

BREAKING NEW GROUND

Relevant for: Developmental Issues | Topic: Rights Issues - Other Rights

A judgment of the Madras High Court, Madurai Bench, has extended enjoyment of civil rights, especially those pertaining to marriage, to transpersons. While this is path-breaking for much of the country, the judgment also opens doors to the larger LGBTQ community for availing civil rights including marriage, succession and inheritance.

In the judgment delivered in *Arunkumar and Sreeja v. Inspector General of Registration and Others* (2019), the Madras High Court has held that a properly solemnised marriage between a male and transwoman is valid under the Hindu Marriage Act, 1955, and the Registrar of Marriages is bound to register the same. The judgment quotes *NALSA v. Union of India* (2014), which held that transgender persons have the right to decide their “self-identified gender”.

The Madurai Bench judgment, however, breaks new ground when it comes to the interpretation of the statutory terms found in the Hindu Marriage Act, especially that of bride. It states that the expression “bride” occurring in Section 5 of the Hindu Marriage Act cannot have a static or immutable meaning. As noted in Justice G.P. Singh’s *Principles of Statutory Interpretation*, the court is free to apply the current meaning of a statute to present-day conditions.

The nine-judge Bench in *Justice (Retd.) K.S. Puttaswamy* made a telling reference to the landmark judgment, *Obergefell v. Hodges* (2015), wherein the U.S. Supreme Court held that the “fundamental right to marry is guaranteed to same-sex couples by both Due Process Clause and Equal Protection Clause of the Fourteenth Amendment.”

The Madurai Bench judgment has revised the legal construction of gender and the conventional interpretation of terms such as “bride” and “bridegroom”. Now, when this is read along with the Supreme Court’s explicit reference to the American court’s guarantee of right to marry to homosexual couples shows that there cannot be a legal bar any more to extending civil rights such as marriage, succession or inheritance to LGBTQ couples who have decided to get married consensually, have married in accordance with the existing laws and are not in violation of any other laws.

At the preliminary hearings before the Supreme Court in *Navtej Singh Johar*, the Solicitor General, representing the Government of India, sought the curtailing of the scope of the case to that of the decriminalisation aspect or the constitutional validity of Section 377 of Indian Penal Code, 1860 alone. The Supreme Court, consequently, did not have an opportunity to examine the bundle of rights that were to naturally arise from the striking down of Section 377. Therefore, in this context, the present judgment is truly path-breaking for the LGBTQ community, which is denied equal protection of laws with regard to civil rights.

The writer is an advocate and a DMK spokesperson

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