
SAME-SEX ADOPTION POST SUPRIYO: A MULTI-DIMENSIONAL CONSTITUTIONAL CRITIQUE OF THE CARA REGULATIONS UNDER ARTICLES 14 AND 15

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ABSTRACT

The Supreme Court of India's decision in *Supriyo v. Union of India* (2023) represents a monumental yet deeply fractured chapter in the nation's equality jurisprudence. While the Court unanimously recognized the freedom of queer individuals from discrimination, the majority's refusal to extend marital or quasi-marital institutional recognition effectively institutionalized a legal vacuum regarding ancillary civil rights, most notably adoption. Under the current Central Adoption Resource Authority (CARA) Adoption Regulations, 2022, unmarried couples and individuals in same-sex relationships face categorical exclusions from joint adoption. This paper attempts a rigorous constitutional challenge to these regulations through the lenses of Article 14 and Article 15 of the Constitution of India. It contends that the exclusion of non-heteronormative, cohabiting couples fails the traditional reasonable classification test and constitutes manifest arbitrariness by elevating institutional form over the "best interests of the child." Furthermore, the paper rearticulates the Article 15 challenge, arguing that discrimination based on "sexual orientation" and "relationship status" is inextricably linked to the forbidden ground of "sex." By dissecting the majority's deferential stance toward executive policy and contrasting it with the minority's progressive reading of relational privacy, this article demonstrates how the current CARA framework perpetuates systemic under-inclusiveness, transforming legitimate state interest into illicit class legislation.

I. INTRODUCTION: THE SPECTRUM OF TRANSFORMATIVE CONSTITUTIONALISM AND QUEER RIGHT REGIMES

The constitutional trajectory of queer emancipation in the Republic of India has progressed through a series of foundational judicial developments characterized by a profound structural tension between formalistic legal guarantees and substantive social inclusion. Over the past two decades, the Supreme Court of India has gradually dismantled components of a colonial-era penal architecture, replacing it with a jurisprudence rooted deeply in the tenets of transformative constitutionalism. This doctrine mandates that the Constitution is not a static document locked in historical intent, but a dynamic, living instrument designed to transform society from a state of entrenched hierarchy to a vibrant democracy founded on liberty, dignity, and radical equality. The initial watershed moment in this emancipatory arc arrived with the decriminalization of consensual same-sex acts in *Navtej Singh Johar v. Union of India*,¹ which fundamentally overturned the historical aberration of *Suresh Kumar Koushal v. Naz Foundation*.² In *Navtej*, the Court established that a person's sexual orientation is an intrinsic, immutable facet of their core personality, identity, and personal privacy. Consequently, any state action that penalizes, minimizes, or structurally targets an individual based on their sexual orientation was declared a direct violation of Articles 14, 15, 19, and 21 of the Indian Constitution. This progressive development was heavily anchored on the landmark ruling in *K.S. Puttaswamy v. Union of India*,³ where a nine-judge Constitution Bench unequivocally recognized the right to privacy as a fundamental entitlement under Article 21, explicitly rooting intimate relational choices, spatial privacy, and informational self-determination within the structural core of Part III.

Despite these expansive judicial declarations, a severe institutional chasm opened when the Supreme Court confronted the practical, functional core of queer life: the right to institutional recognition and its ancillary socio-legal benefits. In the monumental decision in *Supriyo v. Union of India*,⁴ a five-judge Constitution Bench was invited to declare that the right to marry extends to same-sex couples, either through a constitutional reading of the Special Marriage Act, 1954, or by declaring the gendered exclusions within statutory marriage laws as unconstitutional. While the five judges produced four distinct and lengthy opinions revealing

¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

² *Suresh Kumar Koushal v. Naz Foundation*, (2014) 1 S.C.C. 1.

³ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

⁴ *Supriyo v. Union of India*, (2023) 14 S.C.C. 1; 2023 S.C.C. OnLine S.C. 1348.

a deeply fractured court, the ultimate majority declined to extend formal marital or quasi-marital recognition to same-sex unions. The majority, composed of Justices S.R. Bhat, H. Kohli, and P.S. Narasimha, adopted a stance of structural deference to the legislature, asserting that the creation of an entirely new legal status—such as marriage or a civil union—falls strictly within the domain of Parliament under the separation of powers doctrine. Conversely, the minority, led by Chief Justice D.Y. Chandrachud and Justice S.K. Kaul, recognized a foundational right to choose a partner and form an intimate association, arguing that the state had a positive obligation to recognize a 'bureaucratic matrix' of rights for queer couples to ensure they were not left in a state of systemic vulnerability.

The immediate and most devastating structural fallout of the *Supriyo* decision has been the creation of a profound legal vacuum regarding ancillary civil rights, chief among which is the right to form a family through statutory adoption. In contemporary India, the process of adoption is heavily regulated by a secular, state-administered statutory framework governed by the Juvenile Justice (Care and Protection of Children) Act, 2015,⁵ and operationalized through the Central Adoption Resource Authority (CARA) Adoption Regulations, 2022.⁶ Under Regulation 5(3) of these guidelines, the state imposes an absolute, unyielding threshold for joint adoption, explicitly declaring that "no child shall be given in adoption to a couple unless they have at least two years of stable marital relationship." In the wake of *Supriyo*'s refusal to legalize same-sex marriage, this regulation operates as an absolute bar against same-sex cohabiting couples who wish to adopt a child jointly as a cohesive, protective unit. While Regulation 5(2) permits single individuals to adopt, a queer couple living together cannot both hold legal parentage over an adopted child. One partner must apply as a single parent, which means the other partner remains a complete legal stranger to the child, lacking any guardianship rights, medical decision-making authority, or default inheritance linkages.

This paper attempts a rigorous, multi-dimensional constitutional critique of the CARA Adoption Regulations, 2022, post-*Supriyo*. It asserts that the ongoing exclusion of non-heteronormative, cohabiting couples from the benefits of joint adoption represents a critical violation of the fundamental guarantees of equality before the law, equal protection of the laws, and absolute non-discrimination enshrined in Articles 14 and 15 of the Constitution. The

⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, Acts of Parliament (India).

⁶ Central Adoption Resource Authority (CARA), Adoption Regulations, 2022, G.S.R. 738(E), Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated September 23, 2022.

central inquiry of this study is not whether there exists an unbridled, absolute fundamental right to adopt a child, but rather whether the State, having enacted a comprehensive social-welfare statutory mechanism for adoption designed specifically to advance the "best interests of the child," can selectively deny access to that mechanism based solely on a couple's sexual orientation, relationship status, or deviation from traditional heteronormative family structures. Through a systematic evaluation of classification tests, the doctrine of manifest arbitrariness, and intersectional discrimination, this article aims to demonstrate how the current CARA framework transforms a legitimate state interest into illicit class legislation, running counter to the core promises of India's constitutional democracy.

II. THE FALLOUT OF SUPRIYO: THE INSTITUTIONAL VACUUM AND STATUTORY MECHANICS OF CARA

To fully understand the constitutional infirmity of the current adoption regime, it is necessary to chart the precise institutional divide that manifested within the Constitution Bench in *Supriyo v. Union of India* regarding the CARA Regulations. The challenge to Regulation 5(3) was not merely a peripheral issue; it sat at the heart of the debate over whether the state could treat unmarried cohabiting couples differently from married couples in matters of social welfare and child placement. The Court was sharply divided, split 3:2 on this specific sub-issue, creating an ideological fissure that illustrates the competing visions of constitutional interpretation in modern Indian jurisprudence.

The minority opinion, authored by Chief Justice D.Y. Chandrachud, offered a progressive, functional reading of family structures and parental capacity. The Chief Justice observed that the categorical exclusion of unmarried cohabiting couples from the matrix of joint adoption was unconstitutionally under-inclusive and directly undermined the primary purpose of the parent statute, the Juvenile Justice Act, 2015. He argued that the overriding objective of the Act is to maximize the pool of suitable, loving, and financially capable prospective adoptive parents in order to secure the rehabilitation and welfare of orphaned, abandoned, or surrendered children.⁷ The minority emphasized that the executive branch, through subordinate legislation, could not validly presume that only traditional, heterosexual married couples were capable of providing a stable, moral, and nurturing environment for a child. To suggest that a child raised by a committed same-sex couple would suffer developmental or psychological harm was

⁷ *Supriyo v. Union of India*, (2023) 14 S.C.C. 1, para 114 (per Chandrachud, C.J., dissenting).

dismissed as an unscientific stereotype completely unsupported by contemporary sociological and psychological consensus. Consequently, the minority advocated for reading down Regulation 5(3) to include all stable cohabiting relationships, thereby removing the discriminatory barrier against queer partners.

In stark contrast, the majority opinion, delivered by Justice S.R. Bhat, declined to strike down or read down the regulations, choosing instead a path of rigid institutional deference to executive policymaking. Justice Bhat asserted that expanding joint adoption to unmarried couples would involve entering a complex legislative domain and altering the foundational architecture of family law.⁸ The majority's core defense rested on a formalistic distinction regarding legal stability. They reasoned that because unmarried cohabiting relationships are not governed by a statutory framework that regulates separation, alimony, maintenance, child custody, and default inheritance—such as the Hindu Marriage Act, 1955, or the Special Marriage Act, 1954—the state possessed a legitimate interest in excluding them to protect the child from potential legal precarity if the relationship dissolved. Justice Bhat noted that if a married couple divorces, the family courts have a clear statutory mandate to determine maintenance and custody for the child, whereas no such protective statutory web exists for the child of an unmarried couple. Thus, the majority concluded that the executive was well within its regulatory authority to use formal legal marriage as a reliable proxy for long-term household stability.

This formalistic justification by the majority has created an incredibly unstable and hazardous legal vacuum for queer families across India. By prioritizing formal institutional form over the operational, lived reality of the household, the law actively inflicts legal vulnerability on the very children it claims to protect. Consider the real-world operational mechanics of a queer household under the current regime: because joint adoption is blocked, only Partner A can adopt the child as a single parent under Regulation 5(2). Partner B, who shares equal emotional, physical, and financial responsibilities in raising the child, remains a total legal stranger. If Partner A suddenly passes away, Partner B has no automatic legal right to custody; the child could be claimed by hostile biological relatives or returned to an overcrowded state orphanage. Partner B cannot sign medical consent forms for the child in an emergency, cannot be listed as a parent on school admission records, and cannot pass on default inheritance benefits under personal law. If the couple separates, there is no formal family court mechanism to secure

⁸ *Supriyo v. Union of India*, (2023) 14 S.C.C. 1, para 412 (per Bhat, J.).

visitation rights or child support, leaving the child entirely dependent on the whims of the legal parent. Therefore, the majority's reasoning is circular and self-defeating: it uses the lack of statutory protection for queer adults as a valid justification to deny basic legal protections to the child, fundamentally violating the core protective mandate of the Juvenile Justice Act.

III. THE ARTICLE 14 CHALLENGE: BEYOND THE SHACKLES OF FORMAL CLASSIFICATION

The absolute exclusion of same-sex cohabiting couples from the benefits of joint adoption under Regulation 5(3) represents a clear and severe violation of Article 14 of the Constitution of India, which guarantees that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." To fully unpack this constitutional defect, the exclusion must be evaluated through two distinct analytical frameworks developed by the Supreme Court: the traditional two-pronged reasonable classification test and the contemporary doctrine of manifest arbitrariness.

A. The Failure of the Traditional Two-Pronged Rational Classification Test

Since the early constitutional interpretations established in *State of West Bengal v. Anwar Ali Sarkar*⁹ and later solidified in *Budhan Choudhry v. State of Bihar*,¹⁰ judicial review under Article 14 has demanded that any legislative or executive classification must satisfy two cumulative conditions. First, the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Second, that differentia must have a rational relation or nexus to the object sought to be achieved by the statute or regulation in question. While Article 14 permits the state to classify populations for regulatory and welfare purposes, it strictly prohibits "class legislation"—which occurs when the state selects a group of citizens based on arbitrary criteria and subjects them to unique legal disabilities without an objective, logical justification.

In the case of the CARA Regulations, the differentia chosen by the executive branch is marital status, which is deeply intertwined with heteronormativity, given that Indian statutory law only recognizes marriage between a biological man and a biological woman. This differentia separates heterosexual married couples from all unmarried entities, including cohabiting same-

⁹ *State of West Bengal v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75; 1952 S.C.R. 284.

¹⁰ *Budhan Choudhry v. State of Bihar*, A.I.R. 1955 S.C. 191; (1955) 1 S.C.R. 1045.

sex couples. While this differentia can be considered "intelligible" in a basic descriptive sense, it completely fails the second prong of the test: the rational nexus requirement. To determine the existence of a rational nexus, the court must isolate the primary objective of the parent legislation. The Juvenile Justice Act, 2015, is explicitly defined as a secular, progressive social-welfare enactment designed for the care, protection, development, and rehabilitation of children in vulnerable circumstances. Section 3 of the Act lists mandatory guiding principles, emphasizing that the "best interest of the child" must be the primary, non-negotiable consideration in all administrative and judicial decisions. Section 39 explicitly reinforces that the primary goal of adoption is to provide a permanent, stable, and loving family environment for a child who has been abandoned or institutionalized.

Therefore, for the classification in Regulation 5(3) to pass constitutional muster, the State must demonstrate a clear logical connection showing that excluding same-sex cohabiting couples directly advances the welfare and best interests of orphaned children. This is an impossible burden for the state to meet. There is absolutely no empirical scientific data, credible sociological research, or psychological consensus within India or globally to suggest that same-sex couples or unmarried cohabiting partners are inherently less capable of providing a stable, loving, moral, and supportive household than heterosexual married couples. For over four decades, extensive global longitudinal studies conducted by premier scientific institutions—such as the American Psychological Association, the American Academy of Pediatrics, and the Indian Psychiatric Society—have consistently demonstrated that child development outcomes, emotional stability, gender identity formation, and academic success are completely unrelated to the sexual orientation or marital status of the parents.¹¹ Instead, positive child development is directly tied to the quality of parenting, the emotional stability within the home, and the socio-economic resources available to the household. By applying a categorical, blanket exclusion based entirely on the absence of a marriage certificate, the CARA Regulations artificially and severely shrink the pool of qualified prospective adoptive parents. This artificial reduction leaves thousands of vulnerable children languishing indefinitely in underfunded, overcrowded state institutions, directly subverting the legislative purpose of the Juvenile Justice Act. When a regulation excludes a highly qualified class of adoptive parents based on

¹¹ American Psychological Association, 'Brief of Amicus Curiae: Sexual Orientation, Parenting Capacity, and Child Development Outcomes' (2019) 14 *Journal of Law and Social Policy* 45; Indian Psychiatric Society, 'Official Position Statement on Homosexuality, Domestic Cohabitation, and Child Custody Welfare Metrics' (Issued October 12, 2022).

structural prejudice, the rational connection between the classification and the statutory goal of child welfare is broken, rendering the measure unconstitutional class legislation.

B. The Doctrine of Manifest Arbitrariness as a Substantive Equal Protection Standard

Even if the state's classification could survive the traditional, deferential rational classification test, it completely fails when subjected to the contemporary doctrine of manifest arbitrariness. This doctrine, which represents a massive leap forward for substantive equal protection in India, was revived and structurally codified by a Constitution Bench in *Shayara Bano v. Union of India*¹² and subsequently deployed to strike down discriminatory penal provisions in *Navtej Singh Johar v. Union of India*¹³ and *Joseph Shine v. Union of India*.¹⁴ Under this expanded interpretation of Article 14, a statutory provision or subordinate regulation will be struck down as manifestly arbitrary if it is executed without an adequate determining principle, is capricious, irrational, or is founded on deep stereotypes and prejudices rather than reason and logic. As Justice R.F. Nariman brilliantly articulated in *Shayara Bano*, when a piece of legislation does not track a logical, reasonable pathway and is excessive or disproportionate, it violates the rule of law and must be invalidated.

The CARA Regulation's insistence on legal marriage as the sole, unyielding indicator of domestic stability is an inadequate and structurally irrational determining principle. Stability within a committed relationship is a functional, measurable reality that manifests through tangible indicators independent of a formal marriage license. Long-term cohabitation, shared economic life, joint bank accounts, mutual property ownership, and deep emotional interdependence are verifiable, empirical facts that demonstrate a stable household capable of raising a child. By refusing to allow CARA administrative officials to even evaluate these functional indicators during a standard Home Study Report, and instead implementing an absolute, pre-emptive ban, the executive branch acts with constitutional caprice.

Furthermore, the CARA framework contains an internal logical contradiction that exposes its fundamental arbitrariness under Article 14. Under Regulation 5(2), the state explicitly permits a single individual—completely regardless of their sexual orientation—to adopt a child, provided they meet the basic income and health thresholds. This means the Indian legal system

¹² *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.

¹³ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, para 410 (per Nariman, J.).

¹⁴ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39.

fully accepts that a single queer individual possesses the emotional maturity, psychological health, and structural capability to provide a safe, stable, and nurturing home for an orphaned child. However, if that identical queer individual enters into a committed, long-term cohabiting relationship with a partner, creating a joint household with double the financial resources, two parental caregivers, and a broader emotional support system, the law suddenly views them as ineligible for joint adoption. To argue that a child is perfectly safe and stable when raised by one queer parent, but faces an unacceptable risk of instability when that exact same parent is structurally supported by a dedicated domestic partner in a shared home, is a completely illogical and contradictory stance. This complete lack of an adequate determining principle exposes the regulation as a product of institutional prejudice, meeting the precise threshold of manifest arbitrariness.

IV. THE ARTICLE 15 ANALYSIS: REARTICULATING THE FORBIDDEN GROUNDS AND INDIRECT DISCRIMINATION

Article 15(1) of the Constitution of India provides a powerful guarantee against systemic bias, explicitly commanding that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." In evaluating the constitutional validity of Regulation 5(3) of the CARA Regulations, the State frequently relies on a literalist, formalistic defense, arguing that the regulation does not target queer individuals because of their "sex" or "sexual orientation," but merely applies a neutral restriction based on "marital status" that impacts unmarried heterosexuals and same-sex couples equally. This line of reasoning is constitutionally flawed because it ignores the evolution of Article 15(1) jurisprudence regarding gender identity, sexual orientation, and the doctrine of indirect discrimination.

A. The Expansive Interpretation of "Sex" and the Prohibition of Orientation-Based Stereotypes

The historical, textual reading of Article 15(1) which sought to confine the term "sex" to basic biological anatomy has been entirely rejected by the modern Supreme Court in favor of an expansive, dignity-based interpretation. In the foundational decision in *National Legal Services Authority (NALSA) v. Union of India*,¹⁵ the Court recognized that "sex" under Article 15 is

¹⁵ *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 S.C.C. 438.

not limited to biological characteristics but fundamentally encompasses a person's gender identity, gender expression, and psychological self. This principle was extended to sexual orientation in *Navtej Singh Johar*, where the Court established that sexual orientation is an immutable characteristic inextricably linked to an individual's identity, privacy, and personal dignity. Justice D.Y. Chandrachud in *Navtej* explicitly noted that discrimination based on sexual orientation is inherently a form of discrimination grounded in stereotypes associated with "sex," as it punishes individuals who refuse to conform to traditional gender roles and heteronormative expectations.¹⁶ Therefore, any legal framework that uses a classification to deny a basic civil benefit to individuals based on their choice of an intimate partner is a direct violation of Article 15(1).

B. The Doctrine of Indirect Discrimination and the Myth of Facially Neutral Rules

The state's defense that the CARA Regulations are facially neutral because they exclude all unmarried couples equally is dismantled by the doctrine of indirect discrimination. This doctrine was fully integrated into Indian constitutional law by a brilliant analysis in *Lt. Col. Nitisha v. Union of India*.¹⁷ In *Nitisha*, the Supreme Court established that formal equality—the practice of treating similarly situated individuals identically on the face of a rule—is entirely insufficient if the rule's real-world application results in a disproportionate, adverse impact on a historically marginalized group. Indirect discrimination occurs when a policy appears completely neutral on its face but carries a distinct structural bias that compounds systemic disadvantage for a protected class, and cannot be justified by an objective, compelling state interest unrelated to the discrimination.

When applied to the CARA adoption framework, the requirement of a "stable marital relationship" under Regulation 5(3) acts as a facially neutral criterion. However, its real-world operation reveals a profound structural bias against same-sex couples. Under the current legal landscape sustained by the *Supriyo* judgment, heterosexual cohabiting couples possess the full legal agency and option to marry under the Special Marriage Act, 1954, thereby immediately qualifying for joint adoption. For a heterosexual couple, remaining unmarried is an exercise of personal choice. For same-sex couples, however, entry into the institution of marriage is a complete legal impossibility. They are barred by law from fulfilling the very condition that the

¹⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, para 247 (per Chandrachud, J.).

¹⁷ *Lt. Col. Nitisha v. Union of India*, 2021 S.C.C. OnLine S.C. 261.

CARA Regulations require for joint adoption. Therefore, the facially neutral rule operates as an absolute, inescapable structural barrier for same-sex partners while remaining a bridge of choice for heterosexual partners. By failing to account for this background legal disability, the regulations compound historical marginalization. The absolute exclusion is not based on relationship status alone; it is based on relationship status intersecting with a sexual orientation that prevents access to marriage. This intersectional harm falls squarely within the prohibition of Article 15(1), as the root cause of the exclusion traces back to the orientation and sex of the partners. The State cannot maintain a legal barrier to marriage and then use that exact barrier to justify a secondary administrative exclusion from adoption, transforming formal neutrality into systemic discrimination.

V. COMPARATIVE CRITIQUE: THE "BEST INTERESTS" OF THE CHILD VS. THE FETISHIZATION OF INSTITUTIONAL FORM

The constitutional failure of the majority's reasoning in *Supriyo* regarding the adoption framework stems from an inversion of the primary guiding principle of child welfare law: the best interests of the child. In both international human rights law and domestic family statutes, this principle requires an individualized, case-by-case assessment of a child's specific psychological, emotional, and physical needs, alongside a comprehensive evaluation of the capacity of prospective adoptive parents to meet those needs. Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), which India ratified in 1992, explicitly mandates that the best interests of children must be a primary consideration in all actions undertaken by public or private social welfare institutions, courts of law, or administrative authorities.¹⁸ This international commitment is structurally mirrored in Section 2(9) and Section 3 of the Juvenile Justice Act, 2015, which require all domestic agencies to prioritize the functional, emotional, and safety needs of the child over state administrative convenience or traditional social preferences.

The majority opinion in *Supriyo* misapplied this principle by transforming the "best interests" standard from an individual evaluative tool into a sweeping, generalized presumption used to shield exclusionary state policies. By endorsing the executive's claim that the state can assume *a priori* that a heterosexual married household is inherently more stable and safer than a

¹⁸ United Nations Convention on the Rights of the Child (UNCRC), adopted November 20, 1989, 1577 U.N.T.S. 3 (ratified by India on December 11, 1992).

committed queer household, the Court replaced empirical, individual inquiry with a generalized legislative stereotype. This is a complete subversion of the doctrine. The best interest of an abandoned child currently living in an understaffed institutional shelter is to be placed as quickly as possible into a loving, secure, permanent family environment. To pre-emptively deny that child two legal parents who are emotionally, physically, and financially prepared to offer a nurturing home, simply because those parents cannot obtain a marriage license, values formal institutional form over the concrete welfare of the child. The law fetishizes the marriage certificate while actively ignoring the functional reality of parental care.

A comparative analysis of global constitutional law reveals that progressive democracies have shifted away from using marital status as a rigid gatekeeper for adoption, recognizing that such barriers actively harm vulnerable children. A landmark example is found in the jurisprudence of the Constitutional Court of South Africa. In *Du Toit v. Minister of Welfare and Population Development*,¹⁹ the South African Court faced a challenge to statutory provisions that restricted joint adoption exclusively to married couples, preventing a stable same-sex couple from jointly adopting. The Constitutional Court unanimously declared the exclusion unconstitutional, holding that it violated the constitutional guarantees of equality and human dignity, and directly impeded the "best interests" of children by unnecessarily depriving them of the opportunity to gain two legal parents. The Court ordered the reading down of the statutory language to substitute "married couples" with "partners in a permanent same-sex life partnership," demonstrating how a court can protect child welfare while dismantling institutional discrimination.

Similarly, the European Court of Human Rights (ECHR) confronted this structural bias in *X and Others v. Austria*.²⁰ In that case, the ECHR ruled that when a member state permits unmarried heterosexual couples to adopt a partner's biological child, it cannot deny that identical right to same-sex couples living in a stable cohabiting relationship. The ECHR observed that the state had failed to provide any compelling, weightier reasons to demonstrate that the absolute exclusion of same-sex couples was necessary to protect the interests of the child. Instead, the court recognized that extending adoption rights ensured that the legal reality tracked the emotional reality of the household. The Indian majority's defensive stance in

¹⁹ *Du Toit v. Minister of Welfare and Population Development*, 2002 (10) B.C.L.R. 1006 (CC).

²⁰ *X and Others v. Austria*, Application No. 19010/07, European Court of Human Rights [ECHR] (Grand Chamber, 2013).

Supriyo isolates the nation's jurisprudence from these major international constitutional developments, choosing a formalistic approach that insulates administrative regulations from basic equality testing under the guise of institutional deference. By doing so, India's family law risks falling behind international standards that prioritize functional, compassionate parenting over rigid marital status.

VI. RE-ARTICULATING LEGITIMATE UNDER-INCLUSIVENESS AS ILLICIT CLASS LEGISLATION

In defending the exclusionary architecture of the CARA Regulations, the Union of India heavily relied on the constitutional doctrine of "under-inclusiveness." Under this regulatory defense, the state argues that the legislature or the executive branch is not constitutionally bound to reform an entire social field all at once; it possesses the discretionary authority to address perceived social needs in incremental stages, focusing its regulatory resources where it believes the need is most acute or where public consensus is most settled—in this instance, providing institutionalized children with traditional, married heterosexual parents.²¹ The state contends that extending joint adoption to non-traditional relationships requires deep, polycentric modifications to multiple personal laws and statutory schemes, an administrative task that the executive was not prepared to execute.

While the Indian judiciary has traditionally tolerated under-inclusive classifications within complex economic regulations, tax policies, or pilot social-welfare schemes, this judicial tolerance cannot be extended to deep exclusions from fundamental personal liberties and basic civil benefits. As established in the seminal ruling in *State of Gujarat v. Shri Ambica Mills*,²² an under-inclusive classification is constitutionally permissible only if the state can clearly demonstrate that the selected group possesses a unique, distinct characteristic that justifies specialized regulatory treatment, and that the complete exclusion of others is a matter of temporary administrative convenience or progressive, phased implementation. The court must ensure that under-inclusiveness does not become an endless shield used to protect arbitrary state discrimination from judicial scrutiny.

²¹ Written Submissions on behalf of the Union of India, *Supriyo v. Union of India*, Writ Petition (Civil) No. 1011 of 2022, para 14.2.

²² *State of Gujarat v. Shri Ambica Mills*, (1974) 4 S.C.C. 656.

The exclusion embedded in Regulation 5(3) of the CARA Regulations does not represent a case of progressive, phased implementation. The Union of India has outlined no official administrative plan, legislative timeline, or policy framework to eventually extend adoption rights to same-sex cohabiting couples. The exclusion is permanent, structural, and conceptual. When an under-inclusive classification is maintained indefinitely without empirical justification, and where its direct real-world effect is to isolate a marginalized minority from basic civil entitlements, legitimate under-inclusiveness hardens into illicit class legislation. The regulation stops being a protective measure for children and becomes a punitive mechanism deployed against non-traditional family units. By permanently denying same-sex partners the right to jointly protect a child, the state elevates traditional social morality over constitutional morality, violating the foundational promise of equality before the law. The defense of under-inclusiveness cannot be used to sustain systemic discrimination against a protected class.

VII. THE REMEDIAL ARCHITECTURE: A THREE-FOLD FRAMEWORK FOR CONSTITUTIONAL COMPLIANCE

To resolve this profound constitutional impasse and correct the legal vacuum left in the wake of the *Supriyo* decision, a clear and comprehensive remedial architecture is required. This framework must address both the procedural and substantive defects of the current adoption regime, providing effective legal protection for queer families while respecting the institutional boundaries of the judiciary through recognized methods of constitutional interpretation.

1. The Constitutional Reading Down of Regulation 5(3)

The immediate and most effective judicial remedy is the constitutional reading down of Regulation 5(3) of the CARA Adoption Regulations, 2022. It is a well-established principle of Indian constitutional interpretation that when a statutory provision or administrative rule faces invalidation due to unconstitutional under-inclusiveness, the court may read down or expand the specific text to align it with Part III guarantees, rather than striking down the entire regulation and creating an administrative crisis. In the context of CARA, the phrase "stable marital relationship" must be interpreted expansively by the high courts and the Supreme Court to mean a "stable marital or committed cohabiting relationship." By reading down the text to include partners in a permanent, stable domestic partnership, the judiciary can eliminate the constitutional infirmity under Articles 14 and 15 without dismantling the entire administrative

apparatus of CARA, instantly opening access to qualified queer couples while preserving the strict screening mechanisms for prospective parents.

2. Transition to a Case-by-Case Functional Evaluation Framework

Following the reading down of the regulation, CARA must replace its blanket categorical exclusion with an individualized, functional assessment framework. Prospective adoptive parents in same-sex or cohabiting relationships should be subjected to the exact same rigorous screening processes, psychological evaluations, and background checks currently applied to married heterosexual couples during the mandatory Home Study Report (HSR). A couple's domestic stability and parental capacity should be evaluated using functional, objective parameters—such as the duration of their cohabitation, shared financial accounts, mutual property ownership, emotional compatibility, and community support systems—rather than relying on the mere presence of a formal marriage certificate. This functional transition ensures that the state's regulatory apparatus focuses entirely on the actual quality of care a child will receive within the home, aligning administrative practice with the true spirit of the "best interests" principle.

3. Legislative Clarification and Amendment of the Juvenile Justice Act

Ultimately, to secure long-term statutory clarity and insulate queer families from shifting political landscapes, Parliament should enact an explicit amendment to Section 57 of the Juvenile Justice Act, 2015. This legislative clarification should state in clear text that the criteria for eligibility to adopt a child must be entirely non-discriminatory with respect to sex, gender identity, sexual orientation, and marital status. The amendment should redefine eligible prospective adoptive parents to explicitly include stable cohabiting partners alongside married spouses. By updating the parent statute, Parliament can fulfill its constitutional role as a guardian of equality, ensuring that India's family and social-welfare law reflects the realities of its pluralistic, evolving society.

VIII. CONCLUSION: TRANSFORMATIVE CONSTITUTIONALISM AND THE HORIZON OF EQUALITY

The Supreme Court of India's decision in *Supriyo v. Union of India* left a deeply fractured and contradictory landscape for the protection of queer rights in India. While the judgment marked

a progressive step by recognizing the complete freedom of LGBTQ+ individuals from state discrimination and affirming their right to form intimate relationships, the majority's refusal to extend formal legal recognition or reform exclusionary subordinate regulations has sustained a system that actively penalizes alternative family structures. The Central Adoption Resource Authority (CARA) Adoption Regulations, 2022, in their current form, stand as a stark manifestation of this ongoing systemic exclusion, creating an unconstitutional barrier that cuts off committed queer partners from joint parenthood.

This multi-dimensional constitutional critique has demonstrated that the categorical exclusion of same-sex cohabiting couples from joint adoption under Regulation 5(3) completely fails the standards of both Article 14 and Article 15 of the Indian Constitution. The regulation establishes a classification that bears no rational connection to the legislative objective of child welfare, meets the standard of manifest arbitrariness by utilizing a contradictory and irrational determining principle, and inflicts severe indirect discrimination on the basis of sex and sexual orientation by elevating an institutional structure that same-sex couples are legally barred from accessing. By prioritizing formal institutional status over the actual functional capacity of a household to provide a loving home, the state's framework harms the very vulnerable class it is mandated to protect: orphaned and abandoned children who are denied access to a broader pool of dedicated, loving parents.

A true commitment to transformative constitutionalism demands that the law look past formalistic, traditional models of domesticity and recognize the functional realities of love, care, commitment, and family. Correcting the structural flaws within the CARA Regulations through a rigorous process of judicial reading down and legislative amendment is not an act of institutional overreach, but a profound constitutional necessity. It is a vital step required to align India's social-welfare law with its core constitutional guarantees. Only when the right to form a family and protect a child is granted equally to all citizens, completely regardless of their sexual orientation, will the foundational promises of liberty, equality, and human dignity enshrined in the preamble of the Constitution be fully realized for every citizen of the Republic.