

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 4

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Roots, Rights and Recognition: Inclusivity of Transgender Persons in Indian Society: A Doctrinal Study of Matrimonial, Adoption, Inheritance and Succession Rights

ARYAN DEEP* AND ISHIKA RANA**

ABSTRACT

The transgender community occupies an oxymoronic place in the history of Indian jurisprudence: recognised in ancient scriptures and in the courts of earlier centuries, yet largely ignored once the colonial and post-colonial legal systems took hold in India. This paper analyses the extent to which the Indian legal system presently recognises the rights of transgender persons in the field of family law, through three areas of study, namely matrimonial rights, adoption, and inheritance and succession. The doctrinal foundations laid down in National Legal Services Authority v. Union of India, Navtej Singh Johar v. Union of India and Supriyo alias Supriya Chakraborty v. Union of India are discussed alongside the degree to which those doctrinal principles have been translated into the legislative framework comprising the Hindu Marriage Act 1955, the Special Marriage Act 1954, the Transgender Persons (Protection of Rights) Act 2019, the Juvenile Justice (Care and Protection of Children) Act 2015, the Hindu Succession Act 1956 and the Indian Succession Act 1925. Drawing on reported case law, legislation and scholarly literature, the paper highlights particular deficiencies in the statutes and proposes law reform measures that align with the constitutional principles of dignity, equality and non-discrimination entrenched under Part III of the Constitution of India.

Keywords: *Transgender persons, Matrimonial rights, Adoption, Inheritance and succession, Equality, Non-discrimination*

I. INTRODUCTION

The journey of transgender rights in India is a remarkable one, moving from a place of invisibility towards recognition. Historically, transgender persons have been an integral part of a number of cultural and religious traditions in the Indian subcontinent, and evidence of transgender identities is found in ancient texts such as the Mahabharata, the Ramayana and the Kamasutra. In medieval India, the Hijra community held spiritual roles and carried out religious

* Author is a Student at National University of Study and Research in Law, Ranchi, Jharkhand, India.

** Author is a Student at Xavier Law School, XIM University, Bhubaneswar, Odisha, India.

rituals associated with birth and marriage. The social marginalisation observed today is therefore not native to the community; it is in substantial measure a product of colonial legislative frameworks that rendered various forms of gender identity suspect or punishable, notably the Criminal Tribes Act of 1871 and the “unnatural offences” provision in Section 377 of the Indian Penal Code.¹

The coming into force of the Constitution of India marked a crucial development in the journey towards equality and non-discrimination. Yet the constitutional promise was slow to reach transgender persons, because gender identity was not legally recognised in its own right. The law confined itself to determining whether a person was a man or a woman, and in doing so denied transgender persons the civil status on which family relationships depend. Transgender persons held constitutional rights, but remained practically excluded from institutions such as marriage, guardianship, inheritance, succession and adoption.

The change, when it came, was the product not of legislation but of interpretation. In *National Legal Services Authority v. Union of India (NALSA)*, the Supreme Court recognised transgender persons as a third gender and held that the right to determine one’s own gender identity is integral to personal autonomy and dignity.² The Court located gender self-determination in Articles 14, 15, 16, 19(1)(a) and 21, and in doing so unsettled the binary understanding of gender on which the Indian legal system had proceeded. It further directed that no person be compelled to undergo any medical procedure as a condition of legal recognition of their gender identity, and directed the Centre and the State Governments to accord legal recognition to transgender persons and to extend welfare measures to them.³

The constitutional development continued in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, in which the Supreme Court held that the right to privacy is a fundamental right and an essential component of personal dignity and free choice.⁴ Subsequently, in *Navtej Singh Johar v. Union of India*, the Court read down Section 377 of the Indian Penal Code so far as it criminalised consensual sexual conduct between adults, holding that constitutional morality must prevail over majoritarian prejudice.⁵ Together, these judgments established sexual orientation and gender identity as attributes protected by the Constitution.

¹ Criminal Tribes Act, 1871 (Act XXVII of 1871) (India) (since repealed); Indian Penal Code, No. 45 of 1860, S 377 (India) (read down in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1).

² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).

³ *NALSA*, *supra* note 2. The Court directed that “no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity”.

⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India). The Court read down S 377 of the Indian Penal Code “in so far as it criminalises consensual sexual conduct between adults of the same sex”; the provision was left intact in its application to non-consensual acts, acts involving minors and bestiality.

Despite these developments, Indian family law has not undergone any corresponding amendment. The marriage statutes continue to speak of the “husband”, the “wife”, the “bride” and the “bridegroom”. Adoption law continues to assume a heterosexual family form. The law of succession continues to apply a binary model of devolution. The Transgender Persons (Protection of Rights) Act, 2019 was enacted to eliminate discrimination,⁶ but it creates no right, capacity or procedure in respect of marriage, adoption, inheritance or succession, which is why the rights of transgender persons exist in the Constitution without corresponding expression in the personal laws.⁷

The decision in *Supriyo alias Supriya Chakraborty v. Union of India* reflects this inconsistency. The Court held unanimously that queer persons are entitled to equal dignity and to the freedom to enter into relationships, but a majority held that the recognition of same-sex marriage is a matter for the legislature, since the existing statutes cannot be read to accommodate it.⁸

The aim of this research is to show that the divergence between constitutional doctrine and statutory regulation produces an incoherent legal order, in which transgender persons are treated as equal citizens for constitutional purposes yet remain excluded from much of family law. That exclusion is inconsistent with the idea of substantive equality and produces structural discrimination even as the Constitution affirms individual dignity and autonomy.

This study investigates the following questions.

1. To what extent do family laws in India acknowledge the rights of transgender persons in relation to marriage, parenting and inheritance?
2. What effect have the constitutional doctrines developed by the Supreme Court had on the development of law concerning transgender families?
3. Does the Transgender Persons (Protection of Rights) Act, 2019 address the family law concerns of transgender persons?
4. What legislative changes should be adopted to harmonise Indian family law with the constitutional requirements of equality, dignity and non-discrimination?

⁶ Transgender Persons (Protection of Rights) Act, No. 40 of 2019 (India) (brought into force on 10 January 2020 vide S.O. 135(E), dated 10 January 2020).

⁷ *Transgender Persons (Protection of Rights) Act*, *supra* note 6. The Act creates no right, capacity or procedure in respect of marriage, adoption, inheritance or succession. The words “marriage” and “adoption” appear only in the definition of “family” in S 2(c); “inheritance” and “succession” do not appear at all. Section 12 confers a right of residence in the natal household, which is not a family-law capacity.

⁸ *Supriyo alias Supriya Chakraborty v. Union of India*, 2023 SCC OnLine SC 1348, 2023 INSC 920 (India).

II. RESEARCH METHODOLOGY

The methodology adopted for the present research is qualitative doctrinal research. The findings rest principally on an assessment of the Articles of the Constitution, Acts of Parliament, judicial decisions, Law Commission reports, government orders, parliamentary debates and the scholarly literature on the subject. The primary legal sources include the Constitution of India, the Hindu Marriage Act 1955, the Special Marriage Act 1954, the Hindu Succession Act 1956, the Indian Succession Act 1925, the Juvenile Justice (Care and Protection of Children) Act 2015 and the Transgender Persons (Protection of Rights) Act 2019.

Judgments of the Supreme Court and of the High Courts furnish the basis for the doctrinal study. Secondary sources include peer-reviewed journal articles, books and reports of national and international agencies. The study is analytical in character. It examines how far the constitutional principles and the statutory provisions correspond, and identifies the doctrinal shortcomings that prevent transgender persons from attaining equality.

III. HISTORICAL EVOLUTION OF TRANSGENDER RECOGNITION IN INDIA

India has long recognised gender pluralism. Its ancient literature and Hindu texts refer to Shikhandi, to Ardhanarishvara and to Mohini, and in doing so attach significance to questions of gender identity. From the Mughal era, Hijras occupied positions of influence in royal courts, serving in administrative roles and as performers and attendants in royal households.

The marginalisation of transgender persons began in the British colonial period. The Criminal Tribes Act of 1871 recited in its preamble that it was expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs, and Part II of the Act dealt with eunuchs specifically, so that the community was treated as presumptively criminal. The Act went further and withdrew civil capacities: a registered person was prohibited from acting as guardian to a minor, from making a gift deed or a will, and from adopting a son.⁹ Colonial administration thus converted a recognised social role into a policed status, and the exclusion from guardianship, testamentary capacity and adoption prefigures the family law exclusions with which this paper is concerned.

⁹ Criminal Tribes Act, 1871, *supra* note 1. The preamble recited that it was expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs, and Part II, SS 24 to 31, dealt with eunuchs. As the Supreme Court recorded in *NALSA*, *supra* note 2, para. 16, the Act “also denuded the registered eunuchs of their civil rights by prohibiting them from acting as guardians to minors, from making a gift deed or a will, or from adopting a son”. See also *V. Vasanta Mogli v. State of Telangana*, W.P. (PIL) No. 44 of 2018 (Telangana H.C., July 6, 2023) (India), paras. 43–43.3 (describing Part II and striking down the Telangana Eunuchs Act, 1329 Fasli).

Although Article 14 of the Constitution introduced a guarantee of equality, no legislation secured the legal status of transgender persons for several decades. *NALSA* marked the legal breakthrough, the Supreme Court holding that the right to determine one's gender identity belongs to every citizen.

IV. CONSTITUTIONAL FRAMEWORK GOVERNING TRANSGENDER RIGHTS

The foundation of transgender rights under the Indian Constitution lies in a purposive construction of the fundamental rights chapter rather than in any express enumeration. Article 14 guarantees equality before the law and the equal protection of the laws to "any person", without limitation by sex or gender. The prohibition of discrimination in Article 15 operates in respect of "sex", a term judicially construed to encompass gender identity and expression and not merely biological classification. Article 16 applies the non-discrimination rule to public employment, while Article 19(1)(a) protects freedom of expression, including the expression of gender identity through dress and conduct. Article 21 has proved the most significant for transgender rights, since the right to life and personal liberty has been held to include dignity and the autonomy of self-determination.

The Supreme Court drew these provisions together in *NALSA* to hold that transgender persons are entitled to constitutional recognition of their gender identity without any precondition of medical or surgical intervention. *Puttaswamy* strengthened that position by holding privacy to be a fundamental right under Article 21, so that gender identity is an incident of personal autonomy rather than a matter for state definition. *Navtej Singh Johar* held that constitutional morality forbids the criminalisation of consensual same-sex conduct, majoritarian morality being no answer to individual dignity. In *Supriyo*, the Court held that queer persons are entitled to constitutional protection, and further held unanimously that transgender persons in heterosexual relationships may marry under the existing statutory framework, while declining to extend marriage to same-sex couples in the absence of legislation.¹⁰

These decisions have established a constitutional jurisprudence that is strong in principle but dependent on judge-made doctrine dispersed across several judgments rather than on statutory rights.

¹⁰ *Supriyo*, *supra* note 8 (Chandrachud, C.J., concluding that "[t]ransgender persons in heterosexual relationships have the right to marry under existing law including personal laws which regulate marriage"; Bhat, J., concluding that such persons "have the freedom and entitlement to marry under the existing statutory provisions").

V. MATRIMONIAL RIGHTS OF TRANSGENDER PERSONS: CONSTITUTIONAL RECOGNITION VERSUS STATUTORY EXCLUSION

Marriage in India is more than a legal or religious institution. It is a gateway to a range of further rights, including matrimonial obligations, rights in property, custody of children, legitimacy, decisions concerning health care and spousal retirement benefits. The denial of marriage therefore withholds not only the status itself but the civil rights that depend upon it.

Although the constitutional position of transgender persons was settled by *NALSA* in 2014, the marriage statutes retain a binary vocabulary. The position is more particular than it is sometimes made out to be. The Hindu Marriage Act 1955 opens in gender-neutral terms, permitting a marriage “between any two Hindus”, and most of the conditions in Section 5 speak only of the parties; it is the age condition in Section 5(iii) that introduces the “bridegroom” and the “bride”.¹¹ The Special Marriage Act 1954 is drafted in the same shape, permitting a marriage “between any two persons” while stating the age condition by reference to “the male” and “the female”.¹² The Indian Christian Marriage Act 1872 and the Parsi Marriage and Divorce Act 1936 proceed on the same binary assumption. The gendered terms are therefore narrow but load-bearing, since it is at the point of registration that they are applied.

In *NALSA* the Supreme Court treated the recognition of gender identity as a significant development in constitutional law, resting it on Articles 14, 15, 16, 19 and 21, and held that identity is not contingent on biological characteristics or on surgery. That constitutional rule has not been carried into the legislation governing marriage.

The gendered vocabulary of the Hindu Marriage Act 1955 has been a source of difficulty at the point of registration. The Madras High Court addressed the difficulty directly in *Arunkumar v. Inspector General of Registration*, holding that the expression “bride” in Section 5 of the Act includes a transwoman, so that a marriage solemnised between a man and a transwoman is valid and the Registrar is bound to register it.¹³ The decision shows that the gendered terms of the

¹¹ Hindu Marriage Act, No. 25 of 1955, S 5 (India). The opening words are gender-neutral (“A marriage may be solemnized between any two Hindus”), as are clauses (i), (ii), (iv) and (v), which speak of the “party” or “parties”. Only clause (iii) is gendered: it requires that “the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage”. The Act nowhere defines “bride” or “bridegroom”; the words appear only in SS 5(iii) and 7(2).

¹² Special Marriage Act, No. 43 of 1954, S 4 (India). The opening words permit a marriage “between any two persons”, and only clause (c) is gendered: “the male has completed the age of twenty-one years and the female the age of eighteen years”.

¹³ *Arunkumar v. Inspector General of Registration*, 2019 SCC OnLine Mad 8779, W.P. (MD) No. 4125 of 2019 (Mad. H.C., Madurai Bench, Apr. 22, 2019) (Swaminathan, J.) (India). At para. 15 the Court held that “the expression ‘bride’ occurring in Section 5 of the Hindu Marriage Act, 1955 will have to include within its meaning not only a woman but also a transwoman”, adding that “[i]t would also include an intersex person/transgender person who identifies herself as a woman. The only consideration is how the person perceives herself.” At para. 25

statute are capable of a construction consistent with *NALSA*, but it is a decision of a single High Court and the statutes themselves remain unamended.

The constitutional question was carried further in *Supriyo* in 2023, when the Supreme Court declined to recognise same-sex marriage on the view that such a reform must come from the legislature. The Court was clear, however, that transgender persons are entitled to equal constitutional rights, and that a transgender person in a heterosexual relationship may marry under the existing law in accordance with their recognised gender.

Where recognition is withheld in practice, transgender persons lose the consequences that follow from marital status, including maintenance, matrimonial remedies, spousal succession and pension rights. Read with *Shafin Jahan v. Asokan K.M.* and *Puttaswamy*, which locate the choice of a spouse within Article 21, the case for placing the matter beyond doubt by amendment of the marriage statutes is a strong one.¹⁴

VI. ADOPTION RIGHTS: PARENTHOOD BEYOND GENDER BINARIES

Gendered norms and the assumption of a heterosexual family form obstruct transgender persons who wish to become parents. Adoption in India, unlike marriage, is not governed by a single law. Hindus may adopt under the Hindu Adoptions and Maintenance Act 1956, while persons of other communities proceed under the Juvenile Justice (Care and Protection of Children) Act 2015. The Hindu Adoptions and Maintenance Act confers the capacity to take a child in adoption separately on a male Hindu and on a female Hindu, and although the provision governing a female Hindu was liberalised in 2010, the section continues to operate in binary terms and makes no provision for a person recognised in a third gender.¹⁵

The Juvenile Justice Act takes a secular approach to adoption. Section 57 states the eligibility of prospective adoptive parents principally in terms of capacity and suitability, and provides that a single or divorced person may also adopt.¹⁶ The absence of any clause excluding transgender applicants gives the legislation an inclusive appearance. The appearance is only partial. Both the section and the Adoption Regulations made under the Act allocate applicants to the categories of couple, single male and single female, and a single male is not eligible to

the Court quashed the impugned orders and directed the Registrar to register the marriage.

¹⁴ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368 (India); *Puttaswamy*, *supra* note 4.

¹⁵ Hindu Adoptions and Maintenance Act, No. 78 of 1956, SS 7–8 (India) (capacity to take in adoption conferred separately on “any male Hindu” and “any female Hindu”).

¹⁶ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, S 57 (India). Section 57(1) requires prospective adoptive parents to be “physically fit, financially sound, mentally alert and highly motivated to adopt a child”; S 57(2) requires the consent of both spouses in the case of a couple; S 57(3) provides that “[a] single or divorced person can also adopt”; and S 57(4) provides that “[a] single male is not eligible to adopt a girl child”. The section was not amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, No. 23 of 2021 (India).

adopt a girl child.¹⁷ Neither instrument mentions transgender persons at all. The scheme therefore neither permits nor bars adoption by a transgender person: it is silent, and leaves an applicant who is recognised in a third gender without a category to occupy. In practice, the administration of the scheme has often defaulted to heteronormative assumptions about family, marital status and fitness for parenthood, so that the obstacle to adoption is administrative discretion operating in a statutory silence rather than an express legal prohibition.

The practical exclusion of transgender persons from adoption has constitutional implications. In *NALSA*, the Supreme Court recognised transgender persons as citizens entitled to the full range of constitutional rights. If dignity embraces the freedom to determine one's identity and to lead a meaningful family life, it must also extend to the opportunity to become a parent.

International instruments support that reading. The Yogyakarta Principles state that everyone has the right to found a family regardless of sexual orientation or gender identity, and call on States to secure that right, including through access to adoption, without discrimination.¹⁸ Article 21 of the Constitution similarly admits of a broad construction of the right to make decisions about family life.

Empirical research also tells against the conventional objections to parenting by sexual and gender minorities. The available psychological research indicates that the wellbeing of children turns on the stability and security of the parenting they receive rather than on the sex or sexual orientation of the parent.^{19,20} The American Academy of Pediatrics reached the same conclusion on a review of the literature.²¹ That body of work concerns the children of lesbian and gay parents, and there is at present considerably less research on parenting by transgender persons, so it does not establish a proposition specific to transgender parents. What it does establish is

¹⁷ Adoption Regulations, 2022, G.S.R. 726(E) (Sept. 23, 2022), Gazette of India, Extraordinary, pt. II sec. 3(i), reg. 5(2) (India) (requiring the consent of both spouses “in case of a married couple”, providing that “a single female can adopt a child of any gender”, and that “a single male shall not be eligible to adopt a girl child”). The Regulations supersede the Adoption Regulations, 2017. Neither the Act nor the Regulations refers to transgender persons.

¹⁸ *The Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* princ. 24 (Mar. 2007) (“Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.”). The Principles call on States to secure that right “including through access to adoption or assisted procreation”. They are not a treaty and bind no State.

¹⁹ AM. PSYCHOLOGICAL ASS'N, LESBIAN AND GAY PARENTING (2005).

²⁰ Susan Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 DEVELOPMENTAL PSYCHOL. 20 (2003).

²¹ Ellen C. Perrin & Benjamin S. Siegel, *Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian*, 131 PEDIATRICS e1374 (2013).

that the assumption on which exclusion has conventionally rested, namely that a departure from the heterosexual parental form is in itself harmful to children, is unsupported by the evidence.²²

The Indian judiciary has likewise moved towards a child-centred rather than a morality-based approach. In *ABC v. State (NCT of Delhi)*, the Supreme Court upheld the claim of an unwed mother to be appointed guardian of her child without notice to the putative father.²³ The case did not concern transgender persons, but it indicates a shift in constitutional outlook from the traditional family form towards functional parenting.

The absence of express recognition nevertheless produces uncertainty in administration. Prospective transgender parents encounter inconsistency between adoption agencies, delay in verification and refusal of permission notwithstanding that they are legally free to adopt. Such inconsistency is difficult to reconcile with Article 14, since similarly placed applicants are treated differently according to the views of individual decision-makers.

VII. INHERITANCE AND SUCCESSION RIGHTS: BRIDGING THE LEGISLATIVE GAP

Inheritance and succession govern the transfer of property between generations. Although these laws have developed over many years, they contain gaps, ambiguities and inconsistencies that do not answer to the present dynamics of society, and that generate disputes among the very persons for whom they were designed.

The difficulty for transgender persons is structural. The Hindu Succession Act 1956 does not provide a single scheme of intestate devolution. It provides one scheme for the property of a male Hindu dying intestate and a separate scheme for the property of a female Hindu, each with its own order of heirs, and no third or residual track.²⁴ A person whose gender is recorded as transgender under the certificate procedure of the 2019 Act therefore has no evident place in either scheme, whether as the propositus or as an heir. The Indian Succession Act 1925 uses a similar vocabulary of husband, wife and widow, although the asymmetry there is largely one of drafting, since that Act expressly gives a surviving husband the same rights as a widow.²⁵ It is

²² FIONA TASKER & SUSAN GOLOMBOK, *GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT* (1997).

²³ *ABC v. State (NCT of Delhi)*, (2015) 10 SCC 1 (India) (guardianship application by an unwed mother under the Guardians and Wards Act, No. 8 of 1890 (India)).

²⁴ Hindu Succession Act, No. 30 of 1956, SS 8, 15 (India). Section 8 governs “the property of a male Hindu dying intestate”, devolving first upon the Class I heirs in the Schedule; S 15, read with S 16, governs “the property of a female Hindu dying intestate” in a different order. There is no third or residual track. Section 3(1)(f) defines an “heir” as “any person, male or female, who is entitled to succeed to the property of an intestate under this Act”. The words “transgender” and “eunuch” do not appear in the Act.

²⁵ Indian Succession Act, No. 39 of 1925, SS 32–35 (India). Section 32 provides that property devolves “upon the wife or husband, or upon those who are of the kindred of the deceased”, and SS 33 and 33A are framed by reference to the “widow”. The gendering here is largely one of drafting: S 35 provides that “[a] husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband’s

the Hindu Succession Act, running two substantively different schemes, that presents the sharper difficulty.

The question is not merely theoretical, and it has been raised. In *Sweetly (Eunuch) v. General Public*, the Himachal Pradesh High Court framed the issue as what the mode of succession of a transgender person should be, but resolved the appeal by holding that the Hindu Succession Act ought not to have been applied at all in the absence of any religion being pleaded, succession being governed instead by Guru-Chela custom.²⁶ The decision therefore avoids the question rather than answering it, and no reported decision traced in the course of this study determines whether a transgender person takes under Section 8 or Section 15. The Transgender Persons (Protection of Rights) Act 2019 does not address the matter either, and provides expressly that it is in addition to and not in derogation of other laws.

That structural gap sits within a wider set of deficiencies. Most succession and inheritance laws were designed to govern traditional families consisting of a married couple and their biological children. Contemporary society includes blended families, unmarried couples living together, adopted children, stepchildren and families holding assets in more than one jurisdiction. Unmarried partners, for example, take nothing on the death of the other.

Gendered gaps also persist. In some regions, customary and religious rules of inheritance give daughters, widows or other female members a smaller share than male heirs, or exclude women from immovable property and land altogether. This is particularly marked in agricultural economies, where land is not merely an economic resource but a source of standing. A further gap concerns intangible digital property, such as digital assets, online accounts and intellectual property in digital form, which was not contemplated when much of the law of succession was framed.

Several routes to reform are available. A uniform law of succession applying without regard to the religion or custom of the parties is one, though the subject is a delicate one. A second is to amend the definitions of spouse and dependant so as to include couples who cohabit as spouses, and to state expressly how the property of a person recognised in a third gender devolves and how such a person takes as an heir. Securing gender equality in intestate succession is a further

property". The Part does not apply to Hindus, Muslims, Buddhists, Sikhs or Jains (S 29(1)) or to Parsis (S 31).

²⁶ *Sweetly (Eunuch) v. General Public*, R.S.A. No. 17 of 2016 (H.P. H.C., June 22, 2016) (Chauhan, J.) (India). The Court framed the question as "what would be the mode of succession of an eunuch i.e. transgender, in absence of any religion being professed", and answered it by holding that the courts below had "gravely erred in concluding that the plaintiff in matters of succession was governed by the Hindu Succession Act and not by the custom", succession being governed instead by Guru-Chela custom. The decision therefore routes around the Act rather than resolving the position of a transgender person under S 8 or S 15.

step, given the persistent injustice in relation to land. Legislators might also make specific provision for digital assets as heritable property.

Judicial guidance and periodic legislative review have a part to play as well, by allowing established principles to be applied to new social patterns without waiting for comprehensive reform. Public legal education can encourage the use of wills and estate planning as a proactive measure rather than reliance on the default rules of intestacy.

Bridging the legislative gap in inheritance and succession is therefore a difficult undertaking, but the difficulty lies in the breadth of the reform required rather than in any doubt about its necessity.

VIII. CONCLUSION

The purpose of this study was to determine whether the family laws of India have developed alongside the constitutional protection extended to transgender persons by *NALSA*, *Puttaswamy* and *Navtej Singh Johar*. The material examined in relation to matrimonial, adoption and succession law discloses a clear and troubling pattern. Constitutional doctrine has moved decisively towards the recognition of gender identity as an aspect of dignity and self-determination, while the legal structure governing family relationships remains rooted in a binary and heterosexual model.

In matrimonial law, the Hindu Marriage Act, the Special Marriage Act and the other personal laws continue to rely on gender-specific terms such as “husband”, “bride” and “bridegroom”, and no amendment has followed either the recognition of gender identity in *NALSA* or the holding in *Supriyo* that transgender persons in heterosexual relationships may marry under the existing law. The right therefore rests on judicial construction, as in *Arunkumar*, rather than on the text of the statutes. In adoption, the juxtaposition of the Hindu Adoptions and Maintenance Act and the more liberal Juvenile Justice Act produces not an outright bar but an administrative discretion informed by assumptions about heterosexual parenting, which operates unequally between similarly placed applicants. In succession, legal frameworks built on marriage and biological descent leave transgender persons without a settled position, as they leave unmarried partners, blended families and holders of digital property.

Taken together, these findings make good the central argument of the paper: that there exists a dual regime of citizenship, under which members of the LGBTQIA+ community are treated as equal citizens in the constitutional dimension while being excluded from the ordinary legal framework of the family. The Transgender Persons (Protection of Rights) Act 2019, although anti-discriminatory in its purpose, does not bridge the gap between constitutional guarantee and

statutory silence, because it does not amend the law of marriage, adoption or succession. Its certification procedure sits awkwardly with *NALSA* in a further respect. While Section 4(2) confers a right to self-perceived gender identity, and the Rules of 2020 direct that a certificate of identity as a transgender person issue on a self-declaration without medical or physical examination, a revised certificate recording the gender as male or female is available under Section 7 only to a person who has undergone surgery and can produce a certificate to that effect from the medical institution concerned.^{27,28} Self-identification is thus unqualified for the third gender and conditional for the binary genders.²⁹

This is not a case of judicial unwillingness to protect constitutional rights, for the courts have gone as far as the judicial function permits. It is rather an instance of legislative delay, as *Supriyo* itself illustrates. Closing the gap between recognition and rights, which this paper has sought to map, requires amendment of the statutes, and Indian family law is in urgent need of it.

²⁷ *Transgender Persons (Protection of Rights) Act*, *supra* note 6, SS 4–7. Section 4(2) confers “a right to self-perceived gender identity”; S 5 requires an application to the District Magistrate; S 6 empowers the District Magistrate to issue a certificate “indicating the gender of such person as transgender”; and S 7 permits a revised certificate recording the gender as male or female only where the person has “undergone surgery to change gender” and produces “a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery”.

²⁸ *Transgender Persons (Protection of Rights) Rules, 2020*, G.S.R. 592(E) (Sept. 25, 2020), *Gazette of India*, Extraordinary, pt. II sec. 3(i) (Sept. 29, 2020), r. 4(1) (the District Magistrate is to process the application on the applicant’s affidavit in Form-2 “without any medical or physical examination”); r. 6(2) (verification of the medical certificate “shall not include any physical examination”).

²⁹ The *Transgender Persons (Protection of Rights) Amendment Bill, 2026* (Bill No. 79 of 2026), which would omit S 4(2) and route certification through a medical board, was introduced in the Lok Sabha on 13 March 2026 and passed by the Lok Sabha on 24 March 2026 and the Rajya Sabha on 25 March 2026. The statement of the law in this paper is that of the principal Act as in force.