



FIDE ET LABORE

**1ST ST. JOSEPH'S COLLEGE OF LAW NATIONAL LEVEL MOOT
COURT COMPETITION, 2020**

27TH – 29TH MARCH, 2020

MOOT PROBLEM

ST. JOSEPH'S COLLEGE OF LAW

A note from the framers of the Moot Problem

Established in the year 2017, St. Joseph's College of Law, Bengaluru is the first-ever Jesuit Law College in South Asia that is strengthened with a 450 year legacy in imparting quality education through the Jesuits mission. Emboldened with a vision to 'transform the lives of people by bringing about a just and egalitarian society', the college believes in a steadfast focus to bridge law and governance with a human rights approach. It is with this ideal that the inaugural national level moot court competition is based on the lived realities and shared experiences of a community at the margins – transgenders. The scope of law in emancipating transgenders and enlarging their potential to live a life of dignity is paramount for a progressive society. Empowering transgenders through rights that is duly deserved not only allows for wholesome development but also guarantees peace and security. In order to make these goals a necessary aspect of value based lawyering, our first moot problem engages in questions of importance that will push the boundaries of jurisprudence and legal education in a positive direction for the betterment of all.

Ms. Sushmitha Suresh, Mr. Moses Raj G S and Mr. Surjeeth Rahulji M,
Assistant Professors,
St. Joseph's College of Law

ST. JOSEPH'S COLLEGE OF LAW

MOOT PROBLEM

1. Radha and Sarala are transgenders. Sarala had undergone sex-reassignment surgery at the age of 19. Radha was born male however she identifies as a woman. Both are 35 years and work as office assistants in different corners of the city. Radha and Sarala live in Chingaluru with other transgenders in a remote part and manage their affairs through meager salaries and begging.

2. Radha was abandoned by her parents when she turned 12 and Sarala decided to run away from home, unable to understand her sexuality and being traumatized by the constant discrimination she faced by her friends and family due to her effeminate behaviour and the pressure of conformity to masculine identity. She was stopped from attending school after 9th standard although she was a bright student excelling in academics and sports.

3. They both found a safe refuge after encountering Lhakkai, a renowned transgender in Chingaluru. She asked them to stay with her and made efforts to provide them jobs using her contacts. Since that accidental meeting, Radha and Sarala live with 20 other transgenders in their house called Prakriti for the last 10 years.

4. Radha and Sarala fell in love over the course of time and visit movie halls, parks and sometimes go on a vacation after saving some money. They do this discreetly without informing anybody. They had also made plans to live together and raise a child. Meanwhile, Sarala's family finds where she is living through some relatives who had seen Sarala at a vegetable market. Sarala's family search for her, find her place and decide to visit her only to be shocked to find her transitioned and the knowledge about her relationship with Radha only further angered them. After a scuffle between Sarala's friends and family, the family decides to leave but only after delivering threats towards both Radha and Sarala. Shocked by the events, both Radha and Sarala become cautious and decide to get married and try to move places as soon as possible.

5. Radha's uncle Shyamu used to visit Radha's parents regularly and took a keen interest on

Radha's well being. When Radha was abandoned, she stayed with Shyamu for a few years and continued to remain in touch after she decided to live by herself. It was only in October that Radha told Shyamu of Sarala and their plans to get married and live together as a couple. Shyamu was surprised at this new development but being a well wisher, wanted to help her out. He had called her to meet for lunch on the same day Sarala's parents visited Radha. After hearing about the scuffle, Shyamu went with Radha to a police station near his house to seek protection for Radha and Sarala in case they were to encounter any danger.

6. Two weeks after the events with Sarala's family, Radha and Sarala along with their friends met at the Yellamma temple in Krishigiri and in line with Hindu customs got married. As soon as marriage photos became public, a pro binary gender family organization called 'Kutumba Samiti' began to harass and threaten the newlyweds that they are violating the institution of marriage and transgenders cannot tie the mangalasutra. Kutumba Samiti also put out an advertisement in the newspaper about the sanctity and importance of marriage being diluted and withered away by marriage between transgenders.

7. They approached the High Court of Vataka for nullification of marriage. The reasoning of the court was as follows *"while the marriage was done according to Hindu customs and we cannot nullify marriage on those grounds, the law defines marriage between a man and a 'bride'. Even if we include transgenders within the ambit of 'bride', the definition of 'man' cannot be changed or contested. On these grounds, we declare the marriage invalid."*

8. While Kutumba Samiti celebrated the verdict, Radha and Sarala were aggrieved and decided to go on appeal. Along with other transgender organizations in the country, they approached the Supreme Court of Jhindya to recognize their marriage and extend marital rights.

After admitting the petition, the Hon'ble Supreme Court of Jhindya has framed the following questions.

1. Does the definition of marriage under Hindu Marriage Act 1955 mean only between a 'man' and a 'bride'?
2. Does the definition of 'bride' under Section 5 of the Hindu Marriage Act include 'transgender'?
3. Does the scope of marriage between two transgenders extend to other attendant rights such as adoption and maintenance?
4. Whether the appellants are entitled the right to have a family?

The parties are permitted to raise such other issues and arguments as they deem fit.

Disclaimer: "All aspects of the moot problem do not bear any validity in facts. Any representations of the Governments and other institutions or persons are work of fiction only employed for academic purposes. All laws in the country of Jhindya are *pari materia* to the laws in India."

**This problem has been framed by Ms Sushmitha, Mr Moses and Mr Surjeeth, faculty of St. Joseph's College of Law, Bengaluru with assistance from Alternative Law Forum. Participants are forbidden from contacting the authors/organisation under any circumstances. Any attempt to do so will result in immediate disqualification.*