



AN ANALYSIS OF -ARUNKUMAR & OTHER VS. THE INSPECTOR GENERAL OF REGISTRATION & OTHERS CASE LAW

AAYUSHI PANDEY ,

A.P.S.UNIERSITY, REWA,MP

ABSTRACT

"The case of Arunkumar v Inspector General of Registration is the first judgment in India where the right to marry under Article 21 of the Constitution has been upheld for transgender persons and holding that 'bride' under the Hindu Marriage Act would apply to transgender persons who identify as women. The court upheld Ms. Sreeja's self-identification as a woman and recognized her right to identify her gender and to be included, along with other intersex/transgender people who identify as women, in the definition of "bride." She noted a violation of her fundamental rights by the state authorities, which refused to register her marriage. As such, the current litigation strategy for gender-diverse parties is to continue to perpetuate the myth that sex is immutable and inevitable, and therefore rightly and morally justifiable when people of one gender or the other are discriminated against based on this immutably fixed identity. "

KEY FACTS :

Mr. Arunkumar married Ms. Sreeja in a temple in Tuticorin (Tamil Nadu). Arunkumar was assigned male at birth while Sreeja was born with an intersex condition. While she was assigned female at birth, registered as male at school and had a male name. in her Aadhar card, her identity was shown as transgender. Probably socially perceived gender was male and therefore even though her birth certificate records her gender as a woman when she takes a woman's name and marries a man , a transgender marriage and not a marriage between two persons of different sexes in the case. The marriage was solemnized according to Hindu rites and customs and confirmed as valid is carried out by the administrative officer of the municipality. However, the temple authorities refused to guarantee the marriage. This fact raises some questions. Whose authorization administrative officials or temple authorities, it is necessary to claim that the marriage is performed according to Hindu rites and customs. This question is not raised in this case, but as the judgment does not question the validity of the marriage in this respect, presumably, marriage can be said to function according to Hindu rites and customs, if only an administrative official (not usually an authority on religious rites) confirms this in opposition to the temple authorities. From this turn, the couple was required

to register the marriage under “Rule 5(1)(a) of the Tamil Nadu Registration of Marriage Rules,2009”¹. When they approached the joint registrar for the same, he opposed the registration. The couple met with a similar refusal when they appealed the decision to the registrar district. They challenged the registrar's decision by a writ of mandamus in Madras High Court.

The learned Government Advocate appearing for the respondents submitted that “Section 7 of the Tamil registration of Marriages Act, 2009”² confers power to the registrar of marriages to refuse registration. He could do so if he is satisfied that the marriage between the parties was not performed as per the personal laws of the parties, any custom or usage, or tradition. As per “Section 7(1)(c)”³ of the act, if the documents tendered before the Registrar of Marriages do not prove the marital status of the parties, he can refuse to register the marriage. In this case, the authorities of the temple, where the marriage between the parties was said to have been solemnized, had not issued any certificate indicating the performance of the marriage. He further contended that as per “Section 5 of the Hindu Marriage Act, 1955”⁴, the groom must have completed the age of 21 years while the bride must have completed the age of 18 years at the time of marriage. To understand the meaning of the expression “Bride”, in the order impugned in this writ petition, Oxford Advanced Learner’s Dictionary of Current English was referred to. The term “Bride” can only refer to a “Woman on her wedding day”. In the case, on hand, the second petitioner Sreeja is a transgender and not a woman. Thus the statutory requirement set out in Section 5 of the Hindu Marriage Act, 1955 has not been fulfilled. Therefore, the learned Government Advocate wanted this Court to sustain the orders impugned in this writ petition and dismiss the writ petition.

ISSUES OF THE CASE

- 1] The primary issue before the Court was whether the term ‘Bride’, as mentioned in Section 5 of the Hindu Marriage Act, 1955 (HMA) meant only women, or included transgender persons as well, given that Sreeja was a transwoman.
- 2] Does the act of refusing to marry a person on the basis of an individual's sexual orientation or gender interfere with his fundamental rights guaranteed by Articles 14, 19[1] (a), 21 and 25 of the Constitution of India?

PROCEDURAL HISTORY

Arguments by petitioner

The petitioner’s lawyer argued that gender identity, therefore, lies at the core of one’s identity, gender expression, and presentation and, therefore, it will have to be protected Under “Article

¹ Rule 5(1)(a) of the Tamil Nadu registration of Marriage Rules, 2009- Procedure for Registration of Marriage

² Section 7 of the Tamil registration of Marriages Act, 2009- Power to refuse registration of marriage.

³ Section 7(1)(c) of the Tamil registration of Marriages Act, 2009- the documents tendered before him do not prove the marital status of the parties.

⁴ Section 5 of the Hindu Marriage Act, 1955- Conditions for a Hindu marriage.

19(1)(a) of the Constitution of India”⁵. The state cannot prohibit, restrict, or interfere with a transgender’s expression of such personality which reflects that inherent personality.

“Article 21”⁶protects the dignity of human life, one’s autonomy, one’s right to privacy, etc. The right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans.

Both the petitioners herein profess Hindu Religion. Their right to practice Hindu Religion is recognized under “Article 25 of the Constitution of India”⁷. The Hindu Marriage Act is a personal law of the Hindus. Therefore, their fundamental right under Article 25 has also been infringed in this case.

“Article 14”⁸ which provides Equality before Law has also been infringed by the authorities by restricting them to marry.

Arguments by respondent

Murugan, Learned Government Advocate argued that Section 7 of Tamil Nadu Marriage Registration Act 2009 empowers the Registrar of Marriages to refuse or to register. He could do so if he is convinced that the marriage between the parties were not made according to the personal laws of the parties, any customs or usage or tradition.

According to section 7 (1)(C) of the Act, if the documents are entered with the registrar marriages do not prove the marital status of the parties, registration may be refused.

Temple authorities where the marriage between the parties is said to have taken place solemnly, he did not issue any confirmation of the execution of the action marriage.

The term "bride" can only refer to "a woman on her wedding day". In this case, second petitioner Sreeja is a transgender and not a woman. Hence the statutory requirement did not fulfil.

CASES PREFERRED :

The court's reasoning began by recapitulating some of the legal theses recognized in some previous cases: –

National Legal Service Authority vs. Union of India ⁹: The court referred this case (NALSA) in which the Supreme Court found that transgender people thought. As an empowering archive, the Constitution welcomes them to join the mainstream. From now on, it will also be absurd to deny transsexuals the benefit of social foundations, as is already the case in the mainstream.

⁵Article 19(1)(a) of the Constitution of India- All citizens shall have the right to freedom of speech and expression.

⁶ Article 21 of the Constitution of India- Protection of life and personal liberty, No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁷ Article 25 of the Constitution of India- Freedom of conscience and free profession, practice and propagation of religion.

⁸ Article 14 of the Constitution of India- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

⁹ Nalsa v. Union of India, (2014) 5 SCC 438

The court further expressed that transsexual people have the right to choose their own sexual orientation as held by the Supreme Court in NALSA v. Union of India.

Right to equality: the court also referred to NALSA to reiterate that the fundamental right to equality was accessible to "all people", not just men and women. As a result, Article 14 (balance) exposes discrimination based on sex as unconstitutional.

Dignity and privacy: the post-NALSA court further found that discrimination based on gender identity is inconsistent with the fundamental right to dignity and privacy guaranteed by Article 21.

Fundamental right to gender expression: the court additionally reiterated the NALSA case when it stated that gender expression and presentation is guaranteed under Article 19(1)(a). expression of equivalent.

Shafin Jahan Vs. Asokan K.M. and Ors¹⁰ -The Court referred to Shafin Jahan v. Asokan K.M. and Ors. where the preferred option of marrying an individual was held to be indistinguishable under Article 21 of the Constitution of India. As does Article 16 of the Universal Declaration of Human Rights, which includes the right to marry as a human right.

S. Puttaswamy Vs. Union of India¹¹: The Court also approached Justice K. Puttaswamy's case where the Supreme Court referred to the US Supreme Court's case of Obergefell Vs. Hodges, in which the Court should have observed that it is contradictory to perceive the privilege and right to privacy regarding various matters of family life and not the choice to enter into a relationship that is the foundation of a family in the public eye. As the Constitution of India is an empowering record that welcomes transgender people to join the mainstream and they cannot be prevented from getting the benefits of social facilities that already exist in the mainstream.

COURT'S DECISION

The Hon'ble Judges saw that sexual morphology, sexual character, sexual direction and sexual self-perception lend themselves to closing the circle of typical sexuality during physical and social refinement. It does not mean that any such deviation is vexatious or unreasonable. The court saw that sex and gender are different things. An individual's gender is biologically decided at the hour of birth, which is not due to gender.

The court declared that the marriage between a man and a trans woman, both professing the Hindu religion, was a legal marriage. The court expressed that transgender people have the right to choose their recognized gender as held by the Supreme Court in NALSA v. Union of India,

¹⁰ ((2018) 16 SCC 368):

¹¹ (2017) 10 SCC 1)

which was emphasized in Justice K. Puttaswamy v. Union of India and again in Navtej Singh Johar v. Union of India .

The court also held that the word 'bride' in the Hindu Marriage Act cannot have a static meaning and must be deciphered in the light of the general body of law as it exists today. Subsequently, the term "bride" under Section 5 of the Hindu Marriage Act additionally includes a transwoman. On this point, the Court referred to Article 16 of the Universal Declaration of Human Rights, which includes the possibility to marry as a joint freedom, as well as Shafin Jahan v. Asokan K.M. and Ors. where the preferred option of marrying an individual was held to be fundamental to Article 21 of the Constitution of India.

The main principle of interpretation: moreover, the court noted that the Constitution is an empowering document and decided on its directives, "it would be absurd" to deny the transsexual population the rights that are effectively accessible to the standard.

The court therefore ruled that the refusal to marry Mrs. Sreeja would contribute to the violation of her fundamental rights under Articles 14, 19, 21 and 25 of the Constitution of India and set aside the orders of the Joint Registrar No. II and the District Registrar, Tuticorin and directed the Joint Registrar No. II to solemnize the marriage of the appellants.

The word "bride" includes a transwoman if she perceives herself as a woman. Therefore, a marriage solemnized between a Hindu man and a Hindu trans woman is a substantial Hindu marriage under Section 5 of the Hindu Marriage Act.

This is the first judgment in India to uphold the right to marry under Article 21 of the Constitution for transgender people and that "bride" under the Hindu Marriage Act would apply to transgender people who identify as women. It confirmed the inclusion of intersex/transsexual people who identify as women in the sense of "bride".

The court also expressed its appreciation for recent Tamil films that included transgender characters. "Recent Tamil films like 'Peranbu' where Mammooty married a transgender and 'Super Deluxe' where Vijay Sethupathi plays the role of a transgender and is also the parent of the child he fathered are encouraging trends," observed Justice Swaminathan.

Gender self-determination is an integral part of personal autonomy and self-expression and falls within the area of personal freedom guaranteed by Article 21.

Discrimination based on sexual orientation or gender identity, therefore violates equality before the law and equal protection of the law and violates Article 14 Indian Constitution. Article 19 & Article 21 were expansionary interpreted to include one's gender identity.

The law must be interpreted in the light of the current legal system. Article 16 of the Universal Declaration of Human Rights reads as follows: "Art. 16 paragraph 1 Men and women of legal age, without any restriction on account of race, nationality or religion, they have the right to marry and start a family.

7] CONCLUSION & SUGGESTIONS

As such, the current gender dispute strategy is to continue the myth that sex is immutable and inevitable and therefore rightly and morally justifiable when persons of one sex or the other are discriminated against on the basis of this immutably established identity. So the transgender side of the argument is (firmly) transgender and not leading the streak transgender actions and behaviors. Not just the language difference, but the whole thing, there is a paradigmatic shift between these two conceptions of gender: doing and being. If the person is immutably transgender, rather than behaving through a series of performative acts (ie they do gender) transgender, their identity becomes unchosen, given by birth, in other words, much like a sexual dyad. Of course, this litigation strategy makes sense: to assert a claim, to succeed, the litigant must prove that they belong to one of the sexes and that they are damaged based on "not fitting" into a sexual stereotype. Well, in an almost Lovecraftian sense horror, transgender controversies are forced to see and package as their adversary: the gender binary. Lovecraft's famous short story, *The Beast in the Cave*, comes to an end the protagonist's horrifying realization that the supposed animal beast he encountered in the cave was actually also a man (and not an animal); as well as transgender disputants forced to see themselves and present themselves in the eyes of their opponent in the courtroom.

SUGGESTION: –

Even though the Hon'ble Court has given judgment in favor of Sreeja, the mental trauma faced by Sreeja during such proceedings should be taken into consideration for future reference. Because no one but Sreeja can imagine the pain she felt.

"Remember this, whoever you are, however you are, you are just as valid, just as entitled, and just as beautiful." This sentence was said by Juno Dawson, who reminds us that transgender people are also a person who we should understand and care about their dignity and respect.

Companies and authorities including the court should care about the mental health of these people.