

**Input For The Report Of The Independent Expert On
Protection Against Violence And Discrimination Based On
Sexual Orientation and Gender Identity,**

**In Relation To The Human Rights To Freedom Of Expression,
Association And Assembly**

Prepared By

The YP Foundation

In Collaboration with

**The Naz Foundation (India) Trust | Sappho For Equality | Independent
Experts**

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Introduction

The YP Foundation¹ (TYPF) is a youth leadership development organization based in New Delhi, India. TYPF facilitates young people's feminist and rights based leadership on issues of gender justice and sexuality rights through direct programmes, public engagement and policy advocacy at all levels. This report has been drafted with inputs from queer activists and queer led, queer rights based organizations working at the national and sub national levels across India, including Mihir Samson, Sappho For Equality, and Naz Foundation.

TYPF is the data lead for Feminist Accountability Framework, a process to assess Generation Equality Forum, co-convenor of Young Feminist Caucus and has been Chair of UN Major Group for Women and Girls, and the country lead of the adolescent and youth constituency of PMNCH at the WHO. TYPF anchors a network of young leaders who are active on health, gender and wellbeing issues and engage with health policy at the state, national and regional level across India and southeast Asia. TYPF is also part of various coalitions of youth led and youth serving organizations including those who specifically work on SOGIESC and queer rights issues.

This submission highlights specific challenges and needs of LGBTIQ HRDs (Human Rights Defenders) and Organisations in India and provides the realities of the difficulties faced by the LGBTIQ+ community in advocating for their rights. It points out specific needs of vulnerable and marginalized groups and the gaps in government responses to deal with the prevention and redressal mechanisms for ensuring the safety of queer-trans people.

The submission situates the condition of LGBT+ persons within the overall context of diminished rights access and support mechanisms despite recent legal provisions, to highlight the heightened impact of exclusion and apathy through curbing the work of HRDs and civil society organizations. This submission believes that the experiences highlighted here are true to the best possible information available and do not have any direct resemblance or impact from all policies and programmes in the current state.

¹ <http://www.theypfoundation.org>

Status of LGBTQI+ rights in India:

- The Supreme Court of India decriminalized same sex relations in its verdict of *Navtej Singh Johar & Ors. versus Union of India* on 6th September 2018.²

The Court found Section 377, Indian Penal Code, 1860 to be arbitrary and violative of Article 14 of the Constitution (right to equality) since it distinguished between heterosexual and homosexual adults, solely on the basis of their sexual orientation. The Court further stated that the provision violates the right to dignity, privacy, and sexual autonomy guaranteed to homosexual persons under Article 21 of the Constitution (right to life). The Court also found the provision to violate Article 19(1)(a) of the Constitution (freedom of speech and expression).³⁴

- The *NALSA v. Union of India*⁵ a decision of the Supreme Court recognised the right of transgender persons to be recognised in their self-identified gender, without medical intervention, as male, female or outside the binary as transgender.
- There has been deeper avoidance for addressing the concerns of its LGBTQI+ population and increased apathy to their realities despite the 2018 judgment. The implementation of the Supreme Court's guidelines to sensitize the public, and government officers in order to eliminate social stigma and structural discrimination against LGBT+ persons⁶; and the most recent passing of the *The Transgender Persons (Protection of Rights) Act, 2019*⁷ has left many gaps in comprehensive access to justice

²Navtej Singh Johar & Ors. versus Union of India. W. P. (CrI.) No. 76 of 2016 Judgment dated 6th September 2018.

https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf

³ PRS India. (2018, October 31). *Monthly Policy Review : September 2018*.

<https://www.prsindia.org/policy-review/monthly-policy-review/september-2018>

⁴ Alternative Law Forum, Bangalore, India. (2018, September). *Right to Love*.

[RightToLove_PDFVersion.pdf](#)

⁵ NATIONAL LEGAL SERVICES AUTHORITY (NALSA) VS. UNION OF INDIA - South Asian Translaw Database - THIRD GENDER

<https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

⁶ *Navtej Singh Johar & Ors. versus Union of India*, W. P. (CrI.) No. 76 of 2016, Judgment dated 6th September 2018.

https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf

⁷ The Transgender Persons (Protection of Rights) Act, 2019 No. 40 of 2019.

and rights for queer folks. The gaps in the law have been highlighted by transgender persons, trans rights activists, students, and lawyers, and as this is also in violation of the 2014 NALSA judgment by the Supreme Court.⁸⁹¹⁰¹¹¹²

- The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination against transgender persons both in areas like education, employment, and healthcare, both in the public and private sector. It also creates a mechanism for obtaining gender identity certificates in a person's self-identified gender. However, the Act has diluted the principle of self-identification in NALSA The KS Puttaswamy judgment¹³ while declaring the fundamental right to privacy to be an unenumerated fundamental right, the Supreme Court observed that the right to privacy guarantees the freedom of thought, self-determination and belief, and protects all elements crucial to gender identity.
- A five-judge bench of the Supreme Court in *Supriyo v. Union of India*¹⁴ refused to grant a declaration to the effect that same-sex marriage was permissible in law. The Court held that there was no fundamental right to marry under the Indian Constitution. However, the court noted that transgender persons in heterosexual relationships as well as intersex

https://www.prsindia.org/sites/default/files/bill_files/The%20Transgender%20Persons%20%28Protection%20of%20Rights%29%20Act%2C%202019.pdf

⁸ Sampoorna. (2020, June 8). *SPWG Statement on Transgender Persons (Protection of Rights) Bill 2019*. <https://sampoornaindiablog.wordpress.com/2019/07/19/spwg-statement-on-transgender-persons-protection-of-rights-bill-2019/>

⁹ Pathak, S. (2019, December 4). *India just passed a trans rights bill. Why are trans activists protesting it?* NPR.org.

<https://www.npr.org/sections/goatsandsoda/2019/12/04/784398783/india-just-passed-a-trans-rights-bill-why-are-trans-activists-protesting-it>

¹⁰ Banerjee, A. (2019, November 26). *Why India's transgender people are protesting against a bill that claims to protect their rights*. Scroll.in.

<https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights>

¹¹ Kondaiah, K. B. (2019, June 15). *The transgender persons bill misses key demands of the community*. Hindustan Times.

<https://www.hindustantimes.com/analysis/the-transgender-persons-bill-misses-key-demands-of-the-community/story-0c6VV1GvYuV4xqYL06zw8N.html>

¹² <https://translaw.clpr.org.in/wp-content/uploads/2018/09/Nalsa.pdf>

¹³ Puttaswamy v. Union of India (II) - Global Freedom of Expression

<https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-union-of-india-ii>

¹⁴ *Supriyo v. Union of India* 2023 INSC 920.

persons identifying either as man or woman could marry, and that such marriage could be recognized by the applicable personal laws that governed their marriage. The court adopted a circumspect approach, holding that entitlement to legal recognition of the right to union could only be through enacted law, and that the court could not direct the creation of the regulatory framework. The court further refused to read down provisions of the Special Marriage Act in a gender-neutral manner, so as to enable same-sex persons in intimate relationships to have their marriage registered thereunder. The majority opinion directed the State to Ensure that the choice exercised by queer couples to cohabit was not interfered with and they do not face any threat of violence or coercion. All necessary steps and measures in this regard shall be taken. The Court also directed the government to take suitable steps to ensure that queer couples and transgender persons are not subjected to any involuntary medical or surgical treatment. Despite these limited advances, the judgment falls short of securing the constitutional rights of queer-trans people, thereby exacerbating their marginalization and impeding their right to equality. Review petitions are pending against the judgment.

Violations of LGBTQI+ rights and their freedom of expression in India:

- There have been persistent appeals from the queer-trans rights activists and organizations to facilitate the sensitization of healthcare professionals nationwide. A study led by a transmasculine Steering committee and researchers (trans and non-trans) from Drexel University Dornsife School of Public Health (Philadelphia, USA) and the Population Council (New Delhi) on Indian Trans Men and Transmasculine person's health, revealed discrimination in healthcare, housing, employment, or education directly tied to their gender identity, ranging from 42% to 52%.¹⁵ Accessing reproductive services for queer-trans people is often difficult. Illustratively, the amendment to the Medical Termination of Pregnancy (MTP) Act in 2021 exclusively employs the term "women." Access to abortion services is imperative not only for cisgender women but also for transgender, intersex, and gender-diverse persons. Additionally, the prevalent binary operational framework in infrastructural facilities further exacerbates the issue, often misgendering transgender individuals and displaying insensitivity to their unique needs.¹⁶

¹⁵ Our Health Matter, October 2023

<https://weareaptn.org/wp-content/uploads/2023/12/2023-10-16-OHM-Digital-Report-EN.pdf>

¹⁶ Khare, A. (2022) Supreme Court judgment on MTP act: A promise of inclusion and the Long Road Ahead, The Indian Express.

- In 2020, the UN Independent Expert on Sexual Orientation and Gender Identity (SOGI) issued a global call for the prohibition of "conversion therapy." This call emphasized the urgent need for countries to implement robust measures against such practices, particularly to safeguard children and young individuals. In 2022, the National Medical Commission of India took a significant step by categorizing "conversion therapy" as "professional misconduct."¹⁷ However, it is crucial to highlight that this designation exclusively pertains to registered medical practitioners. Consequently, the protection afforded against abusive practices remains constrained, thereby permitting religious institutions, family members, and other entities to persist in subjecting LGBTIQ individuals to harmful "conversion therapy" methodologies.
- In the year 2021, the National Crime Records Bureau of India reported only 236 cases of crimes against transgender individuals, indicating a stark underrepresentation in official crime statistics.¹⁸ This disparity in numbers is indicative of both the underreporting of crimes and fatalities, as well as the inadequacy in the documentation process. For queer-trans and gender-diverse individuals, instances of violence are frequently rooted within their natal families, serving as a primary locus of victimization. A recent report, derived from the findings of a closed-door public hearing conducted in 2023 by the People's Union for Civil Liberties (PUCL) and the National Network of LBT, underscores the urgent need for incorporating these realities in marriage equality policies to protect queer-trans people from violence.¹⁹

<https://indianexpress.com/article/opinion/columns/supreme-court-judgment-on-mtp-act-a-promise-of-inclusion-and-the-long-road-ahead-8185989/>.

¹⁷ BAKSHI, GURSIMRAN KAUR. (SEPTEMBER 6, 2022). National Medical Commission declares conversion therapy as professional misconduct, but it is not enough. The Leaflet. <https://theleaflet.in/national-medical-commission-declares-conversion-therapy-as-professional-misconduct-but-it-is-not-enough/>

¹⁸ Bansal, Vandana, (23 June, 2022). Why Only 236 Trans Person Victims Of Crimes Were Recorded In India In 2020. IndiaSpend. <https://www.indiaspend.com/gendercheck/why-only-236-trans-person-victims-of-crimes-were-recorded-in-india-in-2020-823034>

¹⁹ APNON KA BAHUT LAGTA HAI (OUR OWN HURT US THE MOST), A Report on the findings from a closed door public hearing on April 1, 2023. https://www.sapphokolkata.in/public/media_pdf_file/1681735321.pdf

- A concerning surge in bullying and atrocities against queer-trans adolescents and young individuals within educational institutions has been observed.²⁰ Despite efforts to address this issue through sensitization and teacher training programs, such as the initiative led by the National Council of Educational Research and Training (NCERT) through a teacher-training manual which sought to sensitize teachers on issues faced by queer-trans students, was objected to by the National Commission for Protection of Child Rights (NCPCR) as well as non-state right-wing groups, ostensibly on the basis that it was not age appropriate, which has impeded progress.²¹ The opposition to the teacher-training manual and the active intervention by NCPCR in the marriage equality case, particularly against adoption by queer individuals, underscores the inadequacy of existing mandates in safeguarding the rights and well-being of queer youth. Organizations conducting training and sensitization workshops in schools have also been the target of right wing 'news' websites with allegations of brainwashing children into 'gender identity politics'.²² This highlights a critical gap in the protection mechanisms designed to ensure a safe and inclusive educational environment for all students, irrespective of their sexual orientation or gender identity.²³
- Despite the landmark National Legal Services Authority (NALSA) judgment by the Supreme Court recognising transgender persons, the journey towards securing horizontal reservation for dalit-trans people in public education and employment is an ongoing struggle.²⁴ In the past year, the Supreme Court declined to consider an

²⁰ Baral, M. (2022) 'the school has killed me': Arvey Malhotra's mother recalls his suicide note and elaborates on the bullying that led to her son's death; awaits justice even after 4 months - Times of India, <https://timesofindia.indiatimes.com/life-style/parenting/moments/the-school-has-killed-me-arvey-malho-tras-mother-recalls-his-suicide-note-and-elaborates-on-the-bullying-that-led-to-her-sons-death-await-s-justice-even-after-4-months/articleshow/92721354.cms?from=mdr>

²¹ NCPCR asks NCERT to rectify 'anomalies' in GENDERNEUTRAL teacher training manual (2021) Hindustan Times. <https://www.hindustantimes.com/education/news/ncpcr-asks-ncert-to-rectify-anomalies-in-genderneutral-teacher-training-manual-101636011368488.html>.

²² Bhattacharjee, K, (2020) Tagore International School in Delhi comes under fire for brainwashing children into gender identity politics, stringent action demanded, OpIndia. <https://www.opindia.com/2020/07/tagore-international-school-nazariya-gender-identity-politics-brainwashing-children/>

²³ Bhatt, R. (2023) Death by suicide of a 16-year-old queer person: Why don't you care when we are bullied?, The Indian Express. <https://indianexpress.com/article/opinion/death-by-suicide-of-a-16-year-old-queer-person-the-politics-of-palatability-and-the-failure-to-protect-children-9044073/>.

²⁴ Lakshman, A. (2023) Movement to secure horizontal reservation for trans people in Education and employment gains momentum, The Hindu.

application seeking clarification on whether the reservation intended for transgender persons, as per the NALSA judgment, constitutes horizontal reservation, specifically affirming trans individuals from historically marginalized caste backgrounds.²⁵ Currently, only two states have implemented a modest 1% horizontal reservation.^{26,27} However, the notification has not amended other sections of the Rules, leaving gaps in age limit relaxations, fee structures, and physical standards, comparable to those provided for other reserved categories.

- The subsequent enactment of the 2019 Transgender Persons (Protection of Rights) Act and the accompanying 2020 Rules enable trans individuals to apply for an identity card in their self identified gender, primarily based on self-identification for those seeking recognition as a transgender person while those seeking recognition as a male or female person must indicate some medical intervention. This card serves as a gateway for accessing welfare benefits. Notably, a change of gender marker from male to female or vice versa is contingent upon documentation of medical intervention, presenting a hurdle for those who identify outside the conventional gender binary. Regrettably, the insensitivity exhibited by service providers has resulted in a majority of individuals who underwent legal gender changes experiencing negative encounters within the process.
- Digital platforms have become a space for many from the LGBTQIA+ community to find community and express their identity. But the marginalization experienced in their physical world is many times replicated online. Indian policies and laws lack a

<https://www.thehindu.com/news/national/movement-to-secure-horizontal-reservation-for-trans-people-in-education-and-employment-gains-momentum/article66497445.ece>.

²⁵ Livelaw News Network (2023) Horizontal reservation for transgender persons : Supreme Court refuses to entertain plea to clarify Nalsa judgment, Live Law.

[https://www.livelaw.in/top-stories/horizontal-reservation-for-transgender-persons-supreme-court-refuses-to-clarify-nalsa-judgment-224932#:~:text=INR%20899%20BGST&text=more%20content%20at,The%20Supreme%20Court%20on%20Monday%20\(March%2027\)%20refused%20to%20entertain.NALSA%20case%20is%20horizontal%20reservation](https://www.livelaw.in/top-stories/horizontal-reservation-for-transgender-persons-supreme-court-refuses-to-clarify-nalsa-judgment-224932#:~:text=INR%20899%20BGST&text=more%20content%20at,The%20Supreme%20Court%20on%20Monday%20(March%2027)%20refused%20to%20entertain.NALSA%20case%20is%20horizontal%20reservation)

²⁶ Mahaseth , H. and Mahaseth, M. (2024) Madras HC suggests 1 percent horizontal reservation for transgender persons in TN – the leaflet,

<https://theleaflet.in/madras-hc-suggests-1-percent-horizontal-reservation-for-transgender-persons-in-tn/>.

²⁷ Venkatesan, V. (2021) Karnataka becomes the first state to reserve jobs for transgender persons, The Wire.

<https://thewire.in/lgbtqia/karnataka-first-state-reserve-jobs-transgender-persons>.

recognition of this reality and the vulnerability of LGBTQIA+ community online.²⁸ There are no laws specifically for LGBTQIA+ community that ensure their safety online against harassment & bullying.

- The IT Act 2000 addresses cyber crimes such as hacking, misrepresentation, stalking, or sharing offensive material online.²⁹ But this law leaves the definition of “offensive” ambiguous and there are rarely any cases registered against homophobia or harassment of queer-trans folks online. This is worrying as instances of online bullying increased over the years, and especially target vulnerable youth and adolescents. In the past year, the LGBTQIA+ community in India has been left grieving for teens who have died by suicide as a result of incessant online targeting, bullying, and online homophobia.³⁰ Further, the limited legal environment as failed to address crimes committed using apps like grindr and tinder, including rape, extortion, assault, amongst others.
- There is a clear lack of acknowledgement of queer-trans reality by the IT Act and the Indian Penal Code as the provisions of the act that cover cyber stalking or voyeurism online only considers “women” as the target of these crimes. This leaves anyone beyond the gender binary outside the scope of this law.
- In 2023, the Digital Personal Data Protection (DPDP) Act was passed concerning provisions governing privacy of individuals online. Privacy is a major concern for the LGBTQIA+ community as many of them decide to adopt anonymity online to escape the hostility or homophobia of their physical surroundings. While the creation of the DPDP Act is a step forward in the right direction, the Act has been criticized by civil society actors for its ambiguity and shortfalls in addressing some common concerns.³¹

²⁸ Rangnekar, S. (2022) Laws on Digital Privacy and Security Need to Factor in Queer Rights, The Wire.

<https://thewire.in/government/queer-rights-digital-privacy-security-laws>

²⁹ (2000) Section 66A in The Information Technology Act, Kanooon

<https://indiankanoon.org/doc/170483278/>

³⁰ Billson, C. (2023). Queer teen dies by suicide after relentless online attacks.

<https://www.thepinknews.com/2023/11/24/pranshu-social-media-bullying-suicide-india/>

³¹ Brittas, J., & Babu, A. (2023) What Lies Beneath the PR Blitz on the New Data Protection Act?

<https://thewire.in/government/what-lies-beneath-the-pr-blitz-on-the-new-data-protection-act>

- The ambiguity of the DPDP Act especially threatens LGBTQIA+ community as it leaves several decisions to government actors. There are also disproportionate exemptions for government entities that might inadvertently facilitate the sidestepping of data protection mandates, eroding the legislation's core intent. This is dangerous considering LGBTQIA+ community is still a minority in the country, and has very little voice in decision making spaces.³²

Impact on the work of Civil society organizations and human rights defenders advocating for LGBTQI+ persons' human rights:

- An amendment to the Indian Foreign Contributions Act (FCRA) has influenced the organizing of the civil society institutions in the country. As of July 3, 2023, the home ministry's dashboard indicates that 20,693 NGOs have had their licenses canceled, while 16,257 NGOs remain active.³³ The 2020 amendment to FCRA has impacted funding for NGOs and it has been difficult to engage directly in queer-trans rights engagement in the public discourse.
- The DPDP Act lacks any protection against data profiling.³⁴ This can be dangerous for vulnerable communities like the LGBTQIA+ community as their data can then be used to identify community members and activists. This can lead to dangerous targeted acts by the state or any private entity actor.
- Civil society organizations serve as anchors for Garima Greh, a shelter home mandated by The Transgender Persons (Protection Of Rights) Act 2019. Many organizations also

³² Bhatnagar, T. (2023). LGBTQ representation in Indian Parliament: Will India ever have a transgender MP? Financial Express.

<https://www.financialexpress.com/india-news/lgbtq-representation-in-indian-parliament-will-india-ever-have-a-transgender-mp/3288898/>

³³ Dhawan , H. (2020) FCRA law could dry up money for less popular causes, shut small NGOs down, says Ingrid Srinath - Times of India.

<https://timesofindia.indiatimes.com/home/sunday-times/all-that-matters/fcra-law-could-dry-up-money-for-less-popular-causes-shut-small-ngos-down-says-ingrid-srinath/articleshow/78467325.cms?from=mdr>

³⁴ Burman, A (2023) Understanding India's New Data Protection Law, Carnegie India.

<https://carnegieindia.org/2023/10/03/understanding-india-s-new-data-protection-law-pub-90624>

independently fund drop-in centers and shelter homes. The Ministry of Social Justice and Empowerment has established a total of 12 Garima Grehs to provide basic facilities such as shelter, food, and medical care. However, in recent incidents, families of trans-queer individuals have often barged into these shelter homes, attempting to forcefully take away their children. In many cases, queer-trans employees/activists of the organizations managing the shelter homes have been subjected to physical assault by these families and police authorities who side with them. Families of queer individuals frequently (mis)use missing person complaints to trace their queer child or file abduction charges against their queer child's partner in cases of elopement. The missing person complaint and FIR give the police leeway to take action; in most cases, this action is not in accordance with the law but with the police persons' moral understanding of "family values."³⁵

- Transgender individuals may have limited representation in decision-making bodies or advisory committees related to policy formulation, hindering their ability to actively contribute to legal advancements. The Transgender Persons(Protection of Rights) Act 2019 aims for creating a Trans welfare Board, but not all states yet have the board and the board is not very active and faces a lot of logistical challenges like lack of funds to run Garima Greh.
- Queer social workers who visibly express gender non-conformity encounter significant challenges in crisis intervention scenarios. Instances of slurs, verbal assault, and cuss words are commonplace, and, in certain contexts, individuals have faced direct threats from abusive natal families. The challenges escalate to include stalking by individuals, rape threats, death threats, and intimidation leveraging political influence. Unfortunately, the police have often remained passive in such situations, and in some instances, have even refused assistance. Based on collective crisis intervention experiences at Sappho For Equality, it has been observed that housing emerges as a critical issue, particularly evident during the COVID-19 lockdown. Moreover, reaching out to queer and trans individuals in remote areas becomes challenging for human rights defenders without the support and cooperation of local law enforcement agencies. The lack of security measures and the indifferent stance of law enforcement agencies contribute to the vulnerability of human rights defenders and the communities they aim to support.

³⁵ Das, S. (2022) Inside Indian Queer Youths' Struggle to Find Home, The Swaddle. <https://www.theswaddle.com/author/sudipta>.

Judicial Developments with respect to the right to association, expression and peaceful assembly

Right to association and peaceful assembly

The right to association formed a major part of the minority opinion of the Supreme Court in *Supriyo*, where the opinion authored by Chandrachud CJI found that there exists a right to civil unions under Articles 15 (right against discrimination), 19(1)(a) (right to speech and expression), 19(1)(e) (freedom to settle in any part of the country), 21 (right to life) and 25 (freedom of conscience), and that the right to enter into a union includes the right to associate with a partner of one's choice, according recognition to that union, and to ensure that there is no denial of access to basic goods and services.³⁶ However, it found that this right is limited to 'abiding' partnerships seemingly of a permanent nature. This view did not find favour with the majority.

Recently, in *Daya Gayathri v. State of Kerala*,³⁷ the Kerala High Court directed the state government to swift action against an organisation which tried to disrupt the pride parade, referred to LGBTQIA+ persons as "*the rainbow mafia*" on their social media pages, and were going to colleges informing queer students that they had a mental illness.³⁸

Freedom of expression

The freedom of expression was an important basis for the findings of the court in *NALSA*. Specifically, the court found that the right to express one's self-identified gender (through dress, words, action or behavior) was a part of the freedom of speech and expression guaranteed to citizens under Article 19(1)(a) of the Constitution. It was held that gender identity lies at the core of one's personal identity and that the expression and presentation thereof was constitutionally protected.

In *Navtej Singh Johar*,³⁹ the Supreme Court emphasised the importance of LGBTQIA+ persons being able to participate in public life and warned against restricting constitutional protections to private spaces as follows: "*Privacy creates "tires of "reputable" and "disreputable" sex", only granting protection to acts behind closed doors. Thus, it is imperative that the protection granted for consensual acts in private must also be available in situations where sexual*

³⁶ *Supriyo*, para 213 - 258.

³⁷ *DAYA GAYATHRI v. State of Kerala*, WP(C) NO.40030 OF 2023(C), order dated 30.11.2023, <https://theleaflet.in/wp-content/uploads/2023/12/kerala.pdf>.

³⁸ Gursimran Kaur Bakshi (2023), Kerala HC asks government to take appropriate action against 'NGO' that calls queerness "wokeism" and "rainbow mafia", *The Leaflet*, <https://theleaflet.in/kerala-hc-asks-government-to-take-appropriate-action-against-ngo-that-calls-queerness-wokeism-and-rainbow-mafia/>

³⁹ *Navtej Singh Johar*, para 471.

minorities are vulnerable in public places on account of their sexuality and appearance. If one accepts the proposition that public places are heteronormative, and same-sex sexual acts partially closeted, relegating 'homosexual' acts into the private sphere, would in effect reiterate the "ambient heterosexism of the public space." It must be acknowledged that members belonging to sexual minorities are often subjected to harassment in public spaces. The right to sexual privacy, founded on the right to autonomy of a free individual, must capture the right of persons of the community to navigate public places on their own terms, free from state interference."

In *Pramod Kumar Sharma v. State Of UP*,⁴⁰ the Allahabad High Court quashed an order where the appointment of a man to a public sector job was canceled after a video of him being affectionate with another man began to circulate on the internet. The Court held the order to be vindictive, and referred to the Supreme Court decision in *Navtej Singh Johar*, observing: "It was held that any display of affection amongst the members of the LGBT community towards their partners in the public, so long as it does not amount to indecency or has the potentiality to disturb public order cannot be bogged down by majority perception." The individual's appointment was reinstated.

An important issue that needs to be urgently addressed is the lack of sensitivity displayed by judges when dealing with matters concerning gender identity and sexual orientation. In November, 2022 the Supreme Court issued a module on the sensitisation of the judiciary, making important recommendations to increase the access to justice for the LGBTQIA+ community.⁴¹

40 *Pramod Kumar Sharma v. State Of U P*, WRIT - A No. - 8399 of 2020, judgment dated 02.02.2021

https://www.livelaw.in/pdf_upload/lgbt-allahabad-hc-homeguard-388875.pdf

41 E Committee, Supreme Court of India, SENSITISATION MODULE FOR THE JUDICIARY ON LGBTQIA+ COMMUNITY, November, 2022,

<https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2023/05/2023050154.pdf>.

Recommendations :

- Develop a clear, inclusive, and timely process for changing gender based on self-identification (without the need for medical interventions), in accordance with the principle of self-determination outlined in the NALSA judgment. Sections 6 and 7 of the Transgender Persons (Protection of Rights) Act, 2019 should be amended to legally recognise a person's gender based on self-determination of gender identity without any medical basis, in line with the Supreme Court of India's Nalsa judgment and Yogyakarta Principles+10..
- Develop, implement and strengthen data privacy laws and laws against cyberbullying informed by the dangers faced online by the LGBTQIA+ community.
- Safe shelter homes for queer-trans people, as mandated by the Transgender Persons (Protection Of Rights) Act 2019, are essential to ensure the well-being and protection of individuals. In cases where law enforcement authorities intrude into shelter homes or engage in custodial violence, it should be emphasized that they can be charged under criminal laws for such actions. In 2022 the Madras High Court issued an order directing the addition of a specific clause to the Police Conduct Rules. This clause stipulates that any harassment by a police officer towards individuals belonging to the LGBTQ+ community and/or activists and NGO workers will be treated as misconduct and subject to punishment. This legal provision serves as a deterrent against discriminatory practices by law enforcement personnel.
- The High Court of Delhi in the case of Dhanak of Humanity & Ors. v. State of NCT & Anr. WP (CrI)1321/2021, extended the directions given by the Supreme Court in the case of Shakti Vahini v. Union of India, (2018) 7 SCC 192 directing the state governments to adopt preventive, remedial and punitive measures including establishment of safe houses, to queer and trans couples. However, such directions are not available throughout the country and ought to be implemented in all states and union territories.
- Stricter policies to ban 'conversion therapy'. The scope of the Mental Health Care Act should be used and also the (S Sushma Vs Commissioner of Police) Madras High Court Judgment should be seen to ensure that in all Public and private institutions should have policies and abidance of legal provisions that prohibits conversion therapy or its enforcement.

- Horizontal reservation should be extended under the existing vertical reserved categories, for transgender persons and intersex persons in admissions to public educational institutions, public appointments/employment and public office by Union government and all state governments. This is in line with Articles 15(4), 16(4) and 330 of the Constitution of India.
- Forced sex reassignment surgeries performed on intersex infants and children, that is Intersex Genital Mutilation, should be banned by Union and all state/UT govt health ministries/departments by 2024, as per the direction in Madras HC judgment (Arunkumar v Inspector General 2019).
- Recognition of the right of queer and trans person's right to choose their family would ensure that all rights and entitlements such as benefits from retirement, sickness or death in the course of employment, including gratuity and medical benefits under the Employees State Insurance Act 1948 and insurance policies could be accessed.
- The absence of a redressal mechanism for unissued Trans ID certificates poses a significant challenge. Individuals facing such issues are left without a formal process for resolution. Establishing a clear and accessible redressal system is essential to address delays or denials in obtaining Trans ID certificates, ensuring that transgender individuals can assert their rights and legal recognition without undue hurdles.

About the Collaborators:

Naz Foundation

Founded in 1994, The Naz Foundation (India) Trust in New Delhi focuses on HIV/AIDS prevention, education, and LGBTQIA+ rights. In 2001, they challenged the constitutionality of Section 377, leading to its decriminalization in 2009. Despite a 2013 Supreme Court reversal, a curative petition resulted in the landmark legalization of same-sex relations in 2018. Naz addresses India's LGBTQIA+ individuals through diverse initiatives, including care homes, support groups, counseling services, and vocational training. On December 15, 2023, the Naz Foundation inaugurated the first LGBTQIA Centre, offering mental health counseling, medical assistance, vocational training, and legal aid—a beacon of progress promoting inclusivity, well-being, and social justice.

Sappho For Equality

Sappho For Equality is a Kolkata, India based organization working towards addressing the issues of gender-sexually marginalized cis women, gender non-conforming PAGFB (Persons Assigned Gender Female at Birth) and transmasculine individuals in society. The organization's aim is to problematize discrimination and absence of rights as arising only from a single issue affecting gender-sexually marginalized lives. They strive to create an ongoing platform with people, irrespective of gender and sexual orientation, who question the organized workings of homonegativity/homophobia, binegativity/biphobia, transnegativity/transphobia in their connection/intersection with heteropatriarchy, casteism, racism, ableism, geographical location, economic and religious marginalizations to create a society where the rights and lives of gender-sexual minorities with intersecting marginalizations will be respected and ensured.

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Arosma, Khush Aalam Singh, Mihir Samson, Sahil, Shreyoshi Ray, Sudipta, and Yoshita Srivastava,

Report Compiled by Sudipta Das. For further inquiries, please contact Sudipta at sudipta@theypfoundation.org and/or info@theypfoundation.org.