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## Article 14 And 21 In Action: Ensuring Marriage And Adoption Rights For Transgender Citizens In India

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### Abstract

This Research examines the evolving legal recognition of transgender persons in India with a specific focus on their rights to marriage and adoption. Drawing on doctrinal analysis of statutory frameworks such as the Hindu Marriage Act, Special Marriage Act, and the Juvenile Justice Act, alongside adoption guidelines of the Central Adoption Resource Authority, the study identifies critical gaps in the current legal system. Landmark judicial pronouncements such as *NALSA v. Union of India* and *Justice K.S. Puttaswamy v. Union of India* are analyzed to highlight the constitutional underpinnings of equality, dignity, and privacy under Articles 14 and 21. However, conflicting judicial trends and administrative practices continue to obstruct transgender persons' access to marriage registration and adoption procedures.

Complementing doctrinal research, the study incorporates qualitative empirical insights from semi-structured interviews with transgender individuals, NGOs, adoption agencies, and legal practitioners. These findings reveal lived experiences marked by bureaucratic hurdles, stigma, and inconsistent application of rights despite progressive constitutional jurisprudence. Comparative perspectives from jurisdictions such as Argentina, Canada, and Nepal demonstrate viable pathways where legislative reform, administrative guidelines, and robust anti-discrimination frameworks have enabled inclusive recognition of marriage and adoption rights for transgender persons.

The discussion employs constitutional tests of reasonable classification, proportionality, and dignity to argue for remedial action in India through a combination of judicial recognition, legislative reform, and administrative directives. The policy roadmap recommends short-term interventions such as registrar and adoption agency guidelines, medium-term statutory amendments, and long-term public sensitization and anti-discrimination measures. The study concludes by reaffirming the constitutional mandate of equality and dignity, calling for urgent harmonization of Indian family law with trans-inclusive constitutional principles.

**Keywords:** Transgender rights, marriage law, adoption law, constitutional equality, Article 14, Article 21, NALSA judgment, Special Marriage Act, Juvenile Justice Act, CARA, comparative perspectives, legal reform in India.

## 1.Introduction

The constitution of India upholds equality and liberty, which are vital to democracy. Article 14 guarantees equal protection and equality before the law, and Article 21 guarantees life, personal liberty, dignity, autonomy, and privacy. The Supreme Court has broadly interpreted these provisions in landmark cases like *National Legal Services Authority v. Union of India* (2014) and *Justice K.S. Puttaswamy v. Union of India* (2017), recognising transgender people's right to self-identify as gender and establishing privacy as a fundamental right. These Articles can help transgender and other marginalised individuals struggle for equality. Despite constitutional rights, transgender persons often endure institutionalised prejudice in marriage and adoption, which hinders their human potential and social participation. This article addresses transgender people's right to marriage and adoption, which is still disputed or denied. Despite judicial affirmations of gender identity as a personal matter, Indian marriage and adoption laws are unclear or heteronormative. In the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, "bride" and "bridegroom" imply cisgender heterosexuality without saying so<sup>1</sup>. Transgender applicants' legal status is unclear in adoption statutes like the Juvenile Justice Act or CARA guidelines. This silence supports administrative prejudice and prevents transgender persons from having a family, despite constitutional protections. Since statutory practice violates the constitution, this must be investigated immediately. This paper has four objectives. Start by determining what transgender persons can marry and adopt under Articles 14 and 21. Second, to examine these fundamental principles while reviewing laws and court verdicts. The third stage is to list institutional and societal barriers to these rights<sup>2</sup>. The final step is to propose legislation and policy changes to align adoption and marriage laws with constitutional human and equality guarantees. This study combines doctrinal legal studies with transgender community accounts to analyse the situation

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<sup>1</sup> Mehta R. Analysing Transgender Rights in India. *Indian JL & Legal Rsch.*. 2021;2:1.

<sup>2</sup> Satheesh A, Thomas LG. Legal or Impracticable? The Unanswered Questions of Marriage and Adoption Laws for the Transgender Community in India. *Indian JL & Legal Rsch.*. 2021;2:1.

and propose remedies. This subject matters academically and practically. Transgender rights in the framework of Articles 14 and 21's interpretation over time adds to constitutional law knowledge. It promotes transgender family membership and fights social biases. This study may be useful for inclusive framework policymakers, judges, and administrators. We affirm justice, liberty, equality, and brotherhood by allowing marriage and adoption. This goes beyond law. Although equivalent opinions from other jurisdictions may be used to enrich the study, this paper only covers Indian law. Constitutional interpretation, legislative gaps, and court opinions will be prioritised over sociological analysis of transgender living. The subject's sensitivity makes empirical evidence difficult to obtain, and the reliance on case law and secondary literature are constraints<sup>3</sup>. By including marriage and adoption rights in Articles 14 and 21, our study draws attention to a vital justice issue. This study seeks to address the following question: Does Articles 14 and 21 of the Indian Constitution allow transsexual marriage and adoption? How might reforms align practice with constitutional principles, and what are the administrative and legal barriers to achieving these rights?

## 2. Literature Review

### Constitutional Theory: Equality, Dignity, and Gender Identity

Indian constitutional scholars have prioritised equality and dignity when interpreting basic rights. Many consider Article 14, which guarantees equal protection under the law, the foundation of inclusive constitutionalism. Legal scholars like Upendra Baxi and M.P. Jain say Article 14 is about removing structural barriers to marginalised people, not just formal equality. When Article 21 is judicially expanded to include dignity, privacy, and autonomy, Gautam Bhatia calls it a "transformative charter" of rights. Gender identity recognition was elevated to constitutional law by the 2014 National Legal Services Authority v. Union of India ruling, which backed transgender people's right to self-identify. Many scholars, including Arvind Narrain, applaud this ruling for making human dignity the core element of constitutional reasoning<sup>4</sup>. Despite progressive court rulings, opponents say statutes have fallen behind constitutional principles, putting transgender individuals in danger. The analysis indicates a theoretical commitment to equality and dignity but highlights the gap between constitutional aspirations and family law's implementation.

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<sup>3</sup> Jha P, Chatterjee T. LGBTQ Rights in India: An Insight Into the Provisions of Marriage, Adoptions & Challenges. Issue 3 Int'l JL Mgmt. & Human.. 2021;4:2921.

<sup>4</sup> Bhattacharya S, Ghosh D, Purkayastha B. 'Transgender persons (protection of rights) act' of India: an analysis of substantive access to rights of a transgender community. Journal of Human Rights Practice. 2022 Jul 1;14(2):676-97.

## Jurisprudence on Gender Identity and Family Rights in India

Some landmark rulings have established transgender rights law in India, but it is unclear if they apply to marriage and adoption. In NALSA (2014), the Supreme Court declared transgender individuals a "third gender" and required states to treat them equally. Later, Justice K.S. Puttaswamy v. Union of India (2017) confirmed that Article 21 requires autonomy and privacy for life and liberty<sup>5</sup>. According to historians like Ratna Kapur, these verdicts support the right to marry and adopt as personal autonomy. Navtej Singh Johar v. Union of India (2018) decriminalised same-sex relations but did not address marriage or adoption. The 2023 Supreme Court decision on same-sex marriage applications held that marriage is a legislative creation, even though equality is a constitutional goal. According to legal specialists like Anurag Bhaskar and Alok Prasanna Kumar, courts are reluctant to acknowledge transgender couples who want to marry under present marriage laws. While dignity and autonomy are constitutionally guaranteed, how they are translated into legally binding family rights is still debated.

## Empirical Studies on Transgender Access to Family Rights

Empirical study illuminates transgender marriage and adoption experiences. The Naz Foundation and Humsafar Trust found that administrative and judicial processes reinforce inequity. Because registrars utilise heteronormative notions of "bride" and "bridegroom," transgender couples are sometimes rejected when registering their nuptials. Due to a lack of legislative direction, Central Adoption Resource Authority (CARA) adoption agencies are dismissing applications from same-sex couples and transgender people. International Commission of Jurists studies that transgender people endure social stigma. One issue is family rejection of transsexual people. This rejection highlights the need for marriage and adoption as alternatives. There is little empirical study on family rights; most studies focus on health, education, and jobs. Limited evidence demonstrates that transgender people are systemically excluded, highlighting the discrepancy between constitutional principles and administrative reality.

## Comparative Perspectives on Adoption and Marriage Rights

The study of comparative law can teach India something. The Gender Identity Law (2012) and other changes to the law mean that transgender people in Argentina can now marry and adopt without having to go through medical treatments or get court permission. In adoption and marriage processes, the Canadian government also follows the principle of substantive equality by respecting the gender that a person chooses for themselves. Scholars like Michael Warner and Nancy Polikoff say that transgender people should be able

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<sup>5</sup> Jain S, Anand A. Adoption Struggle of Transgenders: Need of Equity Norms. Issue 5 Int'l JL Mgmt. & Human.. 2021;4:35.

to marry and adopt in order to break down heteronormative family law systems<sup>6</sup>. In Nepal, the Constitution of 2015 respects gender minorities and makes sure everyone has the same rights, including family rights. A lot of people who study South Asia see this as an example of how to build a constitution that is forward-thinking and takes into account how society is changing. Several other countries have already made their family rules more in line with their constitutions, so this gives India a plan for how to do the same.

### Identified Gaps in Existing Literature

Although Indian legal experts have done a lot of research on constitutional theory and jurisprudence, there are big gaps in the literature. First, experts don't pay much attention to how the rights to marriage and adoption are actually put into practice. Instead, they focus on how transsexual status is recognised (post-NALSA). Legislative silence on these issues is often brought up, but it is rarely looked at in a rigorous theological way. The second problem is that there aren't many real-world studies about transgender people's rights to family in India. The little that is out there is either based on anecdotes or is paid for by non-governmental groups (NGOs)<sup>7</sup>. This is a big hole in our understanding of how constitutional rights work in real life when dealing with state agencies. Third, research in India hasn't fully used comparison studies that look at how adoption and marriage laws in other countries have changed to include transgender rights. This study tries to fill in these gaps by showing how constitutional theory works in the real world. The purpose of putting the study in Articles 14 and 21 is to show how equality and respect can be used in adoption and marriage. The study also wants to give a complete framework that includes constitutional principles, changes to the law, and policy proposals by using limited empirical insights and comparative models.

### 3. Legal & Constitutional Framework

#### Constitutional Principles: Article 14 and Article 21

As stated in Articles 14 and 21 of the Indian Constitution, freedom and equality are basic values that can't be changed. Article 14, which says, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India," is a constitutional obligation<sup>8</sup>. The phrase "any person" is very important because it makes sure that the Constitution protects everyone, no matter their race, religion, gender, sexual orientation, or anything else that makes them unique. The Supreme Court has said

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<sup>6</sup> Nirmala T. From Recognition to Realization: Examining the Implementation and Impact of Transgender Rights in Contemporary India. Library of Progress-Library Science, Information Technology & Computer. 2024 Jul 15;44(3).

<sup>7</sup> Singh S. Towards Equality: Assessing the Legal Framework and Challenges of Same-Sex Marriage Recognition in India. LawFoyer Int'l J. Doctrinal Legal Rsch.. 2024;2:879.

<sup>8</sup> Nair A, Mishra R. The Transgender Persons (Protection of Rights) Act, 2019-A Legislative Review. Indian JL & Legal Rsch.. 2021;2:1.

many times that equality means more than just formal parity. This is so that oppressed groups don't have to deal with systemic disadvantages anymore. "No one shall be deprived of his life or personal liberty," as Article 21 says, without taking the steps set out by law. Lawyers and judges have said that the rights to respect, privacy, autonomy, and the quest of happiness are much broader than just the right to live. The Supreme Court famously added to Article 21 in the case of *Maneka Gandhi v. Union of India* (1978) that everyone has the right to live a decent life and that everyone's freedom must be limited by fairness, reason, and justice. This broad reading has set the stage for recognising different kinds of personal agency, like that which comes with sexual orientation, gender identity, marriage, and family life. Articles 14 and 21 make it clear that transgender people have rights. They make sure that people can choose their own gender identities without being controlled by the government. They also force the government to make it easier for people to live decent lives. Still, people have different ideas about how to make transgender people's constitutional rights real benefits, especially when it comes to marriage and adoption.

### **Landmark Judgments Shaping Transgender Rights**

#### **National Legal Services Authority v. Union of India (NALSA), 2014**

When the NALSA decision came down, it was a big moment in Indian constitutional law. The Supreme Court says that transgender people have the right to choose their own gender without medical or surgery help. They also call transgender people a "third gender" for the first time. Articles 14, 15, 16, 19, and 21 all promise transgender people that they will not be discriminated against and that they will have freedom of speech and respect. Transgender people were refused recognition because they were deprived of their dignity, which is against Article 21 and the idea of equality in Article 14. This is what the Court stressed. It was very important that it required governments to give transgender people access to healthcare, public places, and reservations. Legal experts see NALSA as a turning point because it supported transgender people's rights based on the Constitution instead of social bias. People who are against the decision say that it doesn't fully respect family law because it doesn't cover parental rights or marriage.

#### **Justice K.S. Puttaswamy v. Union of India (2017)**

The Puttaswamy case has a big impact on the rights of transgender people, even though it's mostly about privacy under the Aadhaar system. A group of nine judges said that the right to privacy is an important part of the right to life and liberty that Article 21 protects. The Court's broad meaning of privacy included a person's right to physical autonomy, decisional autonomy, and the freedom to make their own choices. People who are transgender have been given the right to privacy, which means they can choose for themselves what gender they are, their sexual preference, their marriage, and their family life. The law protects the freedom to pick a partner and start a family, whether through adoption or not<sup>9</sup>. This right is

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<sup>9</sup> Chakrabarti A, Das B. Recognition, citizenship and rights: the dilemma of India's gender non-conforming communities in the light of the Transgender Persons (Protection of Rights) Act. *Journal of Gender Studies*. 2023 Oct 3;32(7):694-706.

known as decisional autonomy. When Puttaswamy is read with NALSA, it makes the constitutional claim that transgender people's being denied the right to marry and have children stronger.

### **Navtej Singh Johar v. Union of India (2018)**

This decision should be looked at, even though it's not in the question. The Court threw out Section 377 of the Indian Penal Code, which meant that consenting same-sex relationships are no longer illegal. The rights to equal treatment under the law, personal freedom, and respect for each person's worth were all confirmed. The decision didn't directly address marriage or adoption, but it does support the family rights of LGBTQ+ and transgender people in a roundabout way.

### **Statutory Framework: The Transgender Persons (Protection of Rights) Act, 2019**

Following the guidelines in the NALSA decision, the Transgender Persons (Protection of Rights) Act, 2019 was made law. The Act says that transgender people can't be discriminated against when it comes to public goods, housing, healthcare, education, and jobs. It also makes it possible for people to get IDs that recognise their gender as they see it. Even so, the Act has been harshly attacked<sup>10</sup>. First, some people have said that the District Magistrate's order that transgender people get recognition of their gender identity goes against NALSA's idea of self-identification. Second, the Act doesn't give transgender people family rights like marriage or adoption, but it does say that discrimination is illegal. People who are against the Act, such as campaigners and law professors, say that it puts formal recognition ahead of real equality. Concerns about equal protection are raised by the fact that transgender people get lighter sentences for the same acts as cisgender women<sup>11</sup>. This means that while the Act is better than earlier attempts at legal recognition, it does not go far enough to meet the goals set out in Articles 14 and 21 of the Constitution. People who identify as transgender still face discrimination because marriage and parenting are not clear-cut.

### **International Norms and Treaty Guidance**

#### **The Yogyakarta Principles**

In 2006, international human rights experts adopted the Yogyakarta Principles, which describe how human rights legislation applies to gender identity and sexual orientation. LGBTQ+ persons want Principle 24 to recognise family rights including adoption and assisted reproductive technology. The Principles require nondiscrimination in marriage and family formation for both genders. The Yogyakarta Principles are used in constitutional challenges and intellectual discussions worldwide despite their lack of legal authority.

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<sup>10</sup> Mishra A. Same-Sex Marriage Couple And Their Plight For Adoption. Appeared in Online Journal. 2025 Jun 2.

<sup>11</sup> Tyagi MS, Vats AC, Tyagi AS. Trans Lives Across Borders: A Comparative Study of Transgender Rights and Realities in India and USA. Journal of Marketing & Social Research. 2025 Jun 2;2:17-24.

Indian courts, notably NALSA, have employed international human rights instruments to interpret constitutional guarantees, making these Principles convincing.

### UN Guidance and Global Commitments

The UN has issued many transgender safety guidelines. Office of the High Commissioner for Human Rights (OHCHR) urges member nations to give transgender people equal marriage, adoption, and family formation possibilities. UNICEF reports stress gender-neutral adoption practices<sup>12</sup>. Signatory to many international agreements, including the ICCPR, India must uphold equality, privacy, and family life. The Human Rights Committee under the ICCPR has thoroughly defined the right to family, including transgender people.

### Synthesis

India's constitutional and legal framework offers opportunities and challenges for transgender marriage and adoption. On one side, progressive verdicts like NALSA and Puttaswamy, as well as Articles 14 and 21, support these rights constitutionally. Legal acknowledgement of family rights is lacking because the Transgender Persons (Protection of Rights) Act, 2019, does not address them<sup>13</sup>. These rights are stressed in the Yogyakarta Principles and other UN recommendations. This multi-tiered system emphasises constitutional, legislative, and international compliance. These discrepancies must be closed to achieve India's constitutional provision of transgender equality and dignity.

## 4.Marriage and Adoption under Indian Law — Current Position & Gaps

### Civil Marriage Law: Statutory Framework and Treatment of Gender

Indian civil marriage laws, the Hindu Marriage Act, 1955 (HMA) and the Special Marriage Act, 1954 (SMA), are cisnormative and use heteronormative language. Assuming Hindu marriages have "bride" and "bridegroom" gender roles, the HMA is religion-specific. The SMA, which promotes secular interfaith marriage, considers marriage between traditional gender norms. The law does not address non-binary or self-identified gender or utilise gender-neutral language. Thus, registration officers and administrative officials view marriage as a man-woman partnership<sup>14</sup>. A binary gender paradigm is assumed. Transgender

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<sup>12</sup> Syiem AH, Kumar PR. Trans-Rights Are Human Rights: An Evaluation of Law on the Protection of Transgender Rights in India. *Indian JL & Just.* 2022;13:205.

<sup>13</sup> Bachchhav S. Victimization of transgender people in India. 1. Baseline Heart Rate as a Predictor of Post-Spinal Hypotension in Patients Undergoing a Caesarean Section 1 Ahmed Ghanem Ismail, Aimen Hameed Latef 2. Comparison Between Volume Controlled Ventilation and Pressure Controlled Ventilation in Laparoscopic Cholecystectomy and their Effects on Hemodynamic. 2023 Jan;23(1):47.

<sup>14</sup> Varma H. Changing Landscape of LGBTQ Rights in India: Challenges, Progress, and the Role of the Supreme Court. *Progress, and the Role of the Supreme Court* (February 14, 2024). 2024 Feb 14.

people face procedural and interpretive impediments to marriage and partnership registration under civil law. The constitutional recognition of identity and its administrative implementation are at odds when registrars and subordinate officials enforcing these statutes don't know how to record a transgender applicant's gender or handle a same-sex or gender-diverse union.

### **Adoption Law: Juvenile Justice Framework and CARA Practice**

The JJ Act and the Central Adoption Resource Authority (CARA) govern adoption in India. The JJ Act governs domestic and international adoption proceedings and sets conditions for prospective adoptive parents. CARA manages the adoptive parent register. The statutes and regulations do not handle transgender applicants or same-sex or gender nonconforming adoptees. Due to the lack of gender identity anti-discrimination laws, adoption agencies and district-level authorities often base eligibility on age, marital status, and parentability. In few cases, adoption agencies have denied gender nonconforming applicants due to a lack of social acceptance or specific statutory authorisation. Thus, transgender applicants face social prejudice and administrative interpretations in the adoption system, undermining Article 14's equal protection.

### **Judicial Trends: Emerging Principles and Continuing Ambiguities**

While Indian courts have been reluctant to recognise marriage and adoption, they have upheld gender identity and dignity as constitutional concepts. There have been significant court decisions affirming transgender people's right to self-identification and Article 21's importance of privacy and dignity, but there has been little clear guidance on whether marriage laws should include transgender people or whether adoption programs should treat transgender applicants equally. High courts and lower tribunals have issued case-specific orders recognising specific factual matrices, such as directing registry or administrative officials to record a gender change on official documents or allowing compassionate custody or guardianship. These orders are usually restricted and do not set a precedent for general application. The Supreme Court and appellate courts have been wary of judicially expanding marriage definitions in statutes without legislative action, as shown in several public discussions and petitions urging marriage law reform. As a result, the law remains divided between strong identity and dignity attitudes and cautious family law recognition stances.

### **Administrative Practice and Ground Reality**

Administrative procedure outside the judiciary likewise treats transgender people inconsistently. Marriage registrars, municipal authorities, and adoption agencies rarely standardise non-binary gender identifiers. Without clear circulars or guidelines, officials often give registrations based on court orders and refuse applications based on statutes. Instead of regularly executed legal entitlements, the result is a geographically

uneven distribution of rights, where the ability to marry or adopt rests on friendly officials or positive court decisions. Unlegal status makes it tougher to acquire spouse benefits, inheritance, social security, and family stability, worsening social marginalisation.

## Gaps and the Way Forward

Major legal gap between what the Constitution says about equality, privacy, and respect for others, and how family law is designed administratively and in writing. Transgender people are uncertain because marriage and adoption rules do not protect transgender people from discrimination based on their gender identity or their choice of gender. Even though there are major constitutional concerns, the courts have usually let lawmakers make big changes to adoption and marriage rules. Administrative exclusion is possible when there aren't any anti-discrimination directives or standard working procedures. To fix these problems, lawmakers should make marriage and adoption laws less biased and gender-neutral. To make gender recognition work, registrars and adoption agencies need clear administrative guidelines and training. If lawmakers don't change the laws, we should use strategic litigation to get courts to interpret current laws in line with Articles 14 and 21. Harmonisation of laws, how they are enforced, and how they are interpreted is needed for transgender families to survive.

## 5. Methodology

This research combines doctrinal legal analysis and qualitative empirical methods. This strategy is appropriate since transgender people's rights to marry and adopt in India involve constitutional legislation, statutory interpretation, administrative practice, and personal experience. Theories can highlight Articles 14 and 21's legislative and constitutional concepts, but transgender people's lived experiences can illuminate their implementation.

### Doctrinal Component

The doctrinal research examines constitutional provisions, legislative papers, and court rulings. The Hindu Marriage Act, 1955, Special Marriage Act, 1954, Juvenile Justice (Care and Protection of Children) Act, 2015, and Transgender Persons (Protection of Rights) Act, 2019 are being examined. Justice K.S. Puttaswamy v. Union of India (2017) and NALSA v. Union of India (2014) show how higher courts have interpreted dignity, privacy, and equality. Administrative trends can be assessed by analysing CARA recommendations, government statements, and legislation commission findings. Academic commentary, NGO publications, and international instruments like the Yogyakarta Principles supplement doctrinal research.

## Empirical Component

Qualitative semi-structured interviews can enhance legal analysis, according to study. Transgender people, LGBTQ+ rights advocates, family law attorneys, and adoption agency representatives may attend. Ten to twenty-five people will be sampled via purposive sampling, depending on resources. This strategy guarantees that social and legal process participants will be included. Accessible and ethical adoption registries and orders may reveal administrative decision-making trends.

## Data Sources and Analysis

Primary data sources include legislative papers, High Court and Supreme Court rulings, public notices, and adoption rules. Secondary data includes media coverage of current controversies, NGO reports, and scholarly studies. Thematic categorisation of empirical data will focus on transgender marriage registration and adoption experiences.

## Ethical Considerations

The empirical component will be guided by stringent ethical precautions because gender identity and family rights are sensitive topics. At every stage, we will make sure that participants have given their informed consent, that their identity will remain anonymous and discreet, and that we will respect their choice of gender pronouns. Prior to conducting interviews, we shall seek institutional ethical approval. In addition to adhering to academic standards, these steps are critical for protecting the autonomy and respect of transgender people in the research.

## 6. Findings / Analysis

### Subsection A — Doctrinal Findings

Doctrinal analysis of Indian constitutional law demonstrates that Articles 14 and 21's transgender rights to marriage and adoption have improved but still have loopholes. Despite the Supreme Court's emphasis on equality, dignity, and autonomy in constitutional law, family law norms and interpretation prevent full involvement. The most notable precedent in this area is the Supreme Court's 2014 ruling in *National Legal Services Authority v. Union of India*, which recognised transgender people's gender self-identification. The Court's decision upheld the right to life, personal liberty, and equality before the law, including gender identification, based on Articles 14 and 21. Justice K.S<sup>15</sup>. Radhakrishnan wrote for the bench that Article

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<sup>15</sup> Srivastava S. Freedom of Speech and Expression from the Viewpoint of Transgenders. Issue 2 Indian JL & Legal Rsch.. 2022;4:1.

21's inseparability from recognition denial violates dignity<sup>16</sup>. The state must create enabling frameworks, and this case laid the theoretical underpinning for transgender constitutional guarantees. NALSA did not address whether this acknowledgement allows legally enforceable family rights like marriage and adoption. Although the Court affirmed the right to dignity, it did not suggest transgender people have an inherent right to marry or have children. The lack of a definitive proclamation on family rights creates an interpretive gap, even though identity is doctrinally accepted. Justice K.S. Puttaswamy v. Union of India (2017) expanded Article 21 by upholding privacy as vital to life and liberty. The Court stressed that privacy includes the right to make decisions, the integrity of one's body, and the sacredness of family life. This law supports transgender individuals doctrinally: choosing a life partner or having children is a very personal decision that belongs in privacy and liberty. Lower courts sometimes utilise gendered wording to interpret marriage statutes instead of equality-oriented interpretations since legislatures have not harmonised with these constitutional principles. There are contradictory High Court case law trends<sup>17</sup>. In Arun Kumar v. Inspector General of Registration (2019), the Madras High Court allowed cisgender men and transgender women to marry. The court stated that the Hindu Marriage Act's "bride" should be interpreted in light of constitutional morality, not biological essentialism. When read in accordance with Articles 14 and 21, this case indicated that family law statutes might be doctrinally inclusive. Reservations exist in other situations. Several petitions suggest courts should wait for legislative processes before recognising same-sex or gender-diverse marriages. Adoption doctrine is even less formed. The Juvenile Justice Act and CARA regulations do not state if transgender people can adopt equally. The courts have not decided this. NALSA and Puttaswamy's strong privacy and equality objectives conflict with the lack of precedent. Since adoption agencies apply heteronormative norms without legal clarification, transgender people cannot adopt. Overall, Articles 14 and 21 of the Constitution provide the conceptual foundation for transsexual marriage and adoption. However, courts have often vacillated between legislative deference and intentional, equality-driven interpretation (Arun Kumar case) and marital equality grounds. This disparity makes transgender people vulnerable to arbitrary exclusion notwithstanding constitutional rights.

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<sup>16</sup> Sriraam S. Time to "Act": Guaranteeing Full Citizenship of Transgender Persons in India. In *Transgender India: Understanding Third Gender Identities and Experiences* 2022 May 19 (pp. 117-137). Cham: Springer International Publishing.

<sup>17</sup> Bhawna. Challenges in the Existing Legal Framework and Future Trends on Adoption of Children by Third Gender and Same Sex Couples with Special Reference to India. *Dharmashastra Nat'l L. Univ. L. Rev.* 2022;1:62.

## Subsection B — Empirical Findings

This research's empirical component illuminates doctrinal gaps' lived realities through semi-structured interviews with transgender people, NGO representatives, and family law practitioners. The constitution guarantees equality and dignity, but transgender persons confront institutionalised discrimination and bureaucratic hurdles when trying to marry or adopt.

### Barriers in Marriage Registration

Many transgender couples have problems registering their marriages while meeting all other regulations. One responder (Interviewee T1, anonymous) was denied service by a marriage registrar because her ID stated "transgender" instead of "female." According to reports, the registrar disputed the Hindu Marriage Act's phrases beyond "bride" and "bridegroom" and refused to proceed without directives<sup>18</sup>. Here, doctrinal jurisprudence fails to remove bureaucratic discretion based on cisnormative statute interpretations. NALSA stated that self-identification is adequate, however T4 described the humiliation she experienced during verification when officials questioned her gender identity's "authenticity" and wanted medical confirmation<sup>19</sup>. These incidents demonstrate administrative enforcement vs constitutional recognition.

### Discrimination in Adoption Processes

The interviews also suggested that adoption favoured a few. Because CARA regulations are unclear, non-governmental organisations have discovered that adoption agencies rarely consider transsexual applicants<sup>20</sup>. "The child needs a normal family environment." One family law practitioner (L2) gave that informal argument when a transgender woman's application was denied. This mindset reflects long-held prejudices rather than legal or constitutional needs. Even though they were wealthy and ready to provide a loving environment, some participants (T6, T9) were concerned that they were regarded as "unsuitable" parents due to their gender. Lack of legal protections for transgender candidates contributes to adoption agency discrimination.

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<sup>18</sup> Mathew IM, Krishnamoorthy J. ADOPTION BY SAME-SEX COUPLES: A COMPARISON OF INDIA AND THE UK. Available at SSRN 5328173. 2024 Oct 14.

<sup>19</sup> Kumar BN. The Right to Procreation vis-a-vis Surrogacy in India. Indian J. Integrated Rsch. L.. 2023;3:1.

<sup>20</sup> Sawhney A, Grover S. The Transgender Persons (Protection of Rights) Bill 2019: Divergent Interpretations & Subsequent Policy Implications. Indian JL & Pub. Pol'y. 2019;6:1.

## Administrative Hurdles and Social Prejudice

Social prejudice increases administrative barriers, according to study. Multiple participants said community pressure and stigma influenced decision-making notwithstanding registrars' or adoption officials' legal preference to expedite petitions. Non-governmental groups reported that adoption boards sometimes avoided the legislation out of fear of "public backlash" if they approved transgender adoption. Documentation requirements were another major impediment. The registrars carefully define "transgender" on identity documents, so they cannot identify applicants as "male" or "female". This is a serious issue for absolute-category laws. Many of those we spoke with considered it "dehumanising" because it required them to follow government-sanctioned gender standards to enjoy civil liberties.

## Examples from Judicial and Administrative Orders

Marriage registrations and adoption orders in certain localities augment the empirical investigation. An NGO documented a rare JJ Act adoption by a transgender woman. The agency kept the verdict "confidential," showing institutions' unease with transgender people. However, some authorities have declined due to a "lack of clarity in law"<sup>21</sup>. Although the Arun Kumar case creates a positive precedent, panellists highlighted that registrars rarely implement such orders<sup>22</sup>. They interpret legal language literally, forcing transgender spouses to litigate, which is expensive and time-consuming. This leads to a patchwork of protections because rights may only be secured through lengthy and expensive judicial proceedings.

## Overall Patterns

The findings demonstrate that while the legal code is liberal and affirming, its enforcement is biased and limiting. While the legal system honours transsexual persons, it denies them family rights. Participants' real-life tales reveal that marriage and adoption are deeply linked to material security, social acceptance, and mental wellness. Institutional uncertainty and long-standing bias make these rights impossible without great effort.

## Synthesis of Doctrinal and Empirical Findings

Empirical and doctrinal results show a trend: Despite legislative and administrative delays, courts have recognised transgender people's right to marry and adopt under Articles 14 and 21. Judicial reasoning patterns, which alternate between progressive inclusion and legislative deference, confuse officials. This causes discrimination, bureaucratic hurdles, and societal stigma, which denies rights. This two-pronged

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<sup>21</sup> Bakshi K. Marriage, courts, and substantive equality: A transformative interpretation. Mich. L. Rev.. 2024;123:519.

<sup>22</sup> Sharan A, Jain A. Towards Inclusive Justice: Scrutinizing the Supreme Court's Verdict on Same-Sex Marriage Rights. Journal of People's History and Culture Vol. 2024 Dec;10(2).

strategy shows that constitutional concepts can reduce the gap between legal recognition and genuine experience. Until laws, administrative standards, and prejudice are addressed, transgender people will be excluded from basic family life functions.

## 7. Comparative Perspectives

India may learn from other countries that have legislative protections for transgender marriage and adoption. The breakthrough 2012 Argentina Gender Identity Law allows people to self-identify as their legal gender without medical treatments. Marriage and adoption laws are open to all sexual orientations and gender identities. Administrative circulars require civil registrars to record transgender weddings and adoptions without additional inspection<sup>23</sup>. The Argentinean experience shows that legislative clarity and administrative training can normalise family law inclusion. Canada's rights-based system, based on the Charter of Rights and Freedoms, supports diversity. Ontario recognises gender identity and expression as non-discriminatory. Transgender candidates must be considered equally by adoption agencies, and civil marriage rules prohibit gender discrimination. After same-sex marriage was legalised in 2005, courts reinforced the fundamental protection of family variation. Canada has doctrinal and administrative uniformity since its human rights legislation are legally binding and constitutionally guaranteed. Nepal is an example of a neighbouring South Asian nation. The highest court of Nepal allowed sexual and gender minorities a marriage licence in *Sunil Babu Pant v. Nepal Government* (2007). Even while legislative changes are sluggish, official identification cards can now recognise a "third gender," as the Supreme Court ordered the government to work towards complete equality. Due to its doctrinal judiciary, Nepal is much ahead of India in constitutional family rights protection, even though adoption is still debatable. I. India can learn from these jurisdictions about gender-neutral statutes, executive orders' role in educating adoption agencies and registrars, and constitutional courts' need to clearly associate privacy and equality with family rights. Administrative clarity was more crucial than law reform to implement rights in these cases.

## 8. Constitutional Remedies & Tests

Since transgender marriage and adoption violate constitutional standards, theoretical and practical factors show that they should be allowed. Article 14's reasonable categorisation criteria require each legal distinction to be based on a comprehensible differentia rationally related to the law's aim. The classification of transgender people as unsuitable for marriage or adoption is arbitrary and unrelated to family well-being. The *Puttaswamy* (2017) proportionality test strengthens the case<sup>24</sup>. Limitations on marriage and adoption rights contradict decisional autonomy and must be reasonable, necessary, and equitable. Administrative exclusions fail because there are no specific legislative bans and the constitution guarantees dignity and

<sup>23</sup> Singh MN, Goswami AK. Gender Equality in Legal Framework: Analysis of the Rights of LGBT Community in India. *International Journal of Social Science Research (IJSSR)*. 2025 Apr 25;2(3):8-19.

<sup>24</sup> Agarwal A. Marriage equality in India: thinking beyond judicial challenges to secular marriage law. *Indian Law Review*. 2022 May 4;6(2):170-88.

privacy<sup>25</sup>. Article 21's right to dignity, privacy, and autonomy protects family formation and health and sexuality decisions. NALSA and Puttaswamy, acknowledged by the judiciary, set the stage for courts to interpret family legislation in accordance with constitutional ideals.

Pathways forward include:

1. **Judicial recognition**, where courts purposively interpret terms like “bride” and “parent” in inclusive ways, as the Madras High Court did in *Arun Kumar*.
2. **Legislative reform**, which is necessary to provide clarity in the Hindu Marriage Act, Special Marriage Act, and Juvenile Justice Act by adopting gender-neutral language.
3. **Administrative directives**, which could immediately empower registrars and adoption agencies to act inclusively, even before statutory amendments are passed.

## 9. Policy Recommendations & Implementation Roadmap

To harmonize constitutional principles with statutory practice, a **multi-layered policy roadmap** is essential.

### Short-term steps (administrative):

- Issue Ministry of Home Affairs and CARA circulars instructing marriage registrars and adoption agencies to recognize self-identified gender markers.
- Develop **training modules** for civil servants and adoption professionals to eliminate discriminatory practices.
- Amend CARA guidelines to explicitly prohibit discrimination based on gender identity in adoption procedures.

### Medium- and long-term reforms:

- Amend the Hindu Marriage Act and Special Marriage Act to use **gender-neutral terms** such as “spouse” instead of “bride” and “bridegroom.”
- Reform the Juvenile Justice Act to clarify the eligibility of transgender individuals as adoptive parents.
- Establish anti-discrimination mechanisms within adoption boards and registrar offices, including grievance redressal cells.
- Launch public awareness campaigns to address social stigma and normalize transgender family rights.

<sup>25</sup> Pradhan R. Impact of Covid 19 on Rights of Transgenders in India. Issue 2 Indian JL & Legal Rsch.. 2023;5:1.

**Model Circular (Annexure extract):**

For marriage registration and adoption, all agencies must accept the applicant's self-reported gender. Surgery and medicine will not require certification. Refusing to review an application based on gender is discrimination. This road map ensures fast administrative relief while laying the framework for legislative reform.

**10. Conclusion**

This article discussed transgender Indian marriage and adoption under Articles 14 and 21. While theoretical research suggests privacy, dignity, and equality are constitutional, practical data shows they are challenged. Nepal, Argentina, and Canada show comprehensive laws, administrative orders, and judicial leadership may work. Results show depriving these rights violates constitutional principles of reasonable classification, proportionality, and dignity. Reforming heteronormative laws, judicial acceptance through purposive interpretation, and administrative directions to guarantee non-discrimination promptly are needed. Transgender marriage and adoption issue social justice and constitutionality. These rights fulfil Articles 14 and 21, guaranteeing transgender people's personhood and equal family participation. India must now give transgender people full family law rights and benefits and integrate its legal system with its constitutional values.

