

From Nalsa To Supriyo: Shifting Stance Of Transgender Personal Rights In Indian Law

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ABSTRACT

This paper provides a jurisprudential analysis of the evolving legal status of transgender persons in India, focusing on the shifting judicial stance from proactive recognition to judicial restraint. The analysis begins with a critical examination of the landmark judgment in *National Legal Services Authority (NALSA) v. Union of India*, which established a constitutional basis for transgender identity, affirming the rights to self-determination and dignity. It argues that this decision served as a paradigm shift, although its spirit was not fully realized in the subsequent Transgender Persons (Protection of Rights) Act, 2019, which introduced restrictive bureaucratic and medicalized hurdles. The paper then conducts a comprehensive analysis of the recent *Supriyo Chakrabarty v. Union of India* judgment (2023), which, while affirming the right of transgender persons to marry under existing heterosexual laws, denied a fundamental right to marry for queer persons, marking a jurisprudential turn towards legislative deference. The research highlights the persistent gap between legal doctrine and social reality, particularly in the realm of personal rights such as marriage, adoption, and inheritance, which remain governed by a heteronormative framework. The paper concludes with a roadmap for legislative and administrative reforms to align the law with the constitutional principles of equality and non-discrimination.

Keywords: Transgender Rights, NALSA v. Union of India, Supriyo Chakrabarty v. Union of India, same-sex marriage

INTRODUCTION

The journey of transgender personal rights in Indian jurisprudence is marked by a significant and, at times, contradictory evolution. The judiciary has played a critical role in recognizing and advancing transgender rights in India and around the world, serving as an important agency in interpreting and implementing legislative safeguards for transgender people. In India, there are several historic cases that demonstrate the judiciary's dedication to protecting the rights of transgender people. The watershed moment in the Indian juridical history was when the Supreme Court of India recognized transgender people as a 'third gender' in the landmark decision¹, confirming that the fundamental rights entrenched in the Indian Constitution are available equally to them.

This legal narrative begins with a foundational moment of expansive judicial activism in the landmark ruling of *National Legal Services Authority (NALSA) v. Union of India* (referred to as *NALSA* for brevity),² which constitutionally affirmed the dignity and self-identified gender of transgender persons. However, this rights-affirming trajectory has since encountered a more nuanced and restrained judicial approach, as exemplified by the recent *Supriyo Chakrabarty v. Union of India*³ (referred to as *Supriyo* for brevity) judgment. This article provides a jurisprudential analysis of this shifting stance, a trajectory that mirrors a deeper socio-legal enigma—the persistent gap between legal doctrine and the contemporary reality of the transgender community. By examining the transition from the proactive *NALSA* verdict to the deferred approach of

¹ *Infra* note 2.

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

³ *Supriyo Chakrabarty v. Union of India*, 2023 INSC 920

Supriyo, this study highlights the ongoing struggle to translate fundamental identity rights into substantive personal rights, particularly those related to family, marriage, and personal autonomy.

This article will first provide a detailed literature review of the historical and social context of the transgender community in India, followed by an analysis of foundational judicial pronouncements and legislative responses. The core of the paper will be a forensic analysis of the *Supriyo* judgment and its differential implications for transgender persons. Finally, it will conclude with a set of concrete suggestions to bridge the persistent gap between legal doctrine and lived reality, offering a roadmap for a more inclusive and effective legal framework.

Literature Review

The available literature reviewed for the purpose of the article with respect to transgender individuals and their rights includes various books, articles and research papers in different periodicals. A brief review of the same is given below:

Venkatesan Chakrapani & Arvind Narrain (2012)⁴ considers that the road plan that had been established in the past for the future, that is the work undertaken before any legal recognition and assertive advocacy of the rights of transgender community surfaced, provides a tacit picture of the current status of the rights of the transgender community. It is postulated that, a significant number of members of the society appear to have the misconception that social security benefits can be equated with legal recognition, while others are of the opinion that receiving social security benefits and obtaining legal recognition as a woman are essentially unrelated to one another. The report aims to investigate the global points of reference on transgender rights in order to conceive the most effective system for legitimately acknowledging the sex character of transgender individuals in India.

Viji Athreye (2015)⁵ acknowledges the recognition of the judgement delivered by the honourable Supreme Court that transgender individuals are now considered to be of the "third gender" category and are therefore eligible for all of the safeguards that are outlined in the Indian Constitution. The report also recognises transgender individuals who have proved their contribution to society by putting in the effort and demonstrating their capabilities. As a result, for transgender persons to be able to stand on their own and no longer be a burden to their families or society, the government must establish laws and legislation that assist transgender individuals.

Akanksha Mishra (2016)⁶ investigates the significance of the transgender persons in the context of historical and fantastical events, as well as the minimisation that began during the British era. Indian mythology offers certain glimpses into the perceptions of the past as well as contemporary perspectives highlighting the contrasting status of the community at different times, showing that the transgender individuals who are frequently slandered were once adored and appreciated by the society. Specific references to the transgender people can also be trace in the narratives from the Mahabharata and Ramayana. The societal equilibrium began to erode only during the eighteenth century under the British rule, leading to their marginalization subject to segregation in the workplace, in jobs, in public areas, and in administrations such as health care and education.

Sakshi Parashar (2017)⁷ provides support for her investigation by utilising the NALSA⁸ ruling as a basis. The resolution of this conflict depends on whether the Supreme Court's intent in the NALSA judgment will be overturned by the implementation of reservation policies. The fundamental issue is that granting reservations to transgender individuals within the OBC category for economic benefits would inherently demand the application of the "creamy layer" principle, which was designed to correct historical unfairness. There is another issue of utmost importance regarding the booking of transgender people, which exposes them to openly posted restrictions that restrict their arrangement either on strategy or on clinical grounds. Additionally, the research delves into the scope of applying the principle of 'creamy layer' to transgender individuals whenever they are provided reservation benefits as indigenous people of colour.

Arvind Narrain (2018)⁹ analyzes the challenges transgender people face in India regarding their inheritance rights. The paper examines the current legal frameworks, judicial rulings, and the need for

⁴ Venkatesan Chakrapani & Arvind Narrain, "Legal Recognition of Gender Identity of Transgender People in India: Current Situation and Potential Options", *United Nations Development Program*, 2012.

⁵ Viji Athreye, "The Life of Transgenders in India" (2015), available at: <https://www.mapsofindia.com/my-india/government/the-life-of-transgenders> (last visited on January 9, 2023).

⁶ Akanksha Mishra, "Third Gender Rights: The Battle for Equality" 5 *Christ University Law Journal* 9-21(2016).

⁷ Sakshi Parashar, "Inclusion of Transgender Community within Socially and Educationally Backward Classes: Examining the Deeper Concerns" 2 *Indian Law Institute Law Review* 105-123 (2017), available at: <https://ili.ac.in/pdf/sakshi.pdf> (last visited on November 2, 2023).

⁸ *Supra* note 2.

⁹ Arvind Narrain, *Vacillating between empathy and contempt: the Indian judiciary and LGBT rights*, (2018) available at: <https://www.jstor.org/stable/j.ctv5132j6.9> (last visited on April 6, 2023).

legislative reform to ensure equitable access to property for all genders. The author argues that the current legal framework in India is flawed due to its rigid binary gender framework, which requires a fundamental shift in the legal paradigm to ensure social justice and equality for all.

Angela R. Bazzi, Melissa A. Clark, et.al (2018)¹⁰ revealed that the legal rights of transgender persons in India are being planned for the future, and that the right to marriage for people of the same sex has now become a part of the international legal picture. However, in India, there are still civil rules that impact gay rights and the rights of men and women. Human rights are the fundamental rights of every human being, regardless of culture or societal norms. In order to provide access to health services for transgender people, many of them are working for their recognition, and many people are working to get principles codified into policies and laws in both international and municipal law. Human rights are the fundamental rights of every human being.

Prachi Singh (2019)¹¹ clarifies the legal rights that are afforded to transgender individuals. The Transgender Persons (Protection of Rights) Bill, which was introduced in 2014 and was intended to be specifically for transgender people, has been the subject of debate ever since it was first introduced. This is due to the fact that the term "transgender person" has been defined using phrases such as neither wholly male nor wholly female. Furthermore, the bill states that a person who is recognised as transgender would have the right to self-perceived gender identity. However, the bill does not include any provision for the enforcement of such rights. Furthermore, it is extremely challenging to deal summarize with a transgender person under personal and criminal laws that only recognise both male and female genders. In addition to this, the punishment for horrific crimes such as rape is only six months to two years for the person who committed the crime, however the punishment for a woman is sentenced to life in prison. It would appear that the law itself is not progressive because it reflects the disparity that exists between the sexes. According to the Supreme Court's recommendation, the Act does not include any provisions for transgender people to be given preference in employment opportunities. Conclusively, the author argues that the lacunas in the Act indicate that it does not genuinely benefit the community it aims to protect, thus reflecting a continued struggle for true legal recognition and social justice for transgender individuals in India.

Mini Muringatheri (2020)¹² discusses the right to adoption for transgender people in India, have raised yet another significant topic that has to be addressed. In her criticism of the Bill of 2019 on the preservation of the rights of transgender persons, she stated that the bill not only failed to accomplish its intended aim, but it also stripped transgender individuals of the rights that they had previously been granted. Consequently, this brought to light the necessity of revisiting the Act and enacting actual legislation, rather than only circulating a paper that seems to be the Act.

Balaguru Arumugam (2023)¹³ examines the issue of 'right to marry' with respect to the transgender community. The author reflects that the current state of affairs regarding the recognition of transgender marriage in India is in direct opposition to the legitimacy of marriages between people of the same gender. A comprehensive analysis and investigation of the protection of transgender rights and the recognition of their weddings is the purpose of this research paper.

OBJECTIVE AND SCOPE

This paper pivots around the assertion of the Indian judiciary demonstrating a significant shift in its approach—from an expansive and proactive stance in cases like *National Legal Services Authority (NALSA) v. Union of India*¹⁴ to a more restrained and deferential posture in the *Supriyo Chakrabarty v. Union of India*¹⁵ judgment; while being a key driver of legal recognition for transgender persons.

This jurisprudential shift, particularly concerning relational rights, has created a new set of challenges and contradictions that this paper will critically analyse. By examining this transition, the paper seeks to highlight the ongoing struggle to align legal doctrine with the lived experiences of transgender individuals in India, and to bridge the gap between abstract rights and their tangible application in daily life.

¹⁰ Angela R. Bazzi, Melissa A. Clark, et.al, "Resilience Among Breast Cancer Survivors of Different Sexual Orientations." 5 *LGBT Health* 295-302 (2018), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC6913098/> (last visited on December 6, 2023).

¹¹ Prachi Singh, "Why is transgender community unhappy with Trans Persons Bill?", available at: <https://www.downtoearth.org.in/blog/governance/why-is-transgender-community-unhappy-with-trans-persons-bill--67158> (last visited on April 6, 2023).

¹² Mini Muringatheri, "Transgenders Raise the Adoption Question", *The Hindu*, Jan. 5, 2020, available at: <https://www.thehindu.com/news/national/kerala/transgenders-raise-the-adoptionquestion/article30481170.ece> (last visited on April 12, 2023).

¹³ Balaguru Arumugam, "A Study on The Recognition of Transgender Marriages in India", *Shodhak: A Journal of Historical Research* (2023) available at: <https://ssrn.com/abstract=4817920> (last visited on December 28, 2023).

¹⁴ *Supra* note 2.

¹⁵ *Supra* note 3.

MAPPING THE SOCIO-LEGAL TERRAIN

Transgender is a phrase that "encompasses the whole spectrum" of gender variance. The term does not segregate the various subgroups that are present within a large and varied collection of communities; rather, it groups them together into a single category. Anyone challenging the "boundaries of sex and gender" are included in the category of "transgender." This includes transsexuals, transvestites, crossdressers, drag queens and drag kings, butch and femme lesbians, feminine gay men, intersex people, bigendered people, and other individuals who "challenge the boundaries of sex and gender".¹⁶

The transgender community in India, particularly the *hijras*, has a long and visible history, with their presence recorded in ancient mythological and religious texts.¹⁷ The concept of *tritiya prakriti* (third nature) in Hindu mythology and Vedic literature highlights a traditional understanding of gender beyond the male-female binary. These individuals were often seen as a neutral gender, believed to possess the power to confer blessings on auspicious occasions. However, this traditional acceptance was dismantled during the colonial era, as the British administration sought to impose a Western, heteronormative framework. Laws like Section 377 of the Indian Penal Code were used to criminalize non-procreational, non-heterosexual relationships, systematically pushing the transgender community to the margins of society and labelling their existence as "against the law of nature". This colonial legacy remains a significant contributor to the present-day social stigma and legal challenges faced by the community.¹⁸

Despite the rich historical context, the transgender community in modern India faces multi-layered forms of violence and profound systemic marginalization. Reports and studies consistently document high rates of social exclusion, abuse, and discrimination in virtually every sphere of life. A 2017 study commissioned by India's National Human Rights Commission (NHRC) found that only 6% of transgender individuals were formally employed in the private or NGO sector, with a significant portion forced into begging (11%) or sex work (5%) for survival. This economic disenfranchisement is compounded by a lack of educational opportunities, with roughly half of the community never attending school. Furthermore, the community faces severe health disparities; in 2021, the HIV prevalence among transgender people was 3.8%, nearly 20 times the national average. These socio-economic data points underscore the tangible reality of the "socio-legal enigma," where legal and constitutional protections are yet to translate into substantive improvements in the lives of the most vulnerable.¹⁹

The path to legal recognition for transgender rights in India has been primarily judicial. The Supreme Court's landmark ruling in *NALSA v. Union of India* (2014) laid the foundation for recognizing 'transgender' as a 'third gender'. This was a transformative moment that set the stage for subsequent legislative action. Following the *NALSA* judgment, the Indian Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which aimed to codify the rights recognized by the court. However, the relationship between judicial directives and legislative responses has been complex, often demonstrating a disconnect. As will be discussed in detail, this non-linear progression has led to a situation where legal pronouncements have not always been effectively or fully implemented, perpetuating the gap between the law as written and the law as experienced.

FOUNDATIONAL JURISPRUDENCE: THE NALSA JUDGMENT AS A PARADIGM SHIFT

The right to equality has been the foundational basis for the development of the law on transgender rights in India, as the landscape of transgender rights has been significantly shaped by Court rulings on issues of equality and non-discrimination based on an individual's gender identity. The decision of the Supreme Court marked a watershed moment for equality jurisprudence on transgender rights in India in the case of *National Legal Services Authority (NALSA) v. Union of India*.²⁰ In this case, the Court granted legal recognition to transgender persons and held that the right to self-determine one's gender identity is a key facet of an individual's right to equality and non-discrimination under Articles 14 and 15 of the Constitution.²¹

The core of the judgment lies in its progressive interpretation of the Indian Constitution's fundamental rights. The court held that the term "person" in Article 14, which guarantees equality before the law, is not restricted to the male-female binary and encompasses transgender individuals, thereby affording them equal protection. Similarly, the court broadened the scope of "sex" in Articles 15 and 16, which prohibit discrimination, to include "gender identity". This crucial re-interpretation provided a constitutional basis to challenge discrimination

¹⁶ Susan Stryker, *Transgender History: The Root of Today's Revolution* (Seal Press, Cypress, 2nd edn., 2017).

¹⁷ K. Visweswara Rao & K. Nikhita, "Transgender Persons in India: Problems, Policies and Interventions", *DSNLU Journal of Social Sciences* (2023), available at: <https://dsnl.ac.in/storage/2023/02/12-Transgender-Persons-in-India-Problems-Policies-and-Interventions.pdf> (last visited on December 30, 2023).

¹⁸ Arunima Bali, "Case Commentary on Supriya Chakraborty and Anr. V. Union of India" (2023), available at: <https://ijalr.in/volume-4-issue-2/case-commentary-on-supriya-chakraborty-and-anr-v-union-of-india-arunima-bali/> (last visited on December 21, 2023).

¹⁹ "Beyond transgender visibility: India works toward employment equity" (2023), available at: https://www.unaids.org/en/resources/presscentre/featurestories/2023/march/20230331_beyond-transgender-visibility-india (last visited on December 22, 2023).

²⁰ *Supra* note 2.

²¹ *National Legal Services Authority (NALSA) v. Union of India*, Writ Petition (C) No. 604 of 2013.

based on gender identity. The court's ruling on the right to freedom of expression (Article 19(1)(a)) was equally significant. It held that this right "includes one's right to expression of his self-identified gender," which could be conveyed through dress, behavior, or other forms of presentation. Most importantly, the court declared that the right to dignity and personal liberty under Article 21 includes the right of an individual to self-determination of their gender. The court's directions were wide-ranging and proactive. It directed the government to legally recognize a 'third gender,' affirm the right to self-perceived gender identity without requiring Sex Reassignment Surgery (SRS), and recommended reservations for transgender persons in education and jobs.²²

Where NALSA judgement laid the foundation of recognition for transgender rights in India, in 2017, the Supreme Court held that the right to privacy was a constitutionally protected right. Relying on the above decision, the Court held that an individual has the right to decisional autonomy over personal and intimate matters including one's sexual orientation, gender identity and choice of partner, among other personal matters.²³ Thus, the apex court, in its expansive and rights-affirming approach, became the first in the country to provide constitutional recognition to transgender persons and their gender identity.

In response to the NALSA judgment²⁴, the Indian Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, with a purpose to recognize the identity of transgender persons and prohibit discrimination in various fields, including education, employment, healthcare, and property rights. This landmark legislation was enacted to provide for the protection of rights, welfare, and other related matters concerning transgender individuals in India.²⁵

THE NUANCE OF PERSONAL RIGHTS: MARRIAGE, ADOPTION, AND FAMILY

The recent verdict in *Supriyo Chakrabarty v. Union of India*²⁶ (referred to as Supriyo for brevity) represents a crucial juncture in the judicial recognition of personal rights for the LGBTQIA+ community. The petitioners, two same-sex couples, argued for the legal recognition of same-sex marriage, contending that the non-recognition of their unions violated their fundamental rights to equality, dignity, and expression. They drew heavily on the precedents of NALSA²⁷ and *Navtej Singh Johar v. Union of India*²⁸, which had established the constitutional protection of gender identity and decriminalized homosexuality respectively. The Union of India, in opposition, argued that marriage is a matter of legislative policy and that the court should not overstep its institutional boundaries, citing the separation of powers doctrine. While writing four different opinions, the constitutional bench of the honourable apex Court decided a bunch of issues, relating to the personal rights of the transgender persons, some unanimously while the others by majority making it a mixed bag of outcomes.²⁹ With respect to the most crucial issue regarding queer person's right to marriage, the five-judge bench, in a unanimous decision, held that there is no fundamental right to marry under the Indian Constitution and the same being merely a statutory right, thereby is conferred by the legislature. By holding that the court could not compel the Parliament to enact a law or to create social or legal status for same-sex marriages, the apex court pushed the ball recognizing the transgender persons' right to marry, in the court of the Legislature. Further, highlighting the principle of 'separation of powers', it has been observed that though the "*court may feel the wisdom of a measure or norm that is lacking*", it must be careful and not breach the preambular principles by encroaching the boundaries of its envisaged role.³⁰

Further with respect to the scope of reading the queer marriages into the ambit of the Special Marriage Act, 1954 (referred to as SMA for brevity), the honourable court has unanimously rejected the argument of giving a 'gender neutral interpretation' to the SMA to include the union of homosexual couples, since that would, as observed by the court, would "in effect be redrafting the law(s) in the garb of reading words into the provisions", essentially violating the *doctrine of separation of powers* and also tinkering with the objective of the SMA. Nonetheless, marriage between transgender persons in a heterosexual relationship, has been held to be a legally possible entitlement under the existing set of laws as result of their 'harmonious interpretation'.³¹

Another significant issue that came before the honourable bench was whether the queer couples have a right under the current Indian law to enter into a "civil union". In other words, whether a "civil union" has any legal

²² "ICJ Briefing Paper Implementation of the NALSA Decision" available at: <https://www.icj.org/wp-content/uploads/2016/04/India-QA-NALSA-Advocacy-Analysis-brief-2016-ENG.pdf> (last visited on December 20, 2023).

²³ *Retd. Justice K S Puttaswamy v. Union of India*, (2017) 10 SCC 1.

²⁴ *Supra* note 2.

²⁵ G.B. Reddy and Baglekar Akash Kumar, *Transgender Persons and The Law: A Commentary* 9 (Eastern Book Company, Lucknow, 1st edn., 2022).

²⁶ *Supra* note 3.

²⁷ *Supra* note 2.

²⁸ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

²⁹ "Plea for Marriage Equality" (2023), available at: <https://www.scobserver.in/cases/plea-for-marriage-equality/> (last visited on December 18, 2023).

³⁰ *Supra* note 3.

³¹ *Ibid*.

standing as a legal institution in India. Although, the dissenting judgments read the right to form such unions as apart of the fundamental right envisaged by the Constitution of India, the majority held them to be a 'creation of new universe of rights and obligations' leading to violation of principle of separation of powers.³² The court has thereby created a distinction between the right to choose a partner, which is a fundamental right as per the precedents relied upon by the petitioners like *Shafin Jahan*³³ and *Shakti Vahini*³⁴ case, and the statutory right to marry. In effect, a transgender person's right to marry is now contingent on their partner's gender, which is a departure from the gender-neutral principles established in *NALSA*³⁵. This, in a way, creates a new paradox, where a transgender person's identity is constitutionally protected, but their relational autonomy is not, unless it conforms to the male-female binary.

This judgment marks a significant jurisprudential shift. The court, which had previously adopted a proactive stance to expand fundamental rights for a marginalized community in *NALSA*,³⁶ reverted to a more restrained and deferential position. By deferring to Parliament, the court passed the responsibility for relational rights to a legislature that has demonstrated reluctance and contradictory stances on the matter. This indicates that while the judiciary is willing to protect the *being* of a person (their identity and expression), it is reluctant to legislate on their *relations* (marriage and family), leaving a critical aspect of personal rights unaddressed. The *Supriyo* judgment,³⁷ therefore, creates a new layer of the "socio-legal enigma," where legal rights are available but are conditional and often fail to match the lived realities and diverse relationships within the community.

THE NUANCE OF PERSONAL RIGHTS: BEYOND MARRIAGE

While the *Supriyo* judgment addressed the right to marry, it also brought to light other significant gaps in personal rights, particularly in the areas of adoption, surrogacy, and inheritance.

• **Adoption:** While a single transgender person can legally adopt a child, the law is not inclusive of same-sex couples seeking to adopt jointly. The petitioners in the *Supriyo*³⁸ case had sought to extend adoption rights to all sexual and gender minority individuals. The challenge hereunder was against the Regulation 5(3) of the 2020 of the Central Adoption Resource Authority Guidelines which restricts adoption to single individuals and married couples who are in a *stable* marital relationship for two years, as well as, the Section 57(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), that mandated that both spouses had to consent for adoption. Although, treating marriage as 'yardstick' to classify stable couples by these provisions has been highlighted to be discriminatory by the minority judgment, the majority verdict has held 'marriage' to be an institution from which protection and entitlements under an adoption flow. Thus, again pushing the ball into the court of the legislature, the State has been obliged to create legal frameworks to give legal recognition to the queer couples.³⁹

• **Surrogacy:** Current Indian law, specifically the Surrogacy (Regulation) Act, 2021, only permits altruistic surrogacy for legally married, heterosexual Indian couples who have been together for at least five years. This explicitly prohibits unmarried individuals, single men, and same-sex couples from using surrogacy. The law's gender restrictions reflect existing legal and cultural standards that are not inclusive of queer relationships.

• **Inheritance:** The issue of inheritance rights for transgender individuals remains ambiguous under Indian law. Existing personal laws, such as the Hindu Succession Act and Muslim Personal Law, are based on a binary gender paradigm and do not explicitly recognize transgender persons as heirs. The Transgender Persons (Protection of Rights) Act, 2019, while addressing the right to property, is silent on inheritance rights, leaving transgender individuals in a vulnerable position where they may be forced to conform to their assigned gender to claim their share of family property.⁴⁰ The NHRC Advisory on transgender welfare has recommended that a single transgender child of a deceased government employee be treated as an unmarried daughter for family pension purposes and that transgender persons should be allowed to inherit ancestral agricultural land, highlighting these persistent gaps in legal rights.⁴¹

These lacunae in the legal framework for adoption, surrogacy, and inheritance underscore the central argument that while the judiciary has made strides in granting identity rights, the legislature has yet to catch

³² *Ibid.*

³³ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

³⁴ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

³⁵ *Supra* note 2.

³⁶ *Ibid.*

³⁷ *Supra* note 3.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Sulekha Watharkar, A Comparative Study on the Effect of Inheritance Rights Through the Lens of the Transgender Community, *ILE Law Letter* (2023), available at <https://lawletter.iledu.in/wp-content/uploads/2024/01/V1I14.pdf> (last visited on December 18, 2023).

⁴¹ "Succession Laws in India for Transgenders" (2023), available at: <https://www.getyellow.in/resources/succession-laws-in-india-for-transgenders> (last visited on December 18, 2023).

up in providing substantive personal rights that reflect the lived realities and diverse family structures of the transgender community.

Table: Comparative Jurisprudence: *NALSA* vs. *Supriyo Chakrabarty*

Feature	<i>NALSA v. Union of India</i> (2014)	<i>Supriyo Chakrabarty v. Union of India</i> (2023)
Subject Matter	Right to Gender Identity & Recognition	Right to marry, Right to form civil unions, Right to adopt
Fundamental Rights Engaged	Articles 14, 15, 19(1)(a), 21	Articles 14, 15, 19, 21 and 25 (as argued by petitioners)
Court's Interpretation	Expansive, rights-affirming. "Sex" includes gender identity; "person" includes transgender individuals.	Restrained, deferential. Right to marry is a statutory, not a fundamental, right.
Verdict	Constitutional recognition of 'third gender' and right to self-identification.	Denied fundamental right to marry for queer persons.
Impact on Transgender Persons	Established constitutional basis for rights; affirmed right to self-identification without Sex Reassignment Surgery (SRS).	Affirmed right to marry under existing laws for transgender persons in heterosexual relationships.
Legislative Mandate	Explicit directives for a new law and reservations.	Deferred the matter to Parliament, citing separation of powers.

This table provides a clear juxtaposition of the two landmark judgments. It visually demonstrates a significant jurisprudential shift, showing the court's willingness to grant identity rights in *NALSA*⁴² but its reluctance to extend relational rights in *Supriyo*⁴³. This demonstrates the central argument that the judiciary is willing to protect the *being* of a person but is reluctant to legislate on their *relations*, creating a nuanced and often contradictory legal landscape for the community.⁴⁴

CONCLUSION AND SUGGESTIONS

The journey for personal rights for the transgender community in India has been a complex one, driven primarily by judicial activism and punctuated by a slow and often contradictory legislative response. The *NALSA* judgment⁴⁵ was a pivotal moment, establishing a constitutional basis for the rights to gender identity and self-determination. However, the subsequent Transgender Persons (Protection of Rights) Act, 2019, while a step forward, failed to fully capture the spirit of the judicial pronouncement, particularly regarding self-identification and affirmative action. This jurisprudential evolution culminated in the *Supriyo* judgment,⁴⁶ which, while affirming the right of transgender persons to marry under existing laws in heterosexual relationships, marked a broader turn toward judicial restraint on relational rights, effectively passing the responsibility for marriage equality to the legislature. The persistent gap between legal recognition and lived reality, as highlighted by reports from the NHRC, underscores that legal pronouncements alone are insufficient to dismantle deeply entrenched social and systemic discrimination. The "socio-legal enigma" demands a multi-pronged approach that extends beyond broad judicial declarations.

In order to bridge the enduring gap between legal doctrine and lived experience, a comprehensive and multi-pronged roadmap for reform is essential including legislative amendments, such as an amendment of the Transgender Persons (Protection of Rights) Act, 2019, to align it with the core principles of self-identification established in *NALSA*.⁴⁷ Further, the provisions should be accordingly altered to also explicitly address inheritance rights to ensure transgender individuals are not compelled to forfeit their claims.⁴⁸ Furthermore, the absence of a comprehensive anti-discrimination law leaves transgender persons vulnerable to discrimination by both state and non-state actors. Therefore, the need of the hour is the enactment of special laws and policies so as to to explicitly prohibit discrimination on the basis of gender identity and sexual orientation in all spheres, including employment, housing, and access to services. Besides, the

⁴² *Supra* note 2.

⁴³ *Supra* note 3.

⁴⁴ Arunima Bali, "Case Commentary on Supriya Chakraborty and Anr. V. Union of India" (2023), *available at*: <https://ijalr.in/volume-4-issue-2/case-commentary-on-supriya-chakraborty-and-anr-v-union-of-india-arunima-bali/> (last visited on December 21, 2023).

⁴⁵ *Supra* note 2.

⁴⁶ *Supra* note 3.

⁴⁷ Sayan Bhattacharya, "The Transgender Nation and its Margins: The Many Lives of the Law" (2019), *available at*: <https://doi.org/10.4000/samaj.4930> (last visited on November 29, 2023).

⁴⁸ Ajay Singh Solanki, "India's new law on the protection of rights of transgender persons", *available at*: <https://doi.org/10.4000/samaj.4930> (last visited on November 29, 2023).

recommendations of the NHRC Advisory⁴⁹ should be implemented with urgency and full transparency. This includes providing gender-neutral or separate washrooms in public places, setting up anti-discrimination and grievance redressal cells in educational and professional environments, and mandating sensitization programs for law enforcement and government officials. Furthermore, policies should be framed to ensure access to healthcare, including free gender-affirmation care, and social welfare schemes should be made more accessible and inclusive.⁵⁰

Hence, a true progress for the transgender community requires a concerted effort from all branches of government to translate judicial pronouncements into tangible policy, social support, and cultural acceptance. While the judiciary has been a torchbearer for the recognition of identity rights, it is now up to the legislature and the executive to ensure that these rights are not merely a matter of legal doctrine but a lived reality for every transgender person in India. The journey from legal recognition to genuine equality is the final, and most crucial, frontier in the quest for personal rights for the transgender community.

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