
BEYOND THE BINARY: RETHINKING TRANSGENDER RIGHTS UNDER INDIA'S PERSONAL LAW FRAMEWORK

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ABSTRACT

India has made considerable progress in recognising transgender identity through constitutional decisions and statutory reforms. However, family law remains an area of significant legal uncertainty. The rights of transgender persons in marriage, divorce, maintenance, adoption, guardianship, parenthood and succession continue to be governed by personal and secular laws that largely follow binary gender categories and traditional family roles. This creates a distinct legal problem: recognition of gender identity does not necessarily provide clear legal status as a spouse, parent, guardian or heir.

This paper examines the relationship between transgender identity and India's plural family-law system through doctrinal, judicial and comparative analysis. It focuses on key concerns, including the effect of transition during an existing marriage, different and uncertain pathways to parenthood, succession issues, unequal access to family protections, exclusion of non-binary persons and the limited legal recognition of chosen families. The study also examines recent developments in Indian case law and draws comparative insights from the United Kingdom, Malta and Argentina.

The paper contends that transgender family rights cannot depend only on individual court decisions or the simple replacement of gendered terms in existing laws. It proposes a common minimum standard for family rights, a Legal Gender Continuity Principle, targeted statutory reforms and clearer rules on parenthood, family protection and succession. The study emphasises that meaningful legal recognition requires more than recognising identity; it also requires legal certainty in family relationships involving civil status, care, responsibility and property rights.

Keywords: Transgender Persons, Family Law, Personal Laws, Gender Identity, Marriage, Parenthood, Succession, Legal Gender Continuity.

1. INTRODUCTION

Family law governs some of the most personal and important aspects of legal life: whom a person may marry, how a marriage may end, who may become a parent or guardian and who inherits family property. For transgender persons in India, however, recognition of gender identity has developed faster than recognition of their rights within family law. A person may have a legally recognised gender identity while their legal position as a spouse, parent, guardian or heir remains uncertain.

This problem is made more complex by India's plural family-law system. Marriage, divorce, maintenance, adoption, guardianship and succession are governed by Hindu, Muslim, Christian and Parsi personal laws, along with secular statutes. Many of these laws use categories such as husband and wife, male and female, mother and father, son and daughter and widow and widower. These categories are not merely descriptive, they may determine legal capacity, entitlements and succession rights. The interaction between recognised gender identity and these existing legal categories therefore raises complex questions.

Indian courts have begun to address some parts of this issue. Constitutional decisions have recognised gender identity as an important part of equality, dignity and personal autonomy. Later judicial developments have addressed questions relating to marriage, protection from domestic violence, adoption and reproductive autonomy. However, major areas remain unsettled, including transition during marriage, divorce after transition, continuity of parental status, family rights of non-binary persons and succession.

The issue is therefore not simply whether transgender persons have family rights in principle. The real question is whether these rights are applied consistently throughout family life. Recognition of marriage remains incomplete if rights relating to divorce and maintenance are uncertain. Recognition of gender identity has limited practical value if parental status becomes unclear after transition. Similarly, inheritance rights should not depend on unresolved questions of gender classification.

Against this background, this paper examines transgender family rights in marriage, divorce, maintenance, adoption, guardianship, parenthood and succession. It analyses India's legal framework, judicial developments and selected international approaches. The paper contends that isolated judicial interpretation and the simple replacement of gendered terms are not

sufficient. India requires a coordinated approach that combines minimum constitutional guarantees with targeted reforms to personal and secular family laws. Legal recognition must determine not only who a person is before the law, but also provide certainty about their legal position within the family.

2. RESEARCH OBJECTIVES AND METHODOLOGY

2.1 Research Objectives

This study aims to examine the legal framework governing the family rights of transgender persons in marriage, divorce, maintenance, adoption, guardianship, parenthood and succession in India. It examines whether constitutional and statutory recognition of gender identity results in clear and enforceable rights under personal and secular family laws. The study also analyses judicial developments, identifies legal and practical gaps, examines selected international and comparative approaches and proposes reforms for creating a coherent, inclusive and legally certain family-law framework.

2.2 Research Methodology

This study uses a doctrinal and comparative legal research methodology based on qualitative analysis. Primary sources include constitutional provisions, personal and secular family-law statutes, transgender-rights legislation, judicial decisions and international human-rights instruments. Secondary sources, including books, journal articles, reports and other scholarly works, are also examined. A comparative approach is used to study selected legal frameworks in the United Kingdom, Malta and Argentina and to identify principles that may support reform within India's plural family-law system.

3. KEY CHALLENGES IN TRANSGENDER FAMILY RIGHTS IN INDIA

Despite significant progress in recognising transgender identity, family-law rights remain uncertain and inconsistent. The major challenges are:

1. Marriage Recognition-Family Rights Divide: Recognition of a transgender person's right to marry does not automatically clarify all the legal consequences of marriage. Issues relating to divorce, maintenance, alimony, adoption, parenthood and succession continue to be

governed by separate laws. As a result, a transgender person may be able to enter a legally recognised marriage while the full range of rights arising from that marriage remains uncertain.

2. Binary Structure of Personal Laws: Hindu, Muslim, Christian and Parsi family-law systems largely operate through categories such as husband and wife, male and female, mother and father and son and daughter. The problem is not limited to outdated terminology, as these classifications may determine legal rights, capacities and inheritance consequences. Therefore, transgender inclusion requires more than simply replacing gendered terms with neutral language.

3. Transition During an Existing Marriage: Indian family law lacks clear rules governing gender transition after marriage. Questions may arise regarding the validity and continuation of the marriage, changes to registration records, matrimonial remedies, maintenance and succession rights. This lack of clarity can affect not only the transgender person but also their spouse and children, making it a matter of family stability rather than gender recognition alone.

4. Fragmented Pathways to Parenthood: Transgender parenthood is governed by different legal routes involving personal-law adoption, secular adoption, guardianship, custody and assisted reproduction. A person may face different rules depending on whether parenthood is biological, adoptive or assisted. This lack of coordination creates uncertainty regarding eligibility, parental status, birth records and the continuation of parenthood after gender transition.

5. Uncertain Succession and Property Status: Succession laws use gender-specific rules and relationship categories such as son, daughter, widow and widower. This creates uncertainty not only for transgender heirs but also in cases where the deceased person had obtained legal recognition in another gender. The absence of clear rules leaves important questions about inheritance and property rights largely unresolved.

6. Uneven Access to Family Protection: Maintenance, domestic violence and other protective remedies often depend on categories such as wife, woman or female. Courts have provided relief in particular cases, but access to basic legal protection should not depend on repeated litigation over whether a transgender person falls within a specific statutory category. The challenge is to preserve the protective purpose of these laws while ensuring that transgender persons are not left without appropriate legal protection.

7. Non-Binary Exclusion and Administrative Barriers: Even where laws can be interpreted to include transgender men and women, non-binary persons may remain outside legal frameworks based on two fixed gender categories. The problem also extends beyond the law itself to marriage records, adoption procedures, birth certificates and digital systems. A legal right remains incomplete when the process of exercising it requires a person to choose an identity category that does not match their legal or lived identity.

8. Legal Invisibility of Chosen Families: Indian family law mainly recognises rights and obligations arising from marriage, blood relationships and formal adoption. For some transgender persons, networks of care and support may also include chosen or community relationships that receive little legal recognition. The issue is not necessarily to treat such relationships as equal to marriage, but to consider limited recognition for purposes such as healthcare decisions, emergency access, caregiving, dependency benefits and nomination rights.

4. LEGAL FRAMEWORK GOVERNING TRANSGENDER FAMILY RIGHTS IN INDIA

India has gradually recognised transgender identity through constitutional decisions and specific legislation. However, the laws governing family relationships have not developed at the same pace. Marriage, divorce, maintenance, adoption, guardianship, parenthood and succession continue to be governed by a combination of religious personal laws and secular statutes. Many of these laws are based on traditional categories such as bride and bridegroom, husband and wife, male and female and father and mother.

The main concern is the lack of consistency between recognised gender identity and family status. A transgender person may have a legally recognised gender identity while still facing unclear rules relating to marriage, matrimonial remedies, adoption, parenthood or inheritance. This creates a gap between recognition and legal consequences, where gender identity is recognised but its effects across different areas of family law remain unclear and fragmented.

4.1 Constitutional Framework

The constitutional foundation of transgender family rights mainly comes from Articles 14, 15, 19 and 21 of the Constitution of India. Article 14 guarantees equality before the law and equal

protection of the laws, while Article 15 prohibits discrimination on the ground of sex. These constitutional protections are directly relevant when access to marriage, maintenance, adoption or inheritance is affected by gender-based legal classifications.

Article 19(1)(a) protects freedom of expression, including the expression of gender identity, while Article 21 protects dignity, privacy, autonomy and personal liberty. These principles extend to intimate decisions concerning identity, choice of partner and family life. However, constitutional guarantees alone do not answer practical questions concerning marriage registration, transition during marriage, adoption eligibility, parental status or succession. Effective equality therefore depends upon family laws capable of giving consistent legal effect to recognised gender identity.

4.2 Transgender Persons (Protection of Rights) Act, 2019 and the 2026 Amendment

The Transgender Persons (Protection of Rights) Act, 2019¹ provides the main statutory framework for transgender rights in India. Section 3 prohibits discrimination in specified areas, Sections 4 to 7 deal with recognition of gender identity and Section 12 protects the right to residence and inclusion within the family. The Act therefore provides important legal protections relating to identity, non-discrimination and family residence.

However, the Act has a limited role in family law. It does not comprehensively address marriage, divorce, spousal maintenance, adoption, guardianship, reproductive parenthood or succession. Therefore, while the Act protects transgender persons within existing family structures, it does not provide a clear legal framework for their right to form and maintain legally recognised families.

The statutory position changed further with the Transgender Persons (Protection of Rights) Amendment Act, 2026², which modified important aspects of the definition and gender-recognition framework. The amendment has also faced constitutional challenges, particularly over the removal of self-perceived gender identity from the earlier statutory framework.

Changes in the legal recognition of gender can directly affect the operation of family laws that rely on gender-specific categories. However, the amended framework does not clearly explain

¹ The Transgender Persons (Protection of Rights) Act 2019, Act No 40 of 2019, w.e.f. 10 January 2020.

² The Transgender Persons (Protection of Rights) Amendment Act 2026, Act No 3 of 2026, w.e.f. 25 May 2026.

how recognised gender status applies to marriage, adoption, parenthood and succession. This lack of coordination reflects a major problem in the present legal framework: recognition of gender identity and recognition of family status continue to develop separately.

4.3 Hindu Personal Law Framework

Hindu personal law governs family relationships through separate statutes dealing with marriage, adoption, maintenance, guardianship and succession. Within this framework, the Hindu Marriage Act, 1955³ uses the terms “bridegroom” and “bride” under Section 5 and provides remedies relating to judicial separation, divorce, maintenance and custody. However, the Act does not clearly address the effect of gender transition on marriage registration, continuation of an existing marriage or related matrimonial rights.

The Hindu Adoptions and Maintenance Act, 1956⁴ creates a more direct issue of gender classification. Sections 7 and 8 separately regulate the adoption capacity of male and female Hindus. This creates uncertainty about which provision applies after legal gender recognition and how the Act applies to persons outside the binary gender structure. The maintenance provisions are also gender-specific, particularly Section 18, which provides maintenance rights to a Hindu wife.

The Hindu Minority and Guardianship Act, 1956⁵ regulates natural guardianship but does not specifically address what happens when an existing parent undergoes gender transition. This creates uncertainty about the continuation of parental responsibilities, custody and guardianship rights. A change in a parent’s legally recognised gender should not affect an already established parent-child relationship.

Along with marriage, adoption and guardianship, gender recognition also raises important questions under succession law. The Hindu Succession Act, 1956⁶ provides separate rules for succession to the property of Hindu males under Section 8 and Hindu females under Sections 15 and 16. However, the Act does not clearly explain how these separate schemes apply when a person obtains legal recognition in another gender during their lifetime. These gaps show that

³ The Hindu Marriage Act 1955, Act No 25 of 1955, w.e.f. 18 May 1955.

⁴ The Hindu Adoptions and Maintenance Act 1956, Act No 78 of 1956, w.e.f. 21 December 1956.

⁵ The Hindu Minority and Guardianship Act 1956, Act No 32 of 1956, w.e.f. 25 August 1956.

⁶ The Hindu Succession Act 1956, Act No 30 of 1956, w.e.f. 17 June 1956.

Hindu personal law requires coordinated rules on marital continuity, adoption capacity, parental status and succession rather than separate reforms limited to individual family rights.

4.4 Special Marriage Act, 1954

The Special Marriage Act, 1954⁷ provides a secular route to marriage for persons irrespective of their religion. However, Section 4 continues to structure marriage through the categories of male and female and prescribes different minimum ages for each. The Act also provides legal remedies relating to nullity, divorce, alimony and custody.

Although the Act provides a secular form of marriage, it does not expressly address the position of non-binary persons or explain the effect of gender transition during an existing marriage. This creates uncertainty regarding the continuation of marital status, changes to marriage records and related matrimonial remedies. This gap is particularly important because the Act could otherwise provide a common civil route for persons who face limited or uncertain recognition under personal laws.

4.5 Muslim Personal Law Framework

Muslim family law in India is governed by uncodified personal-law principles along with statutes such as the Muslim Personal Law (Shariat) Application Act, 1937⁸ and the Dissolution of Muslim Marriages Act, 1939⁹. Within this framework, marriage, dissolution, maintenance and inheritance are governed by rules in which sex and marital status may have important legal consequences.

The interaction between legally recognised gender identity and these personal-law principles remains unclear. Questions may arise regarding marriage after gender transition, continuation of an existing marriage and the application of sex-based inheritance rules. The issue is especially complex because Muslim family law cannot be reformed simply by replacing gendered terms in a single statute. Any reform must carefully balance constitutional equality, legal recognition of transgender identity and the existing structure of personal law.

⁷ The Special Marriage Act 1954, Act No 43 of 1954, w.e.f. 1 January 1955.

⁸ The Muslim Personal Law (Shariat) Application Act 1937, Act No 26 of 1937, w.e.f. 7 October 1937.

⁹ The Dissolution of Muslim Marriages Act 1939, Act No 8 of 1939, w.e.f. 17 March 1939.

The issue becomes particularly clear in matters of inheritance. Muslim succession law distributes property according to defined family relationships and in certain situations, sex-based shares. However, Indian law does not provide clear rules explaining how legally recognised gender identity applies to these classifications. As a result, the position of transgender persons under Muslim succession law remains uncertain.

4.6 Christian Personal Law Framework

Christian marriage and divorce are mainly governed by the Indian Christian Marriage Act, 1872¹⁰ and the Divorce Act, 1869¹¹, while succession is largely governed by the Indian Succession Act, 1925¹². The Divorce Act provides remedies relating to dissolution of marriage, nullity, alimony and custody. However, the broader legal framework does not specifically address transgender marriage or the effect of gender transition during an existing marriage.

Within this legal framework, gender transition raises important questions about the continuation of existing family relationships. The laws do not clearly explain how transition affects marriage records, spousal status or matrimonial remedies. Similar uncertainty may arise in succession when legal recognition as a spouse or parent becomes unclear after transition. The issue, therefore, goes beyond gendered terminology and concerns the protection of already established family relationships.

4.7 Parsi Personal Law Framework

The Parsi Marriage and Divorce Act, 1936¹³ governs marriage and matrimonial remedies within the Parsi community, while succession is regulated by the relevant provisions of the Indian Succession Act, 1925¹⁴. The matrimonial framework is largely based on the relationship between husband and wife and does not specifically address transgender marriage or the legal consequences of gender transition during an existing marriage.

As a result, questions concerning eligibility for marriage, continuation of an existing marriage and related matrimonial rights remain dependent on legal interpretation. The Parsi framework therefore reflects a wider issue found across personal laws: transgender identity may be legally

¹⁰ The Indian Christian Marriage Act 1872, Act No 15 of 1872, w.e.f. 18 July 1872.

¹¹ The Divorce Act 1869, Act No 4 of 1869, w.e.f. 1 April 1869.

¹² The Indian Succession Act 1925, Act No 39 of 1925, w.e.f. 30 September 1925.

¹³ The Parsi Marriage and Divorce Act 1936, Act No 3 of 1936, w.e.f. 22 June 1936.

¹⁴ The Indian Succession Act 1925, Act No 39 of 1925, w.e.f. 30 September 1925.

recognised, but there is no clear statutory mechanism connecting that recognition with rights arising under community-specific family laws.

4.8 Maintenance and Domestic Violence Framework

Maintenance rights are provided under personal laws, matrimonial statutes and secular legal remedies. Within this framework, the Protection of Women from Domestic Violence Act, 2005¹⁵ provides important remedies, including protection orders, residence orders, monetary relief, custody orders and compensation.

The issue here is different from the recognition of marriage. Transgender persons facing abuse within intimate or domestic relationships need clear access to legal protection, but gender-specific terms in protective laws may create uncertainty about their coverage. A complete family-rights framework must therefore address both the recognition of family relationships and protection within them, ensuring that access to safety does not depend on prolonged litigation over gender classification.

4.9 Adoption and Child-Care Framework

Apart from adoption under Hindu law, the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations provide a secular route to adoption. Under this framework, eligible single persons and married couples may adopt subject to prescribed conditions. However, some eligibility rules continue to distinguish applicants based on gender and marital status.

The lack of a clear transgender-inclusive framework creates practical difficulties relating to applicant classification, documentation and access to the adoption process. Under HAMA, the issue arises because the law provides separate adoption rules for male and female Hindus. In contrast, the secular adoption framework raises questions about how transgender and non-binary applicants are recognised and accommodated throughout the adoption process.

Adoption law should mainly focus on parental capacity, suitability and the best interests of the child. However, when gender identity is legally recognised but eligibility rules and

¹⁵ The Protection of Women from Domestic Violence Act 2005, Act No 43 of 2005, w.e.f. 26 October 2006.

administrative procedures remain unclear, such recognition may not provide transgender persons with meaningful and equal access to parenthood.

4.10 Guardianship, Custody and Legal Parenthood

Guardianship and custody are governed by personal laws, the Guardians and Wards Act, 1890¹⁶ and relevant matrimonial statutes. Under the Guardians and Wards Act, Section 7 empowers the court to appoint or declare a guardian where it is necessary for the welfare of the minor, while Section 17 requires the court to consider the welfare of the minor and other relevant circumstances in selecting a guardian. Custody provisions under matrimonial laws, such as Section 26 of the Hindu Marriage Act, 1955, also allow courts to make orders concerning the custody, maintenance and education of minor children. However, these laws do not clearly explain how gender transition affects an existing parent-child relationship or the continuation of parental and guardianship rights.

The main concern is the continuation of legal parenthood after gender transition. A parent's transition should not affect existing parental responsibilities, custody rights or the child's legal relationship with that parent. However, questions may still arise regarding parental designation and changes to official records. Indian family law therefore needs clearer rules that respect a parent's recognised gender identity while protecting the continuity of the existing parent-child relationship.

4.11 Assisted Reproduction and Reproductive Parenthood

The Assisted Reproductive Technology (Regulation) Act, 2021 regulates ART services and clinics in India. The Act is relevant to transgender family rights because gender identity and reproductive capacity do not always correspond. Transgender persons may retain reproductive capacity or seek fertility preservation to have children in the future.

The present framework does not clearly address transgender persons access to fertility preservation, assisted reproductive services or legal parenthood after the use of reproductive technology. This creates an important gap between gender identity and reproductive capacity. A modern family-law framework should recognise that both can exist together and provide clear rules on access, consent and parental status.

¹⁶ The Guardians and Wards Act 1890, Act No 8 of 1890, w.e.f. 1 July 1890.

4.12 Critical Legal Assessment

India's legal framework has made significant progress in recognising transgender identity and protecting transgender persons from discrimination. However, family law remains fragmented. Marriage laws continue to use gendered marital categories, adoption frameworks distinguish applicants based on gender or marital status, maintenance and protective laws rely on gender-specific relationships and succession laws may apply different rules based on sex.

The nature of the problem also differs across different areas of family law. Marriage law requires clarity on eligibility and the continuation of marriage after transition. Adoption law needs clear and equal eligibility standards, while guardianship law must protect existing parent-child relationships. Reproductive law must recognise the difference between gender identity and reproductive capacity and succession law requires clear rules on how legal gender recognition affects inheritance and property distribution.

Taken together, the present framework shows a continuing gap between recognition of transgender identity and its legal consequences within family law. Addressing this gap does not necessarily require replacing India's plural personal-law system. However, coordinated reforms are needed to ensure minimum standards of non-discrimination, continuity of existing family relationships, consistent recognition of legal gender identity and meaningful access to family rights under both personal and secular laws.

5. JUDICIAL DEVELOPMENT OF TRANSGENDER FAMILY RIGHTS IN INDIA

Indian courts have played an important role in developing transgender rights, especially through the recognition of gender identity, equality and dignity. However, judicial development in family law remains uneven. Courts have addressed issues relating to marriage, domestic violence, adoption and reproductive autonomy, while areas such as divorce, guardianship and succession still lack clear judicial guidance. The existing case law therefore shows both the importance of rights-based judicial interpretation and the limits of developing family rights through individual cases.

5.1 National Legal Services Authority v. Union of India (2014)

The decision in *National Legal Services Authority v. Union of India*¹⁷ laid the constitutional

¹⁷ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

foundation for transgender rights in India. The Supreme Court recognised the right to gender identity and held that transgender persons are equally protected under Articles 14, 15, 16, 19 and 21 of the Constitution. The Court rejected the idea that constitutional protection is limited to the male-female binary and linked gender identity with dignity, personal autonomy and freedom of expression.

The importance of *NALSA* for family law lies in the legal consequences that should follow from the recognition of gender identity. If gender identity is protected as part of a person's constitutional rights, its legal effect cannot be limited to identity documents, employment or welfare benefits. Marriage, divorce, maintenance, parenthood and inheritance are also important parts of a person's legal status and family life. However, these issues were not directly decided in *NALSA* and family laws have not yet been fully aligned with the constitutional principles established by the judgment.

This creates a continuing gap between constitutional recognition of gender identity and legal status within family law. *NALSA* provides a strong foundation for transgender equality, but its principles have not yet been fully reflected across India's personal and family laws.

5.2 Arunkumar v. Inspector General of Registration (2019)

The Madras High Court's decision in *Arunkumar v. Inspector General of Registration*¹⁸ is one of the clearest examples of applying transgender identity recognition within Indian personal law. The case arose when authorities refused to register a Hindu marriage between a man and a transgender woman. While interpreting Section 5 of the Hindu Marriage Act, 1955¹⁹, the Court held that the term "bride" includes a transgender woman and directed the authorities to register the marriage.

The judgment extended transgender rights from constitutional recognition to a specific area of family law. By interpreting the Hindu Marriage Act in line with *NALSA*, the Court showed that terms used in personal laws can be understood according to legally recognised gender identity rather than being limited only to traditional ideas of sex.

However, the decision has a limited scope. The case involved a transgender woman who had

¹⁸ *Arunkumar v Inspector General of Registration* 2019 SCC OnLine Mad 8779.

¹⁹ The Hindu Marriage Act 1955, Act No 25 of 1955, w.e.f. 18 May 1955.

undergone gender-affirming surgery, and the judgment does not provide a complete legal framework for persons who have not medically transitioned or for non-binary persons. More importantly, recognition as a “bride” does not automatically explain how related legal categories such as wife, widow, mother, daughter or female heir should apply under maintenance, guardianship and succession laws.

The *Arunkumar* decision therefore shows both the strength and the limits of judicial interpretation. A court can remove an immediate barrier to marriage, but a single inclusive interpretation cannot resolve all the legal questions that arise from marriage and family status.

5.3 Vithal Manik Khatri v. Sagar Sanjay Kamble @ Sakshi Vithal (2023)

In *Vithal Manik Khatri v. Sagar Sanjay Kamble @ Sakshi Vithal*²⁰, the Bombay High Court considered whether a transgender woman could seek protection and monetary relief under the Protection of Women from Domestic Violence Act, 2005²¹. The Court held that, in the circumstances of the case, a transgender woman could come within the protective scope of the Act and seek relief under its provisions.

The decision deals with a different aspect of family rights from the *Arunkumar* case. The issue was not the right to enter a marriage, but access to legal protection within an intimate relationship. This distinction is important because meaningful family rights require both legal recognition of relationships and effective remedies when those relationships involve violence, abuse or economic vulnerability.

At the same time, the decision does not provide a clear answer for all gender-diverse persons. The case was decided in the specific factual context of a transgender woman who had undergone gender-affirming surgery. It therefore leaves uncertainty about the application of the Domestic Violence Act to transgender women who have not medically transitioned and to non-binary persons, particularly because Section 2(a) defines an “aggrieved person” through the category of “woman”. The judgment provides important protection, but its limited factual setting shows why access to basic legal remedies should not depend on case-by-case judicial interpretation.

²⁰ *Vithal Manik Khatri v Sagar Sanjay Kamble @ Sakshi Vithal Khatri and Another*, Writ Petition No 4037 of 2021 (Bombay High Court, 16 March 2023).

²¹ The Protection of Women from Domestic Violence Act 2005, Act No 43 of 2005, w.e.f. 26 October 2006.

5.4 *Supriyo @ Supriya Chakraborty v. Union of India* (2023)

In *Supriyo @ Supriya Chakraborty v. Union of India*²², a Constitution Bench of the Supreme Court mainly considered the legal recognition of marriages between persons of the same sex and whether the Special Marriage Act, 1954 could be interpreted to recognise such marriages. The Court declined to change the statutory framework through judicial interpretation and left the question of broader legal reform to the legislature.

The case must be clearly distinguished from decisions concerning transgender marriage. It did not primarily deal with transgender family rights, although gender identity and decisions such as *NALSA* and *Arunkumar* case were discussed in the wider context of the case. Its relevance to this study is therefore limited but important: transgender identity and sexual orientation involve different legal questions and the recognition of certain transgender marriages does not by itself resolve the wider issue of marriage equality.

In this context, *Supriyo* case is most useful for this study in showing the limits of judicial reform. Courts may interpret a particular legal term in an inclusive manner, as seen in *Arunkumar*, but wider changes involving marriage, divorce, maintenance, adoption and succession require coordinated legislative reform. Therefore, *Supriyo* should be used for this limited point rather than treated as a direct authority on transgender marriage.

5.5 *K. Prithika Yashini v. Union of India* (2025)

The question of transgender parenthood came before the courts in *K. Prithika Yashini v. Union of India*²³. The case concerned a transgender woman whose application to become a prospective adoptive parent was rejected by the adoption authorities. The case raised important questions about the interaction between the adoption framework under the Juvenile Justice law, eligibility requirements and the legal recognition of transgender identity.

The proceedings before the Madras High Court highlighted an important gap within the adoption framework. Section 57(3) of the Juvenile Justice Act permits a single or divorced “person” to adopt, subject to the applicable regulations. However, gender-based classifications and administrative procedures within the adoption system created barriers for a transgender

²² *Supriyo @ Supriya Chakraborty v Union of India* (2024) 1 SCC 1.

²³ *K Prithika Yashini v Union of India*, WP No 18178 of 2022 (Madras High Court).

applicant. The case therefore shows how a broadly worded statutory right can become limited at the regulatory or administrative level.

This development is especially relevant because adoption raises different legal issues from marriage. In the *Arunkumar* case, the Court could interpret the term “bride” within an existing marriage framework. Adoption, however, involves a detailed legal and administrative process based on eligibility requirements and the best interests of the child. The case therefore shows that transgender access to parenthood requires not only constitutional recognition, but also clear regulations and inclusive administrative procedures.

5.6 Hari Devageeth v. Union of India (2026)

A further development occurred in *Hari Devageeth v. Union of India*²⁴, where the Kerala High Court considered the reproductive rights of a transgender man who sought to preserve his oocytes for future reproduction. The case involved the relationship between his legally recognised male gender identity and his retained reproductive capacity. The Court permitted him to approach an ART bank for the retrieval and preservation of his oocytes for future reproductive use.

The case brings an important issue into transgender family-law jurisprudence: legal gender identity and reproductive capacity do not always correspond. A person who is legally recognised as male may still retain ovaries and reproductive capacity, while reproductive laws may regulate access through categories such as woman, commissioning couple and biological function.

This decision is significant because it extends the legal discussion beyond marriage and adoption to reproductive autonomy and future parenthood. However, it does not resolve all questions concerning transgender persons access to ART or legal parenthood after assisted reproduction. The judgment provides an important remedy in an individual case, but broader issues relating to eligibility, the use of preserved gametes and legal parental status still require clear statutory rules.

²⁴ *Hari Devageeth v Union of India*, WP(C) No 5306 of 2025 (Kerala High Court, 15 May 2026), 2026:KER:33711.

5.7 Judicial Analysis

Taken together, these decisions show that the judicial development of transgender family rights has occurred in specific areas rather than through a complete and coordinated framework. *NALSA* case established the constitutional recognition of gender identity, *Arunkumar* case applied this recognition to marriage; *Vithal Manik Khatri* case addressed legal protection within an intimate relationship; *K. Prithika Yashini* case highlighted barriers in the adoption system and *Hari Devageeth* case brought reproductive autonomy and future parenthood into judicial consideration.

These developments are significant, but they also have important limitations. Some of the leading cases arose from factual situations involving medical transition, while non-binary persons remain largely absent from Indian family-law decisions. Important issues such as divorce after transition, continuity of parental status, guardianship and succession also remain largely unresolved. The lack of reported cases in these areas should not be understood as legal certainty, instead, it shows that much of the relationship between gender identity and family status remains legally untested.

Indian courts have therefore addressed particular areas of transgender family rights without creating a complete legal framework. The law should not depend on separate litigation over every category - bride, wife, parent, heir or widow, across different personal-law systems. The next stage requires coordinated statutory reform that provides clear and predictable family-law consequences for legally recognised gender identity while protecting existing family relationships, parental responsibilities and property rights.

6. INTERNATIONAL AND COMPARATIVE LEGAL FRAMEWORK

The international development of transgender rights has raised an important question that identity-recognition laws alone cannot answer: what legal consequences should follow once a person's gender is legally recognized? This question is especially important in family law, where gender may affect marriage, parenthood, civil registration and existing family relationships. International human-rights standards provide the basic foundation, while the United Kingdom, Malta and Argentina offer different legislative approaches that may provide useful lessons for India's family-law framework.

6.1 International Human Rights Framework

International human-rights law provides a broad foundation for equality, privacy and family life. Article 16 of the Universal Declaration of Human Rights, 1948²⁵ recognises the right to marry and establish a family, while Articles 7 and 12 protect equality before the law and the right to privacy. Similarly, Articles 17, 23 and 26 of the International Covenant on Civil and Political Rights, 1966 protect privacy and family life, recognise the family as entitled to legal protection and guarantee equality before the law.

The Convention on the Rights of the Child, 1989²⁶ is particularly relevant to adoption, custody, guardianship and parenthood. Its child-centred approach places the best interests of the child at the centre of all decisions affecting children. In the context of transgender parenthood, this supports assessing parental capacity and the welfare of the child rather than excluding a prospective or existing parent solely because of their gender identity.

More specific guidance is provided by the Yogyakarta Principles, 2006²⁷, although they are not a binding international treaty. Principle 24 recognises the right to form a family without discrimination based on sexual orientation or gender identity and acknowledges that families exist in different forms. The Yogyakarta Principles Plus 10 further develop principles relating to legal recognition and identity documents.

Taken together, these international instruments provide a broad direction without requiring countries to follow a single model of family law. For India, their relevance lies in two connected principles: legally recognised gender identity should not become a reason for exclusion from family life and decisions involving children should be based on their welfare and individual circumstances rather than general assumptions about transgender parenthood.

6.2 United Kingdom: Defining the Consequences of Gender Recognition

The United Kingdom provides an important comparative model through the Gender

²⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) arts 7, 12 and 16, <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

²⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 3, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

²⁷ Yogyakarta Principles (2006) Principle 24, https://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

Recognition Act, 2004²⁸. The Act is relevant to this study because it not only provides a legal process for gender recognition but also addresses some of the legal consequences and exceptions that follow such recognition.

Section 9 establishes the general rule that, after a full Gender Recognition Certificate is issued, the person's acquired gender becomes their gender for legal purposes, subject to specific statutory exceptions. Section 12 separately provides that legal gender recognition does not affect the person's status as the father or mother of a child. The framework therefore combines legal recognition of acquired gender with the protection of an existing parent-child relationship.

This approach provides legal certainty, but it also creates a tension. A transgender person's acquired gender may be legally recognised for general purposes, while their parental status continues to be recorded through the fixed categories of "father" or "mother". The UK framework therefore shows both the value of clear continuity rules and the difficulty of balancing recognised gender identity with traditional parental categories.

For India, the important point is the legislative technique rather than the precise UK solution. Indian family law largely lacks clear rules explaining what happens to an existing marriage, parental status, maintenance rights or related legal interests after transition. Express consequential provisions could reduce dependence on separate litigation under each personal-law statute.

The UK framework therefore offers a useful lesson for India by showing the importance of clearly defining the legal consequences of gender recognition. Unlike the UK approach, Indian family law largely lacks clear rules explaining how gender transition affects an existing marriage, parental status, maintenance rights and other related legal interests. Introducing clear statutory provisions on these consequences could reduce the need for separate litigation under each personal-law statute.

6.3 Malta: Continuity of Legal Status

Malta's Gender Identity, Gender Expression and Sex Characteristics Act, 2015²⁹ adopts a rights-based approach based on self-determination and bodily integrity. The Act provides a

²⁸ Gender Recognition Act 2004, c 7, <https://www.legislation.gov.uk/ukpga/2004/7/contents>

²⁹ Gender Identity, Gender Expression and Sex Characteristics Act 2015, Act XI of 2015, Cap 540, <https://legislation.mt/eli/cap/540/eng/pdf>

legal process for recognising a person's gender identity without requiring medical intervention as the basis for legal recognition.

For family law, an important feature of this approach is the continuity of existing legal relationships. Legal gender recognition should not separate a person from rights and responsibilities that were already established before transition. This principle is particularly relevant when a person transitions during an existing marriage or after becoming a parent.

India could adopt a similar approach by clearly providing that gender transition alone does not invalidate an existing marriage, end parental responsibilities or remove existing maintenance and property rights. Such protection is important not only for the transgender person but also for the spouse and children whose legal rights arise from the same family relationship.

Malta's recognition framework also provides a useful perspective on non-binary identity. Recognition beyond male and female categories raises an important family-law question: a person may have a legally recognised non-binary identity while laws relating to marriage, parenthood or succession continue to operate through binary categories. Malta's comparative value therefore lies not in providing a complete solution to every such issue, but in showing that recognition beyond the binary must be supported by clear rules governing its consequences in family law.

6.4 Argentina: Integrating Gender Identity and Family Equality

Argentina provides a different comparative approach through the combined operation of the Marriage Equality Law 2010³⁰ and the Gender Identity Law, 2012³¹. The two laws deal with different areas but work together in an important way: one removes sex-based restrictions in marriage, while the other provides legal recognition of gender identity. Their interaction reduces the conflict between a person's recognised gender identity and their legal family status.

The Marriage Equality Law, 2010 extended marriage to couples irrespective of their sex. Its important feature for transgender family rights is that marital eligibility does not depend upon one party being legally classified as male and the other as female. The law also extends the

³⁰ Marriage Equality Law, Law No 26.618 (2010), <https://servicios.infoleg.gob.ar/infolegInternet/anexos/165000-169999/169608/norma.htm>

³¹ Gender Identity Law, Law No 26.743 (2012), <https://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm>

legal rights and responsibilities arising from marriage without distinction based on the sex composition of the married couple. This reduces the possibility that a change in the legal gender of one spouse will create uncertainty about the validity or continuation of the marriage.

The Gender Identity Law, 2012 recognises the right to gender identity, the free development of personality according to that identity and treatment consistent with it. It allows a person to obtain legal recognition of gender identity through an administrative process without requiring surgery, medical treatment or ordinary judicial approval. The law therefore separates legal gender recognition from compulsory medical intervention and provides a clear process for changing official records.

The importance of the Argentine approach lies in the interaction between these two laws. Legal gender recognition operates within a marriage framework that does not depend on the sex composition of the couple. As a result, recognition of a person's gender identity is less likely to create separate questions concerning marital eligibility or continuity. This shows the advantage of coordinating identity-recognition law with the wider family-law framework rather than allowing the two areas to operate separately.

For India, this approach provides an important comparative lesson. Under the present Indian framework, legal recognition of gender identity may still lead to separate questions before marriage registrars, adoption authorities and other family-law institutions. The Argentine approach shows that these difficulties can be reduced when the consequences of recognised gender identity are supported by compatible family-law rules.

However, the Argentine model cannot simply be applied to India because India has a plural system of personal and secular family laws. Its main value for India lies in the principle of legal coordination: recognition of gender identity becomes more effective when family laws clearly determine its consequences for marriage, parenthood and other family relationships.

6.5 Comparative Lessons for India

The three countries address different parts of the same legal problem. The United Kingdom shows the importance of clearly defining the legal consequences and exceptions that follow gender recognition. Malta highlights the need to protect existing family relationships after transition and also raises questions about the place of non-binary persons within family law.

Argentina shows how coordination between gender identity law and family law can reduce uncertainty in areas such as marriage and parenthood.

These approaches provide useful lessons for India, but they must be adapted to its own family-law structure. India has Hindu, Muslim, Christian and Parsi personal laws, along with secular family laws. Therefore, rather than following only one foreign model, India can draw suitable principles from all three approaches. One possible reform is a common Legal Gender Continuity Principle that applies across the existing family-law system. Under this principle, legal gender recognition or transition alone should not invalidate an existing marriage, end an established parent-child relationship or take away existing maintenance and property rights.

However, a general continuity principle alone cannot solve every problem. Marriage laws need clear rules on eligibility and the continuation of marriage after transition. Adoption laws need clear and non-discriminatory eligibility standards. Guardianship and parenthood laws must protect existing parent-child relationships while also providing rules for changes in official records. Succession laws need clarity on how legal gender recognition affects sex-based inheritance rules and gender-specific family categories.

Comparative law therefore provides India with useful principles rather than a single ready-made solution. The main lesson from these countries is that legal recognition of gender identity must be connected with clear and predictable consequences across family law. Without this connection, recognition remains incomplete when a transgender person seeks legal recognition and protection as a spouse, parent or heir.

7. CRITICAL ANALYSIS

India's transgender family-law problem cannot be solved simply by replacing words such as "male", "female", "husband" or "wife" with gender-neutral terms. The problem is much deeper. While the law has developed to recognise gender identity as an individual right, family laws continue to provide rights and responsibilities based on relationships such as spouse, parent, child and heir, which are also influenced by religion, sex and family ties. The main challenge is therefore to ensure that recognised gender identity has clear and consistent legal consequences across family law while also taking into account India's plural system of personal laws.

A completely uniform family code is not the only solution. India can continue to recognise different personal laws while ensuring that transgender persons receive basic legal protection across all family-law systems. Reforms concerning marriage, divorce and succession may raise questions of religious freedom under Articles 25 and 26 of the Constitution. However, personal-law diversity should not result in a situation where a person's legally recognised gender has uncertain or inconsistent consequences under different laws. A better approach is to preserve legitimate differences between personal laws while establishing minimum constitutional protections that apply to everyone. In this way, equality can serve as a common minimum standard even when different communities continue to follow different family-law rules.

The existing system also places too much burden on transgender persons to secure family rights through individual court cases. A person should not have to approach different courts to establish the right to marry, seek protection from domestic violence, apply for adoption or preserve reproductive material. Such an approach creates rights through litigation rather than providing them clearly through law. It mainly benefits those who have the resources and ability to challenge exclusion, while others remain dependent on administrative decisions and uncertain legal interpretations. Courts play an important role in protecting constitutional rights, but judicial interpretation cannot replace the need for clear and comprehensive legislation.

Another concern is that legal inclusion may still leave some people excluded. Allowing transgender persons to be recognised within the existing categories of "man" or "woman" may solve certain legal problems, but it does not address the position of non-binary persons. Similarly, a law may use the gender-neutral word "person", while application forms, online portals, eligibility rules and official records still require a person to choose either male or female. Therefore, real inclusion depends not only on the language of the law but also on whether a person can exercise a right from the application stage to final legal recognition without being forced to accept a gender category that does not match their recognised identity.

Family-law reform must protect existing family relationships as well as individual gender identity. When a person transitions during an existing marriage or after becoming a parent, the legal effects can extend to the spouse, children and other family members. Any sudden change in the validity of a marriage or parental status may affect maintenance, custody, inheritance and the rights of children. The law should therefore recognise a person's gender identity

without automatically disturbing family relationships that were already legally established. Protecting such continuity is important not only for transgender persons but also for ensuring legal certainty and fairness for all members of the family.

Taken together, these concerns show that neither judicial interpretation nor legal recognition of gender identity alone is sufficient to address the problems faced by transgender persons in family law. The present framework remains inconsistent across marriage, adoption, guardianship, reproductive rights and succession, while non-binary persons and administrative barriers create further gaps in access to family rights. The real measure of transgender equality is therefore not simply whether the law recognises a person's gender identity, but whether that recognition carries clear and consistent legal consequences when the person enters, continues or leaves a family relationship, becomes a parent or claims rights as an heir.

8. RECOMMENDATIONS

Reform of transgender family rights requires more than simply changing gendered words in existing laws. India needs a coordinated legal framework that respects the diversity of personal laws while ensuring basic standards of equality, continuity of family relationships and legal certainty. The following measures are proposed:

(i). Establish a Common Minimum Family-Rights Standard

Parliament should establish minimum legal protections that apply across both personal and secular family laws. These protections should include freedom from discrimination based on gender identity, recognition of a person's legally recognised gender and protection of existing family relationships after transition. This approach would allow different personal laws to continue operating while ensuring that basic family rights do not depend on uncertain or inconsistent interpretations of gender.

(ii). Introduce a Legal Gender Continuity Rule

Indian law should clearly provide that legal gender recognition or transition alone does not invalidate an existing marriage, end parental status or take away existing maintenance, pension, nomination, property or succession rights. Such a rule would address an important gap in the present legal framework and protect not only transgender persons but also spouses and children whose rights depend on the continuation of the same family relationship.

(iii). Conduct Targeted Reform of Family Statutes

Laws relating to marriage, divorce, maintenance, adoption, guardianship and succession should be reviewed separately instead of depending only on a general guarantee of equality. The law should clearly explain how terms such as spouse, parent, child, widow, widower, son and daughter apply after legal gender recognition. The aim should be to provide legal certainty while preserving the basic structure of each personal-law system.

(iv). Create a Clear and Inclusive Parenthood Framework

Adoption eligibility should be based on a person's ability and suitability to care for a child and the best interests of the child, rather than uncertainty about gender identity. The law should also ensure that biological or adoptive parenthood continues after transition and provide clear procedures for updating parental details in official records. Reproductive laws should separately provide clear rules on fertility preservation, access to assisted reproductive services and legal parenthood for transgender persons.

(v). Reform Succession Through a Rights-Preservation Approach

Succession laws should clearly address the rights of both transgender heirs and transgender persons whose property is being inherited. The law should explain how legal gender recognition affects gender-specific inheritance rules and family categories used in succession law. Gender transition should not take away existing inheritance rights, and uncertainty about terms such as son, daughter, widow or widower should not result in exclusion from inheritance.

(vi). Extend Family Protection Without Identity-Based Gaps

Laws relating to maintenance, residence rights and protection from domestic violence should be reviewed so that transgender persons do not have to repeatedly approach courts to establish their eligibility for protection. Reform should carefully balance the purpose of laws designed to address gender-based disadvantage with the need to protect transgender and non-binary persons who face economic dependence, abuse or violence within family and domestic relationships.

(vii). Recognise Chosen Family for Limited Legal Purposes

The law should allow adults to formally nominate trusted persons for specific purposes such

as making medical decisions, visiting or assisting them in hospitals, acting as emergency contacts, providing care and receiving certain dependency-related benefits. This limited recognition would not replace existing laws on marriage, adoption or succession. Instead, it would provide legal protection where a person's actual network of care and support includes people outside their biological or marital family.

(viii). Reform Administrative Systems Alongside Statutes

Legal reform will remain incomplete if marriage registers, adoption portals, birth certificates and other family-law records continue to use rigid male-female classifications. Central and State authorities should ensure that application forms, digital systems and procedures for correcting records are consistent with legally recognised gender identity. Administrative systems should make it easier to exercise legal rights rather than create additional barriers.

(ix). Establish a National Family-Law Harmonisation Committee

A specialised committee should be formed to review the major family laws in a coordinated manner. The committee should include family-law scholars, constitutional experts, representatives of transgender and non-binary communities, child-rights specialists and personal-law experts. Its role should be to identify conflicts between gender-recognition laws and family laws and recommend coordinated amendments, rather than waiting for problems to be addressed separately under individual laws only after court cases arise.

The main reform principle of this paper is that India does not need a separate personal law for transgender persons. Instead, the existing family-law system should provide clear and consistent legal consequences for recognised gender identity. A common minimum standard of constitutional protection, together with specific changes to existing personal and secular family laws, can preserve the diversity of India's family-law system while providing greater legal certainty in matters of marriage, parenthood, protection and inheritance.

9. CONCLUSION

India has made significant progress in recognising transgender persons as equal holders of constitutional rights. However, family law remains an area where this recognition has not yet resulted in clear and consistent legal rights. The main problem is not the complete absence of rights, but the fragmented way in which they operate. A transgender person may have a legally

recognised gender identity while still facing uncertainty about their rights as a spouse, parent, guardian or heir. This problem becomes more serious because family rights in India are governed by different personal and secular laws, many of which continue to use binary and gender-specific categories.

The study shows that transgender family rights cannot depend only on individual court decisions. Courts have made important progress in areas such as marriage, protection from domestic violence, adoption and reproductive rights. However, major questions concerning transition during marriage, continuity of parenthood, the family rights of non-binary persons and succession remain unresolved. Requiring transgender persons to approach courts separately for each family right creates uncertainty and inequality in practice, while leaving important family relationships dependent on judicial interpretation and administrative decisions.

At the same time, reform does not require a separate personal law for transgender persons or the immediate replacement of India's existing family-law system. A more practical approach is to establish common minimum constitutional protections across all family laws, together with specific changes where necessary. Legal gender recognition should have clear and consistent effects across family law, transition alone should not end existing family relationships, parental rights and responsibilities should continue with proper regard to the welfare of the child, and succession rights should not remain uncertain because of unresolved questions about gender classification.

The future of transgender rights in India therefore depends on moving beyond legal recognition alone. The real test of equality is not simply whether the State recognises a person's gender in official documents, but whether that recognition has clear and stable legal consequences when the person marries, separates, becomes a parent, seeks protection within a family relationship or inherits property. Until gender identity recognition is properly connected with these basic areas of family life, transgender equality will remain recognised in constitutional principle but incomplete in practice.