁵Urvashi Vaid 'Building bridges: thoughts on Identity and South Asian G/L/B/T Organizing' *Trikone Magazine*, Tenth Anniversary Issue, 1996.

²⁷ <http://www.trikone.org/>

²⁸ Naaz Foundation Trust, New Delhi

However the most recent legal challenge comes from the Naaz Foundation Trust, New Delhi.²⁹ Naaz India has filed a writ petition challenging Section 377 in the Delhi High Court on December 7 th, 2001 on the grounds that include:

*Section 377 violates the right to life and personal liberty, the right to equality and the right to freedom guaranteed to all citizens as Fundamental Rights under Chapter III of our Constitution.*³⁰

Similarly other gay and lesbian groups like Hamsafar of Mumbai, Sahayathrika of kerela, etc. are also raising gay issues in the mainstream.

MARRIAGE UNDER DIFFERENT PERSONAL LAWS IN INDIA

In India, citizens have a choice to be married under their various personal laws, or a common law of civil marriage. While none of the acts have explicitly defined marriage as a union between a man and a woman, it has been interpreted and understood to mean that a marriage is always between a man and a woman. Words like ‘bride and bridegroom’, ‘husband and wife’ imply that the laws are valid only for couples of the opposite sex. The Hindu Marriage Act, 1955, is applicable for Hindus, Sikhs, Jains and Buddhists. Section 5 of this Act says that a marriage may be solemnized between any two Hindus, if the bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage. Also, Section 60 of the Indian Christian Marriage Act, 1872, lays down that the age of man intending to be married shall not be under twenty- one years, and the age of woman intending to be married shall not be under eighteen years. Thus, both these legislations have heterosexist underpinnings. In the case of Muslims, they are governed by Islamic Law itself, rather than any codified law of the Parliament. As per Islamic law, marriage is a contract, and the purpose of marriage is to legalise sexual relations between a man and a woman, for the procreation of children (however, this is not a universal view, with other competing views existing about homosexuality in Islam).

The Special Marriage Act, 1954, allows for marriages between individuals from different religions and castes. While no separate definition of marriage is given, the Act also has heterosexist underpinnings, such as the definition of a ‘prohibited relationship’ which only considers a

²⁹ A group dedicated to halting the spread of HIV and AIDS in India, where about 7 million people are believed to be infected.

³⁰ Although first time the high court in Delhi has dismissed the legal petition that sought to legalise homosexuality. The court ruled that the "validity of a law" cannot be challenged by anyone who is "not affected by it".

relationship between a man and a woman within certain degrees of familial relations³¹.

Naz Foundation v. Government of NCT of Delhi passed a landmark judgment, decriminalizing homosexual intercourse between consenting adults. Section 377 of the Indian Penal Code was adjudged to violate the fundamental right to life and liberty and the right to equality as guaranteed by the Constitution of India.³²

Constitutional Rights Of Transgender People

Preamble to the Constitution mandates Justice - social, economic, and political equality of status. Thus the first and foremost right that they are deserving of is the right to equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Article 21 ensures right to privacy and personal dignity to all the citizens. Article 23 prohibits trafficking in human beings as beggars and other similar forms of forced labor and any contravention of these provisions shall be an offence punishable in accordance with law.

The Constitution provides for the fundamental right to equality, and tolerates no discrimination on the grounds of sex, caste, creed or religion. The Constitution also guarantees political rights and other benefits to every citizen. But the third community (transgender) continues to be ostracized. The Constitution affirms equality in all spheres but the moot question is whether it is being applied. As per the Constitution most of the protections under the Fundamental Rights Chapter are available to all persons with some rights being restricted to only citizens. Beyond this categorization the Constitution makes no further distinction among rights holders.

Proposed Solution/ Conclusion Remarks

In spite of recognition from vedas to Mughal, britisher and modern scenario the transgender community didn't get equality before law. Through, the transgender community was given high position in mughal period and facing many problems obstacles in British colonial rules. The government should be eradicated 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.

In light of the above statement and research the question is whether the recognition of same- sex marriage would leads to equality in the society to transgender?

³¹ www.lawctopus.com/academike/same-sex-marriages-in-india

³² (2014) 1 SCC 1

It is high question in our society because there is lack of implementation of law in our society.

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