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SAME-SEX MARRIAGE IN INDIA: CONSTITUTIONAL EQUALITY VERSUS LEGISLATIVE SILENCE

Reading Supriyo v. Union of India in the Shadow of Legislative Inaction and Regression

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ABSTRACT

This article examines the widening gap between India's constitutional promise of equality and Parliament's continuing refusal to legislate on same-sex marriage. Tracing the doctrinal arc from the decriminalisation of consensual same-sex conduct to the recognition of privacy, dignity, and the right to choose a life partner, it situates the Supreme Court's 2023 judgment in *Supriyo @ Supriya Chakraborty v. Union of India* as both the culmination of, and a retreat from, that trajectory. The Court unanimously declined to recognise an unqualified fundamental right to marry, reasoning that marriage is substantially a creature of statute; yet by a narrow 3:2 majority it also declined to extend even interim protective remedies, such as reading down discriminatory adoption regulations. This article argues that legislative silence, far from curing that institutional restraint, has since hardened into legislative regression, most visibly in the 2026 amendment narrowing statutory protection for transgender persons. Drawing on the dismissal of review petitions, the limited administrative measures adopted by the Union Government, and the compensatory jurisprudence of the High Courts, the article contends that India's queer citizens today occupy a zone of constitutional recognition without enforceable remedy, and proposes a narrowly tailored civil union statute as an interim safeguard against continuing legislative inertia.

Keywords: same-sex marriage; Supriyo v. Union of India; Special Marriage Act, 1954; constitutional equality; legislative silence; transformative constitutionalism; civil unions.

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I. INTRODUCTION

Marriage in India functions as far more than a private declaration of commitment. It is a gateway that automatically confers a wide bundle of ancillary legal entitlements: inheritance and intestate succession, eligibility for joint adoption, spousal nomination for insurance, provident fund and pension benefits, tenancy succession, next-of-kin status in medical emergencies, and a presumption of legitimacy for children born within the relationship. For heterosexual citizens, this gateway opens automatically the moment a marriage is solemnised under one of India's several personal law statutes or the ostensibly secular Special Marriage Act, 1954.[1] For same-sex couples, it remains closed — not because the Constitution forbids their union, but because no legislature has chosen to open it.

This produces a striking asymmetry. Over the last decade, India's constitutional courts have been unusually generous in recognising the personhood, dignity, and autonomy of queer citizens. They have decriminalised consensual same-sex conduct,[2] recognised a constitutionally protected third gender,[3] and read sexual orientation into the guarantee of privacy under Article 21.[4] Yet the single most consequential threshold of civil life — marriage — continues to be governed by statutory language drafted across the nineteenth and twentieth centuries, speaking only of a "bride and bridegroom," a "husband and wife," or "any two Hindus," each phrase understood, by convention rather than express words, to presuppose heterosexuality.

This article argues that the doctrinal architecture for equality already exists in Indian constitutional law; what is missing is legislative will, and that absence has begun to calcify into something more troubling than mere silence. The Supreme Court's judgment in *Supriyo @ Supriya Chakraborty v. Union of India* is the clearest illustration of this asymmetry.[5] A five-judge Constitution Bench agreed almost entirely on the diagnosis of discrimination confronting queer couples, yet declined to prescribe more than a non-binding administrative palliative, remitting the cure to a Parliament that has since shown little inclination to act — and has, if anything, moved to narrow rather than expand statutory protection for gender and sexual

[1]Special Marriage Act, No. 43 of 1954, India Code (1954).
[2]Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).
[3]National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438 (India).
[4]K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).
[5]Supriyo @ Supriya Chakraborty v. Union of India, 2023 SCC OnLine SC 1348 (India).

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minorities.[6]

Part II of this article maps the constitutional provisions on which queer equality claims rest. Part III traces the judicial trajectory that preceded *Supriyo*. Part IV analyses *Supriyo* itself — its unanimous holdings, its internal divisions, and its aftermath. Part V argues that legislative silence has, since 2023, hardened into legislative regression. Part VI situates India's experience against comparative constitutional responses to the same institutional question. Part VII offers modest, judicially and legislatively feasible proposals, before Part VIII concludes.

II. THE CONSTITUTIONAL ARCHITECTURE OF EQUALITY

Four provisions of Part III of the Constitution anchor the case for queer equality.

Article 14 guarantees equality before the law and the equal protection of the laws. Classification under Article 14 must rest on an intelligible differentia bearing a rational nexus to the object sought to be achieved and, in its more recent articulation, must not be manifestly arbitrary.[7] Statutes confining marriage to persons of the opposite sex classify on the ground of sexual orientation; the difficulty for the State, as Part IV discusses, has been to identify a legitimate purpose to which that classification bears any rational connection beyond the perpetuation of an inherited social convention.

Article 15(1) prohibits discrimination "on grounds only of religion, race, caste, sex, place of birth," among others. Beginning with *NALSA* and consolidated in *Navtej Singh Johar*, the Supreme Court has read "sex" to encompass gender identity and, derivatively, sexual orientation, on the reasoning that discrimination against a person for failing to conform to heteronormative expectations attached to their biological sex is itself a form of sex discrimination.[8] This interpretive move is central to any claim that excluding same-sex couples from marriage law is itself a species of sex-based discrimination rather than a neutral policy choice.

Article 19(1)(a) and (c) protect freedom of expression and freedom of association respectively; *Navtej Singh Johar* held that an individual's choice of sexual partner is an exercise of autonomy

[6]See infra Part V (discussing the Transgender Persons (Protection of Rights) Amendment Act, 2026).
[7]Navtej Singh Johar, (2018) 10 S.C.C. 1 (discussing the manifest arbitrariness standard in striking down Section 377 of the Indian Penal Code).
[8]National Legal Services Authority, (2014) 5 S.C.C. 438; Navtej Singh Johar, (2018) 10 S.C.C. 1.

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protected under both guarantees.[9]

Article 21 has proved the most generative source of queer rights. Since *Maneka Gandhi v. Union of India* read "personal liberty" to require fair, just, and reasonable procedure and, by extension, a substantive core of dignity,[10] the Supreme Court has progressively located within Article 21 a right to privacy,[11] a right to choose one's own life partner free of interference by family or community,[12] and a right to found and cohabit within a relationship of one's own choosing.

Underlying all four provisions is what Indian courts have termed transformative constitutionalism — the idea that the Constitution is not a static charter reflecting the social consensus of 1950, but a living instrument meant to transform an unequal society into one reflecting its own promised ideals, even where that transformation runs ahead of majoritarian sentiment.[13] It is precisely this methodology that allowed the Court to strike down Section 377 of the Indian Penal Code and to recognise a self-identified third gender against considerable social resistance. The central puzzle this article investigates is why the same methodology, applied with such confidence in *Navtej Singh Johar* and *NALSA*, was held by the majority in *Supriyo* to stop just short of the marriage register.

III. THE JUDICIAL TRAJECTORY BEFORE SUPRIYO

The doctrinal path to *Supriyo* was neither short nor straight. In 2009, the Delhi High Court in *Naz Foundation v. Government of NCT of Delhi* read down Section 377 of the Indian Penal Code to exclude consensual sexual conduct between adults, grounding its reasoning in dignity, privacy, and the constitutional prohibition on discrimination.[14] That judgment was short-lived: in 2013, a two-judge bench of the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* reversed the Delhi High Court, restoring criminal liability for consensual same-sex conduct and dismissing the affected population as a "minuscule minority" whose rights did not warrant constitutional protection — a characterisation later repudiated in the strongest terms.[15]

[9]Navtej Singh Johar, (2018) 10 S.C.C. 1.
[10]Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
[11]K.S. Puttaswamy, (2017) 10 S.C.C. 1.
[12]Shakti Vahini v. Union of India, (2018) 7 S.C.C. 192 (India); Shafin Jahan v. Asokan K.M., (2018) 16 S.C.C. 368 (India).
[13]Navtej Singh Johar, (2018) 10 S.C.C. 1 (invoking the doctrine of constitutional morality over social morality).
[14]Naz Foundation v. Government of NCT of Delhi, (2009) 160 D.L.T. 277 (Delhi HC) (India).
[15]Suresh Kumar Koushal v. Naz Foundation, (2014) 1 S.C.C. 1 (India).

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The tide turned within months. In *National Legal Services Authority v. Union of India*, decided in April 2014, the Supreme Court recognised the right of transgender persons to self-identify their gender as male, female, or third gender, grounding this right in Articles 14, 15, 16, 19(1)(a), and 21, and directing reservation benefits for the transgender community as a socially and educationally backward class.[16] *NALSA's* significance for the present inquiry lies less in its immediate holding than in its interpretive method: it treated self-identification, rather than external medical criteria, as the touchstone of gender — a principle later reversed by statute, as Part V discusses.

Three years later, a nine-judge bench in *K.S. Puttaswamy v. Union of India* unanimously recognised privacy as intrinsic to Article 21, with several concurring opinions specifically identifying sexual orientation as an essential attribute of privacy and expressly disapproving *Koushal's* reasoning as constitutionally unsustainable.[17] *Puttaswamy* supplied the doctrinal predicate that *Navtej Singh Johar* would formalise a year later: a five-judge bench, delivering four separate but concurring opinions, unanimously read down Section 377 to exclude consensual adult same-sex conduct, grounded the decision in Articles 14, 15, 19, and 21, invoked the doctrine of constitutional morality, and expressly overruled *Koushal*.[18]

A parallel line of authority addressed the right to choose a life partner, developed largely in the context of inter-caste and inter-religious unions threatened by family or community violence. In *Lata Singh v. State of U.P.*, the Court held that an adult's choice of marital partner lies beyond the reach of family or caste-based objection.[19] In *Shakti Vahini v. Union of India*, confronting honour-based violence by khap panchayats, the Court held that the right to choose a partner flows from Articles 19 and 21.[20] In *Shafin Jahan v. Asokan K.M.* — the Hadiya case — the Court went further, holding that the right to marry a person of one's choice is integral to Article 21 itself.[21] Although each of these cases arose in a heterosexual context, their reasoning proceeds from the autonomy of the choosing individual rather than the identity of the chosen partner, making them doctrinally transferable — a transferability the *Supriyo* petitioners would later press, largely without success.

[16]National Legal Services Authority, (2014) 5 S.C.C. 438.
[17]K.S. Puttaswamy, (2017) 10 S.C.C. 1.
[18]Navtej Singh Johar, (2018) 10 S.C.C. 1.
[19]Lata Singh v. State of U.P., (2006) 5 S.C.C. 475 (India).
[20]Shakti Vahini, (2018) 7 S.C.C. 192.
[21]Shafin Jahan, (2018) 16 S.C.C. 368.

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High Courts, meanwhile, moved ahead of the Supreme Court on discrete questions. In *Arunkumar v. Inspector General of Registration*, the Madurai Bench of the Madras High Court held that "bride" in Section 5 of the Hindu Marriage Act, 1955 must be read to include a transgender woman who identifies as a woman, relying directly on *NALSA's* self-identification principle and ordering registration of the marriage.[22] In *S. Sushma v. Commissioner of Police*, the Madras High Court, confronting the harassment of a lesbian couple by police acting on a parental missing-persons complaint, issued wide-ranging guidelines banning so-called conversion therapy and mandating sensitisation of police and the judiciary, observing that until the legislature enacted a comprehensive protective framework, courts would have to fill the vacuum to prevent queer citizens from being left in what it called a vulnerable atmosphere.[23] That single observation — that courts must act because the legislature has not — anticipates almost exactly the institutional dilemma that would confront the Supreme Court two years later. By the time the marriage-equality petitions reached the Supreme Court in 2022, the doctrinal runway appeared fully built. Privacy, dignity, autonomy, non-discrimination on grounds of sex and gender identity, and the right to choose a partner had each been independently constitutionalised. The only question left open was institutional: could the judiciary translate these individually secured holdings into the collective, status-conferring institution of marriage, or was that transformation a legislative prerogative that courts, however sympathetic, could not usurp?

IV. SUPRIYO v. UNION OF INDIA: ANATOMY OF A SPLIT

A. Facts and Procedural History

The litigation originated in writ petitions filed in November 2022 by two same-sex couples — Supriyo Chakraborty and Abhay Dang, and Parth Phiroze Mehrotra and Uday Raj Anand — seeking recognition of their marriages.[24] The Supreme Court subsequently transferred connected petitions pending before the Delhi and Kerala High Courts, eventually consolidating twenty petitions brought by fifty-two petitioners drawn from across the sexual and gender minority spectrum.[25] The Union Government resisted at every stage, filing successive affidavits characterising the demand for marriage equality as reflecting "urban elitist views," and arguing that recognition would require judicially rewriting an entire branch of interconnected law.[26] A

[22]Arunkumar v. Inspector General of Registration, AIR 2019 Mad 265 (India).
[23]S. Sushma v. Commissioner of Police, 2021 SCC OnLine Mad 2096 (India).
[24]Supriyo @ Supriya Chakraborty v. Union of India, 2023 SCC OnLine SC 1348 (India).
[25]Id.
[26]'Urban Elitist Views': Centre Files Affidavit in SC Opposing Same-Sex Marriages, The Wire (Apr. 17, 2023).

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five-judge Constitution Bench comprising Chief Justice D.Y. Chandrachud and Justices Sanjay Kishan Kaul, S. Ravindra Bhat, Hima Kohli, and P.S. Narasimha heard the matter over ten days between April and May 2023, reserved judgment on 11 May 2023, and delivered four separate opinions on 17 October 2023.[27]

B. Points of Unanimity

All five judges agreed on four propositions. First, the Constitution does not recognise an unqualified fundamental right to marry; marriage, whatever its social significance, is substantially a creature of statute, and no institution becomes a fundamental right merely by virtue of the content the law happens to give it.[28] Second, the Court unanimously declined to strike down the Special Marriage Act, 1954, or to read it in a gender-neutral fashion, reasoning that doing so would produce a cascading effect across statutes governing succession, adoption, and taxation, amounting to impermissible judicial legislation rather than interpretation.[29] Third, all five judges recognised that queer couples possess a right — located in Article 21 and, in Justice Bhat's formulation, a "right to relationship" — to cohabit and conduct an intimate association free of threat, coercion, or police harassment.[30] Fourth, building on *NALSA*, the Court confirmed that transgender persons in heterosexual relationships, and intersex persons identifying as male or female, already possess the right to marry under existing personal law.[31]

C. Points of Division: Civil Unions

The bench split 3:2 on whether the State is constitutionally obliged to confer legal status on queer relationships short of marriage. Chief Justice Chandrachud and Justice Kaul, in the minority, held that the right to enter a union enjoys constitutional protection under Articles 19(1)(a) and 21 — and, in the Chief Justice's reasoning, Article 25 as well — and that the State's failure to confer any legal recognition on such unions constitutes indirect discrimination.[32] They identified a limited bundle of entitlements — joint bank accounts, insurance and pension nomination, and medical decision-making authority — that could be secured without wholesale legislative reform, and directed the Union Government to constitute a committee to examine implementation.[33] Justice Bhat, writing for himself and Justice Kohli,

[27]Supriyo, 2023 SCC OnLine SC 1348.
[28]Id. (Chandrachud, C.J.); id. (Bhat, J.).
[29]Id.
[30]Id. (Bhat, J., for himself and Kohli, J.).
[31]Id.
[32]Id. (Chandrachud, C.J.); id. (Kaul, J.).
[33]Id. (Chandrachud, C.J.).

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with Justice Narasimha concurring separately, rejected this approach, holding that any status functionally equivalent to a civil union — however limited — could only be conferred by legislation, since even a minimal framework raises questions of registration, eligibility, and dissolution that a court is institutionally ill-equipped to design.[34] Notably, the sole concrete institutional outcome to survive this division — the direction that the Union Government constitute a Cabinet-Secretary-led committee — was not, strictly, a judicially enforceable order; it tracked an undertaking the Solicitor General had already offered during the hearing, and the majority endorsed it only as holding the executive to a promise it had voluntarily made.[35] This distinction matters, since it means the sole tangible institutional legacy of *Supriyo* rests on executive discretion rather than judicial command.

D. Points of Division: Adoption

The Court divided again, along the same 3:2 line, on the constitutionality of Regulation 5(3) of the Adoption Regulations framed by the Central Adoption Resource Authority, which requires prospective adoptive parents to demonstrate two years of a stable marital relationship, excluding unmarried and same-sex couples from adopting jointly.[36] Chief Justice Chandrachud held the Regulation ultra vires the Juvenile Justice Act and violative of Articles 14 and 15, reasoning that it rested on an unproven assumption that only married heterosexual couples can provide a stable home, and that it indirectly discriminated against queer persons by forcing them to choose between an intimate partnership and joint parenthood.[37] Justice Bhat, for the majority, upheld the Regulation as a legitimate, if imperfect, exercise of CARA's rule-making competence, while urging the executive to reconsider its practical exclusions.[38] The result, as the majority itself acknowledged, is anomalous: an individual queer person may adopt in a personal capacity, but the same two people, raising the same child in the same household, cannot adopt jointly and thereby secure equal legal protection for both parents.

E. Aftermath: The Committee, Administrative Measures, and Dismissal of Review

The Union Government constituted the High-Powered Committee in April 2024, chaired by the Cabinet Secretary and drawing representatives from the Ministries of Home Affairs, Women and Child Development, Health and Family Welfare, Law and Justice, and Social

[34]Id. (Bhat, J.); id. (Narasimha, J.).
[35]Key Takeaways of Judgement: Same-Sex Marriage, Lexology (Oct. 18, 2023).
[36]Central Adoption Resource Authority, Adoption Regulations, 2017, Regulation 5(3), framed under the Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code.
[37]Supriyo, 2023 SCC OnLine SC 1348 (Chandrachud, C.J.).
[38]Id. (Bhat, J.).

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Justice and Empowerment.[39] Following closed-door consultations and a public call for submissions, the Government announced in August 2024 that same-sex partners could open joint bank accounts, nominate each other for insurance benefits, and be recognised as members of the same household for ration-card purposes.[40] No legislative bill on civil unions or marriage equality has followed. Meanwhile, review petitions filed in November 2023 — including one by Udit Sood and connected petitioners, and a separate petition by Utkarsh Saxena and Ananya Kotia — argued that the majority judgment was internally self-contradictory, having found discrimination without remedying it.[41] The Supreme Court declined an open-court hearing and dismissed the review petitions in chambers on 9 January 2025, through a reconstituted bench of Justices B.R. Gavai, Surya Kant, B.V. Nagarathna, P.S. Narasimha, and Dipankar Datta — of whom only Justice Narasimha had sat on the original bench — finding no error apparent on the face of the record.[42] The judicial route to marriage equality in India is now closed for the foreseeable future, subject only to the vanishingly narrow possibility of a curative petition.[43]

V. FROM SILENCE TO REGRESSION

It is useful to distinguish legislative silence from legislative regression. Silence — mere inaction on a contested social question — is not, without more, a constitutional wrong; legislatures are entitled to deliberate, to defer, and even to decline to act on a matter of genuine social division. Regression is different in kind: it is the affirmative narrowing of a legal protection that citizens had previously, and often at considerable litigative cost, secured. This Part argues that India's political response to queer equality claims has moved from the former toward the latter in the years since *Supriyo*.

The silence itself has been unmistakable. No government bill on marriage equality or civil unions has been introduced in either House of Parliament since *Supriyo* was decided. Section 4(c) of the Special Marriage Act, 1954, the very provision at the centre of the litigation, remains unamended years later. The Union Government's own characterisation of the demand as reflecting “urban elitist views” unrepresentative of the country's rural and religious majority

[39]Country Policy and Information Note: Sexual Orientation and Gender Identity Expression, India, UK Home Office (Dec. 2025).
[40]Id.
[41]Supriyo @ Supriya Chakraborty v. Union of India, Review Petition (C) No. 1864 of 2023 (India); Same-Sex Marriage Review Petitions Rejected by Supreme Court, LawBhoomi (Jan. 2025).
[42]Supriyo @ Supriya Chakraborty v. Union of India, Review Petition (C) No. 1864 of 2023, order dated Jan. 9, 2025 (India).
[43]See Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 S.C.C. 388 (India) (establishing the limited scope of curative jurisdiction).

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signalled an intention to treat the question as closed rather than merely deferred.[44]

More troubling is the regression evident in the Transgender Persons (Protection of Rights) Amendment Act, 2026. Introduced in the Lok Sabha on 13 March 2026, passed by both Houses within weeks, and granted presidential assent on 28 March 2026, the amendment replaces the open, self-identification-based definition of "transgender person" in the 2019 Act with a closed, enumerated list of categories, and expressly provides that the definition does not — and is deemed never to have — included persons defined solely by sexual orientation or self-perceived gender identity.[45] It further requires a medical board's certification, reviewed by a District Magistrate, before an individual may obtain a certificate of gender identity, reversing the self-certification model that *NALSA* had constitutionalised over a decade earlier.[46] A statutory advisory panel chaired by former Delhi High Court Justice Asha Menon publicly described the amendment as a "great shock" and urged its withdrawal, noting its inconsistency with *NALSA's* core holding.[47]

This sequence carries a specific implication for the marriage-equality debate. If Parliament is prepared to legislatively narrow a right that a unanimous, foundational Supreme Court judgment had already secured for transgender citizens, the prospect that the same Parliament will voluntarily legislate an expansion of rights for the more socially contested category of same-sex couples appears, on present evidence, still more remote. Legislative silence on marriage equality can no longer be read as a neutral placeholder awaiting future action; the 2026 amendment supplies direct evidence of the political branches' revealed preference when they do act on adjacent questions of gender and sexual minority rights.

In the resulting vacuum, protection has continued to accrue — unevenly, and without the generality that legislation would supply — through individual High Court litigation. In *M.A. v. Superintendent of Police, Vellore*, decided by the Madras High Court in May 2025, a division bench allowed a habeas corpus petition brought by a woman whose same-sex partner had been forcibly detained by her family, holding that marriage is not the sole mode of founding a family

[44]'Urban Elitist Views': Centre Files Affidavit in SC Opposing Same-Sex Marriages, The Wire (Apr. 17, 2023).
[45]Transgender Persons (Protection of Rights) Amendment Act, 2026, § 2 (India); The Transgender Persons (Protection of Rights) Amendment Bill, 2026, PRS Legislative Research (2026).
[46]Id.; National Legal Services Authority, (2014) 5 S.C.C. 438.
[47]Indian Government Creates Committee to Study Rights for Same-Sex Couples, Washington Blade (May 28, 2024, updated 2026).

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and recognising a judicially cognisable "chosen family" for LGBTQIA+ persons under Article 21.[48] The Court relied, by analogy, on the very line of choice-of-partner authority — *Shakti Vahini* and *Shafin Jahan* — that the *Supriyo* petitioners had unsuccessfully invoked two years earlier, and referred approvingly to an earlier "deed of familial association" that the same High Court had recognised as a private, contractual substitute for civil union.[49] The doctrinal seed for this proposition — that intimate association need not culminate in marriage to warrant constitutional protection — already existed in *Supriyo's* own unanimous "right to relationship" holding; it took a habeas corpus bench, exercising an emergency jurisdiction designed for unlawful detention rather than family law, two years later, to give that seed operative content for a single litigant.

This pattern — courts advancing protection retail, one habeas corpus petitioner and one High Court bench at a time, while the political branches remain inert or move actively backward — might be termed constitutionalism by attrition. It secures rights unevenly, for those with the resources and circumstance to litigate, rather than universally, through the general and prospective processes that only legislatures can supply.

VI. COMPARATIVE PERSPECTIVES

India's experience gains sharper definition when set against comparative constitutional responses to the same institutional question: what should a court do when it identifies unconstitutional discrimination in the definition of marriage, but hesitates to rewrite marriage law itself?

The United States resolved this question by locating a freestanding fundamental right. In *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment's Due Process and Equal Protection Clauses guarantee same-sex couples the right to marry on the same terms as opposite-sex couples, reasoning that the right to marry is itself fundamental and cannot be conditioned on the sex of the parties.[50] This route was doctrinally unavailable to the *Supriyo* bench, which had already held, unanimously, that no general fundamental right to marry exists under the Indian Constitution for anyone, regardless of orientation — a foundational difference in constitutional structure rather than merely in outcome.

[48]M.A. v. Superintendent of Police, Vellore, 2025 SCC OnLine Mad 2542 (India).
[49]Id.; see also S. Sushma v. Commissioner of Police, 2021 SCC OnLine Mad 2096.
[50]Obergefell v. Hodges, 576 U.S. 644 (2015).

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South Africa took a different, and instructive, institutional path. In *Minister of Home Affairs v. Fourie*, the Constitutional Court held the common-law definition of marriage and the Marriage Act's exclusion of same-sex couples unconstitutional, but rather than order immediate judicial recognition, suspended its declaration of invalidity for twelve months to allow Parliament to cure the defect, with the automatic consequence that the definition would be read in by operation of law if Parliament failed to act within that period.[51] Parliament met the deadline, enacting the Civil Union Act, 2006.[52] Taiwan's Constitutional Court adopted a structurally similar mechanism in 2017, giving the Legislative Yuan two years to amend the Civil Code, with a default rule permitting same-sex couples to register marriages directly under the Court's interpretation if the legislature failed to act; the Legislative Yuan met the deadline with implementing legislation in 2019.[53] Nepal, India's South Asian neighbour, took a still more direct route, beginning administrative registration of same-sex marriages in late 2023 following an interim Supreme Court order — illustrating that neither shared regional culture nor comparable development compels India's particular combination of judicial restraint and legislative inertia.

The common thread in the South African and Taiwanese examples is a default or backstop mechanism: a court-imposed deadline coupled with an automatic legal consequence if the legislature fails to meet it. Such a mechanism preserves the separation of powers — it does not dictate the legislature's ultimate policy choice — while ensuring citizens are not abandoned to open-ended inaction. The *Supriyo* majority rejected any comparable backstop, reasoning that the interconnections between marriage law and other statutes governing succession, adoption, and taxation made a judicially administrable default impossible to design.[54] Whether that institutional claim withstands scrutiny is the subject of the next Part.

VII. CRITIQUE AND THE WAY FORWARD

The claim that a judicial default mechanism is impossible to design deserves closer scrutiny than the *Supriyo* majority gave it. Justice Bhat's own opinion catalogued, with some precision, the specific statutes — the Indian Succession Act, the Hindu Succession Act, employment and pension regulations — that would require amendment to give full effect to marriage equality.[55]

[51]Minister of Home Affairs v. Fourie 2006 (1) SA 524 (CC) (S. Afr.).
[52]Civil Union Act 17 of 2006 (S. Afr.).
[53]Judicial Yuan Interpretation No. 748 (2017) (Taiwan).
[54]Supriyo, 2023 SCC OnLine SC 1348 (Bhat, J.).
[55]Supriyo, 2023 SCC OnLine SC 1348 (Bhat, J.).

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That very precision suggests the interconnection problem is a reason to calibrate the remedy, not to withhold one altogether. A narrowly tailored civil union statute, conferring a defined and limited bundle of rights — hospital visitation and medical decision-making authority, inheritance under the general law of intestacy, insurance and pension nomination, and tenancy succession — without importing the full incidents of personal-law marriage, such as religion-specific divorce grounds or maintenance regimes, would sidestep much of the "cascading effect" objection that animated the majority's institutional caution.

Four concrete proposals follow. First, Parliament could enact a standalone, religion-neutral civil union statute, using the Special Marriage Act's own secular character as a template; that Act already permits any two Indians to marry regardless of religion, making it the natural vehicle for a modest further extension rather than a wholesale rewriting of India's plural personal-law system.[56] Second, the CARA Adoption Regulations should be amended to replace the marital-status eligibility criterion with an individualised best-interest assessment of the sort Chief Justice Chandrachud's dissenting opinion proposed, decoupling a child's welfare from the marital status of prospective parents.[57] Third, a standalone anti-discrimination statute covering employment, housing, and access to services on grounds of sexual orientation and gender identity would fill a gap that neither *Navtej Singh Johar* nor *Supriyo* could close, since no such claim was squarely before either bench. Fourth, the High-Powered Committee's mandate should be placed on a statutory footing, with fixed reporting timelines and an avenue for judicial review of executive inaction, rather than being left, as at present, entirely to executive discretion.

A likely objection is that India's religious and cultural pluralism, reflected in its multiplicity of personal laws, makes any legislative movement on marriage uniquely fraught. This objection has force, but it misidentifies the appropriate vehicle: a civil union statute modelled on the Special Marriage Act would operate alongside, rather than in supersession of, existing personal laws, exactly as the Special Marriage Act itself already does for interfaith and non-religious couples. It would require no interference whatsoever with Hindu, Muslim, Christian, or Parsi personal law.

A further, more realistic objection concerns political economy: no major national party has

[56]Special Marriage Act, No. 43 of 1954, India Code (1954).
[57]Supriyo, 2023 SCC OnLine SC 1348 (Chandrachud, C.J.).

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campaigned on marriage equality, public opinion remains genuinely divided along religious, generational, and rural-urban lines, and legislative reform, if it materialises at all, is more likely to proceed incrementally — a civil union statute preceding, by some years, any amendment to marriage law proper. This article does not dispute that prediction. It insists only that even the most incremental step requires a legislative initiative that has not, in the years since *Supriyo*, been forthcoming, and that the 2026 amendment to the Transgender Persons Act indicates that the political risk in this area currently runs toward retrenchment rather than reform.

VIII. CONCLUSION

India's queer citizens today possess an unusually rich menu of declared constitutional rights — dignity, privacy, autonomy, freedom from discrimination, and the right to intimate association — and a correspondingly thin menu of enforceable entitlements flowing from those declarations. *Supriyo* is best understood not as a defeat but as a deferral: a bench that identified discrimination with unusual clarity, while declining, by the narrowest of majorities, to supply more than a promise that the executive would examine the problem in due course. A deferral without a deadline, however, is difficult to distinguish in practice from a denial.

The 2026 amendment to the Transgender Persons (Protection of Rights) Act supplies the clearest available evidence of how the political branches behave when left, without judicial or constitutional constraint, to legislate on questions of gender and sexual minority rights: not toward expansion, but toward retrenchment. This should recalibrate expectations about what "legislative silence" on marriage equality actually represents, and it strengthens, rather than weakens, the case for a modest, judicially administrable backstop of the kind South Africa and Taiwan each adopted at comparable moments in their own constitutional histories.

Until Parliament acts — or until some future bench revisits the institutional caution of *Supriyo* — the burden of translating constitutional promise into lived remedy will continue to fall, unevenly and unpredictably, on the habeas corpus jurisdiction of individual High Court benches. That arrangement satisfies neither the rule of law's demand for generality nor the separation of powers' demand for institutional propriety. Equality that is declared but not enforced is, for the citizens who must live within its gap, no equality at all.

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