BEYOND SUPRIYO V. UNION OF INDIA: CHARTING THE LEGISLATIVE PATHWAY FOR MARRIAGE EQUALITY AND CIVIL UNIONS

Vishal Anand, Research Scholar, Department of Law, Patna University

ABSTRACT

This article critically examines the legal and social landscape for relationship recognition for LGBTQIA+ persons in India following the Supreme Court's landmark judgment in Supriyo @ Supriya Chakraborty v. Union of India. The Court, while unanimously acknowledging the discrimination faced by queer couples and affirming their right to cohabit and form unions, stopped short of granting marriage equality, deferring the matter to the legislature. A 3:2 majority held that reading gender-neutral language into the Special Marriage Act, 1954, would be tantamount to judicial legislation, thereby placing the onus of reform squarely on Parliament. This article charts the legislative pathway forward, dissecting the two primary options available: the incremental approach of enacting a law for civil unions, and the comprehensive path of amending existing secular marriage law to achieve full marriage equality. It argues that while civil unions may appear politically expedient, they risk entrenching a "separate but equal" doctrine, creating a tier of second-class citizenship that is constitutionally suspect and socially inadequate. By analysing the doctrinal foundations laid in Navtej Singh Johar and Puttaswamy, the article contends that the constitutional principles of equality, dignity, and liberty mandate full and equal recognition. It provides a detailed legislative blueprint for amending the Special Marriage Act and other consequential statutes, addressing concerns about personal laws and ancillary rights like adoption and succession. Ultimately, the article concludes that only the enactment of marriage equality legislation, rather than a standalone civil union law, can truly fulfil India's constitutional promise and secure substantive justice for its LGBTQIA+ citizens.

Keywords: Civil Unions, Legislative Reform, LGBTQIA+ Rights, Marriage Equality, Supriyo v. Union of India.

I. Introduction

The journey for LGBTQIA+ rights in India has been a long and arduous constitutional pilgrimage, marked by significant judicial milestones. From the decriminalisation of homosexuality in Navtej Singh Johar v Union of India[1] to the affirmation of transgender rights in National Legal Services Authority v Union of India (NALSA),[2] the Supreme Court of India has often acted as a vanguard of fundamental rights, expanding the horizons of liberty, equality, and dignity. The culmination of this trajectory was widely anticipated in Supriyo @ Supriya Chakraborty v Union of India,[3] a case that sought the ultimate recognition of queer relationships: the right to marry. However, the five-judge Constitution Bench delivered a fractured and complex verdict that, while deeply empathetic, ultimately represented a moment of judicial restraint. The Court unanimously recognised the right of queer couples to cohabit and seek recognition of their unions, but a narrow 3:2 majority declined to read down the Special Marriage Act, 1954 (SMA)[4] to permit non-heterosexual marriages, deeming such an act to be within the exclusive domain of the legislature.

The Supriyo judgment, therefore, is not an end but a pivotal transference of responsibility. It closes a chapter of judicial intervention on the question of marriage and opens a new one demanding legislative action. The Court, in essence, has laid the constitutional groundwork, affirmed the existence of discrimination, and handed the proverbial baton to Parliament to finish the race. The Chief Justice of India, Dr. D.Y. Chandrachud, in his minority opinion, explicitly stated that "the failure of the State to recognise the bouquet of rights that flow from a union" constitutes a violation of fundamental rights.[5] This leaves Parliament with a profound constitutional and moral obligation. Inaction is no longer a neutral position; it is an active choice to perpetuate a state of discrimination that the highest court of the land has now formally acknowledged.

This article aims to chart the legislative course forward in the post-Supriyo era. It moves beyond a mere critique of the judgment to a pragmatic and principled exploration of the pathways available to Parliament. The central question is no longer whether to grant legal

[1] Navtej Singh Johar v Union of India (2018) 10 SCC 1.
[2] National Legal Services Authority v Union of India (2014) 5 SCC 438.
[3] Supriyo @ Supriya Chakraborty v Union of India [2024] 10 SCC 1 (hypothetical citation for the purposes of this article, actual citation is Writ Petition (Civil) No 1011 of 2022 and connected matters, decided 17 October 2023). For the purpose of OSCOLA compliance, the judgment will be referred to by its popular name and the year of decision. Supriyo v Union of India (2023).
[4] The Special Marriage Act 1954.
[5] Supriyo v Union of India (2023) (Judgment of CJI Chandrachud) [87].

recognition to queer unions, but how. Two primary models present themselves: the incrementalist approach of creating a bespoke legal framework for 'civil unions', and the comprehensive approach of amending the SMA to achieve full 'marriage equality'.

This analysis will proceed in five parts. Part I will deconstruct the Supriyo judgment, examining the reasoning of both the majority and minority opinions to understand the precise nature of the legal and institutional questions left unresolved. Part II will build upon the judgment's foundations to argue that a compelling constitutional mandate exists for Parliament to act, rooted in Articles 14, 15, 19, and 21 of the Constitution.[6] Part III will engage in a critical comparison of the two legislative models-civil unions versus marriage equality-weighing their respective merits and demerits from a legal, social, and rights-based perspective. Part IV will offer a concrete legislative blueprint, outlining the specific amendments required for both models to demonstrate their practical feasibility and complexity. Finally, Part V will analyse the surrounding socio-political landscape, considering the challenges and opportunities for reform and drawing lessons from comparative international experiences. The article concludes by arguing that while civil unions may offer a politically tempting compromise, they are a constitutionally flawed and socially inadequate solution. The only path that aligns with the transformative vision of the Indian Constitution is the unequivocal embrace of marriage equality.

II. The Doctrinal Cul-de-Sac: Deconstructing Supriyo v. Union of India

The Supriyo judgment is a complex tapestry woven from four separate opinions, resulting in a unanimous acknowledgment of discrimination but a majority refusal to provide the ultimate remedy of marriage. To chart the path forward, it is crucial to understand the precise contours of the Court's reasoning, particularly the point of divergence between the majority and minority.

A. The Unanimous Core: Acknowledgment of Rights and Discrimination

Across all four opinions, there was a clear and unequivocal consensus on several foundational issues. First, the Court unanimously affirmed that queerness is a natural variation of human identity and not an urban or elitist concept, directly refuting the Union Government's primary sociological objection.[7] Second, every judge agreed that queer couples have a fundamental right to cohabit and form relationships, a right that flows from the freedoms guaranteed under

[6] The Constitution of India 1950.
[7] Supriyo v Union of India (2023) (Judgment of CJI Chandrachud) [122]-[123].

the Constitution. Third, and most critically for the legislative path forward, the Court was unanimous in its finding that the State has an obligation to recognise such unions and to protect queer couples from the discrimination and violence they face. The judgment explicitly acknowledged the "bouquet of rights" that heterosexual married couples enjoy-ranging from joint bank accounts and insurance nominations to inheritance and adoption-and noted the discriminatory exclusion of queer couples from this "constellation of benefits."[8]

Furthermore, the Court unanimously directed the Union Government to form a high-powered committee to undertake a detailed examination of the rights, entitlements, and benefits that could be extended to queer couples without direct legislative amendment. This directive, while palliative in nature, serves as a powerful judicial admission of the State's failure to ensure equality and its duty to remedy the situation. It is this unanimous core-the acknowledgment of discrimination and the duty of the State to act-that forms the unassailable foundation for future legislative reform. Parliament cannot claim that the problem does not exist when the Supreme Court has unanimously declared that it does.

B. The Majority View: Judicial Restraint and the Sanctity of the Legislature

The majority opinion, authored by Justice S. Ravindra Bhat (with whom Justice Hima Kohli concurred) and supplemented by Justice P.S. Narasimha's concurring opinion, formed the 3:2 split that denied the petitioners' plea for marriage equality under the SMA. The central pillar of the majority's reasoning was the doctrine of separation of powers and the principle of judicial restraint.

Justice Bhat argued that the SMA was a statute conceived and enacted with a specific heterosexual framework in mind. To read "marriage" as being between any two "persons" instead of a "man" and a "woman" would not be a simple act of interpretation but a wholesale rewriting of the law.[9] He contended that such a judicial intervention would have cascading effects on a "myriad" of other laws, including those related to succession, adoption, maintenance, and divorce, which are intricately linked to the institution of marriage. This "web of statutes," he argued, could not be untangled and rewoven by the judiciary without usurping the legislative function of Parliament.[10] The task of evaluating the social, economic, and legal ramifications of such a profound change, according to the majority, was one that required public

[8] ibid [86].
[9] Supriyo v Union of India (2023) (Judgment of Bhat J) [110].
[10] ibid [112].

debate, consultation, and legislative deliberation-processes that courts are institutionally ill-equipped to handle.

Justice Narasimha, in his separate but concurring opinion, reinforced this view by emphasising that the right to marry is not a fundamental right in itself, but a statutory right.[11] While the Constitution protects the right to choose a partner and the right to association, it does not, in his view, elevate the specific institution of marriage to a fundamental right. Therefore, the creation or definition of this statutory right is a matter of legislative policy. To compel the State to create a new statutory framework for non-heterosexual marriage through judicial fiat would be to cross the "Rubicon" that separates judicial interpretation from judicial legislation.[12]

The majority's position can thus be summarised as one of institutional deference. It did not negate the constitutional rights of queer individuals; rather, it concluded that the specific remedy of marriage equality through a judicial re-reading of the SMA was institutionally inappropriate. This leaves the door wide open, indeed pointing directly towards it, for Parliament to walk through.

C. The Minority View: A Constitution of Transformation

In stark contrast, the minority opinions of Chief Justice D.Y. Chandrachud (with whom Justice Sanjay Kishan Kaul largely concurred in his separate opinion) presented a powerful vision of the Constitution as a transformative document capable of evolving with societal morality.

CJI Chandrachud argued that the SMA, as a secular law, should be interpreted in a manner that furthers constitutional values. He contended that the right to marry is not merely a statutory right but an essential component of the fundamental rights to life, dignity, equality, and freedom of expression.[13] To deny this right on the basis of sexual orientation is a direct violation of Articles 14 and 15. He invoked the doctrine of "reading down," a well-established interpretive tool where a statute is interpreted narrowly to save it from being unconstitutional. He proposed that the term "man" and "woman" in the SMA could be read as "spouses" or "persons," thereby making the Act gender-neutral without doing violence to its core purpose of enabling civil marriage for inter-faith and inter-caste couples.[14]

[11] Supriyo v Union of India (2023) (Judgment of Narasimha J) [14].
[12] ibid [25].
[13] Supriyo v Union of India (2023) (Judgment of CJI Chandrachud) [81].
[14] ibid [190]-[192].

Addressing the "cascading effects" argument, the CJI meticulously demonstrated that many of the supposed legislative obstacles were either surmountable through interpretation or already addressed by gender-neutral language in associated laws (e.g., the Juvenile Justice Act, 2015,[15] which allows single persons and couples in a stable relationship to adopt). He argued that the fear of legislative chaos was overstated and that the Court had a duty to remedy a clear constitutional violation rather than deferring out of a fear of complexity.

Justice Kaul, echoing this sentiment, powerfully stated that legal recognition of same-sex unions was a step towards "realizing the full potential of our democracy."[16] He saw the denial of marriage as a "historic injustice" that the Court had a duty to correct, drawing parallels to the Court's role in striking down other discriminatory colonial-era laws. The minority view, therefore, represents a bold, rights-affirming stance, viewing the judiciary not as a passive interpreter but as an active guardian of the constitutional promise of equality for all citizens.

The schism in Supriyo thus boils down to a fundamental disagreement about the role of the judiciary in matters of profound social reform. The majority saw a legislative boundary it could not cross; the minority saw a constitutional duty it could not abdicate. For the purpose of this article, the crucial takeaway is that even the majority, in its deference, implicitly recognised that the current state of the law is constitutionally inadequate. The judgment is not a declaration that the status quo is acceptable; it is a declaration that the responsibility for changing it lies with Parliament.

III. The Constitutional Mandate for Legislative Action

The Supriyo judgment, despite its outcome, powerfully reinforces the constitutional mandate for Parliament to act. The deference shown by the majority was not an approval of the discriminatory status quo but a procedural determination about the appropriate forum for change. The substantive constitutional arguments against discrimination, which have been methodically built up over a series of landmark cases, remain intact and, in fact, were strengthened by the unanimous findings in Supriyo. Parliament is therefore not acting in a constitutional vacuum; it is acting to fulfil a clear mandate derived from the core principles of the Indian Constitution.

[15] The Juvenile Justice (Care and Protection of Children) Act 2015.
[16] Supriyo v Union of India (2023) (Judgment of Kaul J) [2].

A. Article 14: Equality Before the Law

Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws.[17] The doctrine of reasonable classification, which permits the State to differentiate between groups of people, is subject to a stringent two-part test: the classification must be founded on an intelligible differentia, and the differentia must have a rational nexus with the object sought to be achieved by the statute.[18]

The exclusion of non-heterosexual couples from the SMA fails this test spectacularly. The intelligible differentia is sexual orientation. The object of the SMA is to provide a secular legal framework for marriage, enabling couples to formalise their union outside the confines of religious personal laws. What is the rational nexus between excluding queer couples and achieving this object? There is none. The exclusion does not strengthen secular marriage for heterosexuals; it merely denies its benefits to a specific class of citizens based on their identity. As CJI Chandrachud noted, sexual orientation has "no rational nexus with the purpose of the SMA."[19] This is a classic case of unconstitutional discrimination. The Navtej Johar judgment had already established that discrimination based on sexual orientation is violative of Article 14. By failing to amend the SMA, Parliament is perpetuating a statutory scheme that is manifestly arbitrary and fails to provide equal protection of the laws to all its citizens.

B. Article 15: Prohibition of Discrimination

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.[20] While "sexual orientation" is not an explicitly enumerated ground, the Supreme Court in Navtej Johar read the term "sex" expansively to include sexual orientation.[21] The Court reasoned that discrimination on the basis of sexual orientation is a form of discrimination on the basis of "sex" because it is premised on stereotypes about gender roles and the expected nature of relationships. To discriminate against a man who wishes to marry another man is to discriminate against him on the basis of his sex, as a woman in his position would be permitted to marry that man.

Therefore, the SMA, by limiting marriage to a "man" and a "woman," engages in direct discrimination on a prohibited ground under Article 15. Legislative inaction in the face of this

[17] Constitution of India 1950, art 14.
[18] State of West Bengal v Anwar Ali Sarkar [1952] SCR 284.
[19] Supriyo v Union of India (2023) (Judgment of CJI Chandrachud) [159].
[20] Constitution of India 1950, art 15.
[21] Navtej Singh Johar (n 1) [439] (Chandrachud J).

clear constitutional violation is untenable. Parliament has a positive obligation to reform laws that are inconsistent with the fundamental rights of its citizens. The continuation of the SMA in its current form amounts to a legislative endorsement of discrimination.

C. Article 19: The Freedom to Choose and Express

Article 19(1)(a) guarantees the freedom of speech and expression.[22] The Supreme Court has interpreted this right broadly to include the expression of one's identity, beliefs, and choices. In Navtej Johar, the Court held that expressing one's sexual orientation is a core part of an individual's identity and is protected under Article 19(1)(a).[23] The ability to choose a life partner is a fundamental aspect of this self-expression. By denying queer couples the right to have their chosen union legally recognised, the State is effectively delegitimising their expression of identity and love, casting a chilling effect on their freedom.

Furthermore, Article 19(1)(c) protects the freedom to form associations or unions.[24] While this has traditionally been applied in the context of political parties, trade unions, or cooperative societies, its language is broad. The most intimate and fundamental human association is that of a family or a couple. The unanimous opinion in Supriyo explicitly affirmed the right of queer individuals to form unions. The legislative task is to give this right meaningful legal content. A union without legal recognition is a hollow right, devoid of the protections and benefits that the State confers upon the associations of other citizens.

D. Article 21: The Right to Life with Dignity

Article 21, the heart of the fundamental rights chapter, guarantees that no person shall be deprived of their life or personal liberty except according to procedure established by law.[25] The Supreme Court has, through decades of progressive interpretation, expanded "life" to mean a life of dignity, not mere animal existence.[26] The right to dignity includes the right to privacy, autonomy, and the ability to make fundamental life choices.

In K.S. Puttaswamy v Union of India, the Court declared privacy, including decisional autonomy and the privacy of choice, to be a fundamental right.[27] The choice of a life partner was unequivocally held to be a part of this protected sphere. In Shafin Jahan v Asokan K.M.

[22] Constitution of India 1950, art 19(1)(a).
[23] Navtej Singh Johar (n 1) [445] (Chandrachud J).
[24] Constitution of India 1950, art 19(1)(c).
[25] Constitution of India 1950, art 21.
[26] Maneka Gandhi v Union of India (1978) 1 SCC 248.
[27] K S Puttaswamy v Union of India (2017) 10 SCC 1.

(the Hadiya case), the Court forcefully reiterated that "the right to choose a partner is a person's personal choice and is an inextricable part of Article 21."[28] The Supriyo court built directly on this jurisprudence, holding that the right to enter into a union flows from Article 21.

To deny legal recognition to this union is to deny a life of dignity. It relegates queer couples to a precarious existence, unable to access joint housing loans, nominate each other for life insurance, make emergency medical decisions for one another, or inherit property seamlessly. This exclusion from the basic civil institutions that support and protect families is an affront to their dignity. The State, by its inaction, is complicit in this systemic denial of dignity. Parliament's constitutional duty under Article 21 is not merely to refrain from taking life or liberty, but to actively create conditions that allow all individuals to live a life of dignity. Fulfilling this duty requires the legal recognition of queer unions.

IV. The Fork in the Road: Marriage Equality vs. Civil Unions

With the constitutional mandate for action established, Parliament stands at a fork in the road. The two most prominent legislative models are the creation of a separate legal status known as "civil unions" or the amendment of the existing secular marriage law, the SMA, to achieve full marriage equality. While the former is often presented as a pragmatic and incremental compromise, a deeper analysis reveals it to be a constitutionally and socially inferior option.

A. Option 1: The Incremental Path – A Civil Union Act

A civil union is a legally recognised union of a couple, typically same-sex couples, that provides some or all of the rights and responsibilities of marriage. Proponents of this model in India argue that it is a politically palatable first step. It would grant immediate legal protection to queer couples without directly challenging the traditional, often religiously-infused, definition of "marriage." This approach, it is argued, avoids a direct confrontation with personal laws and conservative social forces, making it legislatively easier to pass.

A hypothetical Indian Civil Union Act would be a standalone piece of legislation. It would define the eligibility for entering a civil union (age, consent, prohibited degrees of relationship) and then explicitly enumerate the rights and obligations that flow from it. This list, as suggested by CJI Chandrachud in his opinion, could include rights related to joint bank accounts, succession, maintenance, tax benefits, insurance, and medical decision-making.[29]

[28] Shafin Jahan v Asokan K M (2018) 16 SCC 368 [88].
[29] Supriyo v Union of India (2023) (Judgment of CJI Chandrachud) [86].

However, this model is fraught with significant problems.

i. The "Separate but Equal" Doctrine: The most fundamental objection to civil unions is that they institutionalise a "separate but equal" regime. This doctrine was famously repudiated in the context of race by the U.S. Supreme Court in Brown v. Board of Education,[30] which held that separate educational facilities are inherently unequal. The same logic applies here. Creating a separate institution for queer couples, even one with a substantial list of rights, sends a powerful message that their relationships are not worthy of the same status and respect as heterosexual relationships. The word "marriage" carries immense social, cultural, and symbolic weight. To deny it to one group of citizens is to brand their unions as lesser-than, perpetuating the very stigma the law should seek to dismantle. It creates a gilded cage-offering protection but withholding full equality and dignity.

ii. The Inevitable Hierarchy of Rights: The "list" of rights conferred by a Civil Union Act would become a constant political battleground. Which rights are included? Which are left out? Why should a queer couple have the right to inherit but not to jointly adopt? Why are they entitled to maintenance but not to the same pension benefits? This enumerated approach is inherently incomplete. Marriage, by contrast, is a comprehensive legal status that acts as a gateway to a whole, evolving "constellation of rights" without needing each one to be specified in the primary statute. A civil union framework guarantees a piecemeal and perpetually deficient bundle of rights, subject to the whims of legislative majorities.

iii. Legal and Administrative Complexity: Creating a new legal status would introduce significant complexity into the Indian legal system. Every time a law refers to a "spouse" or "married couple," a question would arise: does this include "civil partners"? This would necessitate a massive and confusing process of consequential amendments or lead to endless litigation seeking clarification. It is far simpler and cleaner to amend the definition of marriage in one secular law and have that change flow through the legal system, rather than creating a parallel, and likely unequal, track.

The experience of other countries is instructive. The United Kingdom, many U.S. states, and other jurisdictions initially introduced civil partnerships or domestic partnerships as a compromise, only to eventually move to full marriage equality. This history demonstrates that

[30] Brown v Board of Education of Topeka 347 US 483 (1954).

civil unions are often a transitional and ultimately unstable legal category, tacitly acknowledging the inadequacy of the "separate but equal" model.

B. Option 2: The Path of Full Equality – Amending the Special Marriage Act

The alternative, and superior, path is to amend the Special Marriage Act, 1954, to make it gender-neutral. This would achieve full marriage equality within the secular legal framework of the country. This approach directly addresses the discrimination identified by the Supreme Court by providing the exact same legal status, with the exact same bundle of rights, to all couples regardless of their gender or sexual orientation.

i. Fulfilling the Constitutional Promise: This is the only model that truly satisfies the constitutional mandate of equality under Articles 14 and 15 and dignity under Article 21. It rejects the "separate but equal" logic and affirms that the relationships of queer citizens are entitled to the same respect, dignity, and legal recognition as those of their heterosexual counterparts. It is a statement of full inclusion and substantive, not just formal, equality.

ii. Legal Simplicity and Certainty: Amending the SMA is a far more elegant and efficient legal solution. By changing the core definition of the parties to a marriage, the entire "constellation of rights" that automatically flows from marriage becomes accessible to queer couples. While some consequential amendments would be necessary (as discussed in the next section), it avoids the creation of a confusing and ambiguous parallel legal status. The legal meaning of "marriage" under secular law would be expanded, providing clarity and certainty for couples, employers, hospitals, and government agencies.

iii. Respecting Pluralism and Personal Laws: A key argument against marriage equality is its supposed conflict with religious personal laws. Amending the SMA elegantly sidesteps this issue. The SMA is, by its very nature, an alternative to personal laws. No religious community is being forced to change its doctrines or ceremonies. Individuals who wish to marry under a secular, state-sanctioned framework can opt for the SMA. Those who wish to marry under their personal laws remain free to do so. Amending the SMA would simply extend this secular option to all citizens, thereby strengthening, not weakening, India's pluralistic legal fabric. It respects both religious freedom and the constitutional rights of individuals.

In essence, the choice between civil unions and marriage equality is a choice between palliative care and a curative remedy. Civil unions treat the symptoms of discrimination by providing a limited set of benefits. Marriage equality addresses the root cause by eradicating the discriminatory classification itself from secular law. For a constitution committed to transformation and justice, the choice is clear.

V. The Legislative Blueprint: Drafting the Future

The argument that amending the law to provide for marriage equality is too complex is a common refrain used to justify legislative inertia. However, a close examination reveals that the necessary drafting is straightforward. The challenge is not one of legal complexity, but of political will. This section provides a practical blueprint for the two legislative options to demonstrate that reform is eminently achievable.

A. Blueprint for Marriage Equality: Amending the Special Marriage Act, 1954

Achieving marriage equality requires targeted amendments to the SMA and consequential amendments to a handful of related secular laws. The core principle is the adoption of gender-neutral language.

a) Amendments to the Special Marriage Act, 1954

i. Preamble and Long Title: The long title, which speaks of marriage for "any two persons," already provides a foundation. The language can be made more explicit if desired.

ii. Section 4: Conditions relating to solemnization of special marriages. This is the most crucial section. Clause (c) states: "the male has completed the age of twenty-one years and the female the age of eighteen years."[31] This must be amended to a uniform, gender-neutral age of marriage for all persons. For example: "each party has completed the age of twenty-one years." This also aligns with recent legislative proposals to raise the age of marriage for women, promoting gender equality.

iii. Section 2: Definitions. The definitions of "degrees of prohibited relationship" in Section 2(b) refer to relatives by blood or affinity. While the schedules listing these relationships are framed in gendered terms (e.g., "Mother's brother," "Wife's mother"), they can be easily redrafted or interpreted using a "functional approach." For example, a gender-neutral redraft could state: "One person is in a prohibited relationship with

[31] Special Marriage Act 1954, s 4(c).

another if they are related as (a) an ancestor or descendant; (b) the sibling of an ancestor; (c) a sibling...” and so on, using neutral terminology.

iv. Schedules: The Schedules relating to prohibited relationships and the form of the marriage certificate would need to be redrafted to use gender-neutral terms like “Spouse A” and “Spouse B” or simply “Spouse” and “Spouse” instead of “Bridegroom” and “Bride.”

v. Other Sections: Various sections using terms like “husband,” “wife,” “man,” and “woman” (e.g., in the context of maintenance or divorce) would need to be replaced with “spouse” or “person.” This is a simple search-and-replace drafting exercise. For instance, Section 24 on void marriages could refer to “spouse” being impotent.

b) Consequential Amendments to Ancillary Laws

The “cascading effects” argument requires a considered response. Parliament must undertake a comprehensive review and make necessary consequential amendments. Key areas include:

i. The Indian Succession Act, 1925:[32] This secular law governs inheritance for those married under the SMA. Its provisions would need to be made gender-neutral. For instance, sections referring to the rights of a “widow” or “widower” could be amended to refer to a “surviving spouse.”

ii. The Hindu Adoptions and Maintenance Act, 1956 (HAMA):[33] While a personal law, its provisions on maintenance could be impacted for Hindus marrying under the SMA. However, the SMA itself contains maintenance provisions (Sections 36 and 37) which can be made self-sufficient. For adoption, the more secular and inclusive Juvenile Justice (Care and Protection of Children) Act, 2015 is the way forward. Section 57 of the JJ Act already permits adoption by a single person or “a couple,” and its regulations have been interpreted to allow adoption by unmarried couples. Clarifying that “couple” includes married couples of any gender would be a simple and powerful reform.[34]

iii. Employment and Financial Regulations: Laws and regulations concerning gratuity, provident fund, insurance nominations, and pension often use the term “spouse.” A clarificatory clause in the amended SMA or a general omnibus amendment act could state that for the purposes of all central laws, the term “spouse” shall be construed to

[32] The Indian Succession Act 1925.
[33] The Hindu Adoptions and Maintenance Act 1956.
[34] Juvenile Justice (Care and Protection of Children) Act 2015, s 57; Adoption Regulations 2017, reg 5.

include a spouse in a marriage solemnised under the amended SMA, regardless of gender.

This blueprint demonstrates that the legislative task, while detailed, is not insurmountable. It requires diligence, not genius.

B. Blueprint for a Civil Union Act

Drafting a Civil Union Act would involve creating an entirely new statute from scratch. While seemingly offering a "clean slate," it is inherently more complex due to the need to define the scope of the union.

A hypothetical "Indian Civil Union Act, 2026" would need to contain chapters on:

i. Chapter I: Preliminaries: Definitions of "civil union," "civil partner," "court," etc.
ii. Chapter II: Solemnization of Civil Unions: Conditions for entry (e.g., age, consent, not within prohibited relationships), procedures for registration, and the effect of registration.
iii. Chapter III: Rights and Obligations: This would be the most contentious part. It would have to be an exhaustive list. For example:
    a. Section X: The partners to a civil union shall have the same rights and obligations as spouses under the Income Tax Act, 1961.
    b. Section Y: A partner to a civil union shall be considered a "family member" for the purposes of the regulations of the Insurance Regulatory and Development Authority of India.
    c. Section Z: The provisions of the Indian Succession Act, 1925, relating to intestate succession for a "spouse" shall apply mutatis mutandis to a surviving civil partner.
iv. Chapter IV: Dissolution of Civil Unions: Procedures for separation and dissolution, mirroring divorce provisions, including grounds for dissolution and provisions for maintenance and alimony.

The problem is immediately apparent. This list-based approach is clumsy and destined to be incomplete. Every new law or regulation passed in the future would require a specific check to see if "civil partners" need to be included. It creates two parallel legal universes that must constantly be kept in sync, an inefficient and inequality-perpetuating system. Comparing the

two blueprints, the path of amending the SMA is clearly the more rational, efficient, and rights-affirming legislative strategy.

VI. Navigating the Socio-Political Landscape

The primary obstacle to marriage equality in India is not legal or logistical, but political. Overcoming this requires a multi-pronged strategy that engages with the government, opposition, civil society, and the public at large.

A. The Role of the Government and the High-Powered Committee

The Supreme Court's direction in Supriyo to form a high-powered committee headed by the Cabinet Secretary was a strategic move.[35] It forces the executive branch to engage directly with the issue and formalise its position. The role of this committee is crucial. If it operates transparently, consults widely with queer community representatives, legal experts, and social scientists, and produces a comprehensive report acknowledging the practical and legal difficulties faced by queer couples, it could provide the government with the political cover and the detailed roadmap needed to introduce legislation.

However, there is also the risk that the committee becomes a tool for delay, its proceedings kept opaque, and its recommendations shelved. The onus is on civil society, the media, and the political opposition to maintain pressure, file Right to Information (RTI) requests, and demand accountability for the committee's progress. The government's response to the committee's work will be the true test of its commitment to the Court's directive and the constitutional values at stake.

B. Addressing Social and Religious Objections

Opponents of marriage equality often frame their objections in the language of tradition, culture, and religion. It is crucial to counter this narrative effectively. The legislative push must be framed not as an attack on tradition, but as an expansion of civil rights within a secular framework. The key arguments are:

i. Secularism: The proposed reform is to a secular law, the SMA. It does not compel any religion to alter its tenets. This respects the religious freedom of all communities while upholding the civil rights of all citizens.

[35] Supriyo v Union of India (2023) (Judgment of Bhat J) [120].

ii. Constitutional Morality over Social Morality: The Supreme Court has repeatedly held that in a constitutional democracy, it is constitutional morality, not popular or social morality, that must prevail.[36] Constitutional morality is rooted in the principles of liberty, equality, fraternity, and dignity. Legislation for marriage equality is an expression of this constitutional morality.

iii. Indian Traditions of Plurality: The narrative that Indian culture is monolithically heterosexual is historically inaccurate. Proponents of reform can draw upon indigenous and historical examples of gender fluidity and same-sex unions to argue that inclusivity is deeply rooted in Indian traditions of pluralism.

Public education campaigns, spearheaded by civil society organisations, are vital to normalise queer relationships and sensitise the public, dispelling myths and fears.

C. Lessons from a Comparative Perspective

India can draw valuable lessons from the legislative journeys of other nations.

i. In South Africa, the Constitutional Court in Minister of Home Affairs v Fourie declared the common law definition of marriage unconstitutional and gave Parliament one year to amend the law, which it did by passing the Civil Union Act, 2006 (which confusingly allowed for both "marriages" and "civil partnerships").[37] This demonstrates a model of judicial-legislative dialogue.

ii. In Taiwan, the Constitutional Court did something similar, ruling that the absence of same-sex marriage was unconstitutional and giving the legislature two years to act. The legislature subsequently passed a law legalising same-sex marriage in 2019, making Taiwan the first in Asia to do so.[38]

iii. In Ireland, the change came through a popular referendum in 2015,[39] a path that requires immense social mobilisation but confers powerful democratic legitimacy.

iv. In the United States, the journey was a patchwork of state-level legislative action and court rulings, culminating in the Supreme Court's nationwide ruling in Obergefell v. Hodges.[40]

[36] Navtej Singh Johar (n 1) [274] (Misra CJ).
[37] Minister of Home Affairs v Fourie (2006) (3) BCLR 355 (CC).
[38] J.Y. Interpretation No. 748 (Constitutional Court of Taiwan, 24 May 2017).
[39] Thirty-fourth Amendment of the Constitution (Marriage Equality) Act 2015 (Ireland).
[40] Obergefell v Hodges 576 US 644 (2015).

The common thread in many of these stories is that legislative action often follows a strong push from the judiciary. India's Supreme Court has provided that push. The path now is legislative, and the experiences of Taiwan and South Africa, where courts set a constitutional deadline for legislative action, offer a compelling model of how branches of government can collaborate to achieve justice. While the Indian Supreme Court did not set a deadline, its judgment creates a powerful political and moral imperative for Parliament to act swiftly.

VII. Conclusion

The Supreme Court's judgment in Supriyo v. Union of India was not the final word on marriage equality, but rather the opening sentence of a new and crucial legislative chapter. By unanimously acknowledging the systemic discrimination faced by queer couples and affirming their right to form unions, the Court has passed the constitutional mantle to Parliament. The question is no longer whether to act, but how to act in a manner that is true to the transformative spirit of India's Constitution.

This article has argued that the legislative path forward presents a stark choice. The path of civil unions, while superficially appealing as a political compromise, is a constitutional mirage. It leads to a "separate but equal" quagmire, institutionalising second-class citizenship, creating legal confusion, and failing to deliver the full measure of dignity that is the birthright of every citizen. It is a solution that postpones justice rather than delivering it.

The only path that leads to substantive equality is the amendment of the Special Marriage Act, 1954, to make it a truly secular and inclusive law for all Indians. This is not a radical or impossibly complex task; it is a straightforward legislative exercise in applying the foundational principles of the Constitution to a law that has fallen behind the times. It is a path that respects religious freedom by confining its reforms to the secular domain, and it is a path that offers legal clarity and certainty.

Parliament now stands at a historic crossroads. It can choose the path of least resistance, enacting a piecemeal and ultimately inadequate civil union law that will only serve as a temporary stopgap. Or it can demonstrate courage and vision, embracing its role as the guardian of the nation's constitutional morality. It can choose to amend the Special Marriage Act, bringing an end to a historic injustice and affirming that in the eyes of the law, the love and commitment of all couples are equal. For a nation that prides itself on its diversity and its democratic values, the choice for full and unequivocal marriage equality is the only one that befits its constitutional soul. The time for legislative action is now.