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## DECRIMINALISED, NOT YET FREE: LIVED REALITIES AND LEGAL SILENCES IN LGBTQIA+ INCLUSION IN INDIA

~ *Sneha Kumari*

### Abstract

This paper observes and talks about what it really means to be LGBTQIA+ in India today. Even after the courts of our nation, especially the apex court, having taken big, important steps, be it from allowing people to identify their gender, protecting privacy, and ending the ban on same-sex relationships, many queer people still face tough challenges in daily life. These include things like being forced into therapy to "change" who they are, being bullied at school, facing unfair treatment at work, and being rejected by their own families. Many also struggle to get proper healthcare, especially if they are trans.

This paper tries to understand real stories of these experiences and then shows that while the law has changed, life hasn't improved enough for everyone. It talks about how queer communities are coming together despite the difficulties to support each other, celebrate who they are, and to show to the society that they deserve more. The paper argues that we need better laws to stop discrimination, more inclusive education and healthcare systems, and proper training for people. Real inclusion needs more than just legal change it needs society to treat queer people with kindness, fairness, and respect.

### I. Introduction: A Right to Be

Imagine that one lives in a world where simply being themselves is seen as wrong, where expressing one's identity can invite judgment, rejection, or even violence. For many LGBTQIA+

individuals in India, this isn't a distant fear, it's their everyday truth. At the same time, while these rulings mark important progress, the everyday experiences of queer people show that true justice goes beyond courtrooms and official systems. Yes, while it is true that landmark court decisions have acknowledged queer rights, but beyond the courtroom walls, harsh realities persist for them every day. Be it in form of bullying in schools, or silence at home, even discrimination at work, and not to forget fear in public spaces continue to define queer lives. It needs to reach people's hearts and minds, and most importantly, inspire real awareness and action in our laws.

This paper begins by addressing the disconnect between legal recognition and lived experience. While decriminalisation was a milestone, it did not dismantle the deep-rooted stigma or systemic exclusion faced by the queer community. Through real-life stories and grounded observations, this paper explores how legal change, even though very necessary, is not sufficient alone for dignity and freedom of the queer community.

This isn't just a study of laws! It's a journey through lives. One can hear that trans women have been turned away from rentals, that queer teens are time and again silenced by forced shame, that same-sex couples are denied the right to build families, and then small communities networks offering care where the system fails. The message is simple yet urgent: the right to live freely and authentically is not just a legal issue, but rather, it is a societal issue.

## **II. Milestones of Progress: Courts as Torchbearers**

The Indian judiciary has played an important role in terms of the advancements in the fields of LGBTQIA+ rights, and has often stepped in where the legislative or executive action has been seen to be lagging. Over the past decade, one can observe that there took place a series of landmark judgments which have, together, brick by brick, laid the foundation for a more inclusive legal framework. These judgements can be said to be rooted in the principles such as dignity, equality, and autonomy. Yet, at the same time, these rulings have made essential progress, the lived experiences of queer people have revealed that the road to justice needs to extend beyond the

courtroom and structures control, to the people, to the minds and most importantly, to the legislative awareness and action taking.<sup>1</sup>

A very important moment came for the queer community when the Supreme Court's decision in *National Legal Services Authority v. Union of India (2014)*<sup>2</sup> (commonly referred to as NALSA). In this case, the Court recognised the right of individuals to self-identify their gender as male, female, or third gender. It marked a significant departure from binary notions of gender and directed the state to ensure equal access to education, healthcare, employment, and other public services for transgender persons.

This was followed by *Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)*<sup>3</sup>, where the Court upheld the right to privacy as a fundamental right under Article 21 of the Constitution<sup>4</sup>. The judgment explicitly linked privacy to personal autonomy, asserting that sexual orientation and gender identity are core aspects of an individual's dignity. It laid the constitutional groundwork for protecting queer identities from state interference and social intrusion.

In *Navtej Singh Johar v. Union of India (2018)*<sup>5</sup>, the Supreme Court delivered one of its most landmark judgments by reading down Section 377 of the Indian Penal Code<sup>6</sup>, as a result, decriminalising consensual same-sex relations between adults. This decision marked a rather clear departure from the colonial-era-based and followed morality system and upheld the fundamental constitutional values of equality, dignity, and individual autonomy, which is said by many to be followed in India. It affirmed that queer love and identity are entitled to equal protection under the law and social respect. This judgment was both legally significant and symbolically transformative.

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<sup>1</sup> The Quint (@thequint), *Ahead of the Assembly elections, what has queer Maharashtra been promised by the parties?*, Instagram (Nov. 18, 2024), [https://www.instagram.com/p/DCg6EUZzn\\_f/](https://www.instagram.com/p/DCg6EUZzn_f/) (last visited May 31, 2025).

<sup>2</sup> *National Legal Services Authority v. Union of India & Others*, [2014] 5 S.C.R. 119 (India) [hereinafter NALSA].

<sup>3</sup> *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, [2017] 10 S.C.R. 569.

<sup>4</sup> India Const. art. 21.

<sup>5</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

<sup>6</sup> Indian Penal Code, § 377 (1860) (India).

More recently, in *Supriyo v. Union of India (2023)*<sup>7</sup>, the Supreme Court declined to recognise marriage equality for same-sex couples but acknowledged the validity of their relationships. The Court recognised the structural barriers queer couples face in accessing housing, healthcare, inheritance, and social security. While it called upon Parliament to consider legal reforms, it also exposed the limits of judicial intervention in achieving full equality.

Together, these judgments reflect the evolution of Indian constitutional law towards greater inclusion. However, courts cannot single-handedly change societal attitudes or dismantle deep-rooted prejudice. Legal recognition, while powerful, cannot mend family estrangement, prevent discrimination in everyday settings, or ensure that queer people feel safe in their communities. The law can set the direction, but the journey requires collective social effort.

### **III. Between the Lines: Legal Silences and Gaps**

Despite several progressive judgments, many of the everyday realities faced by LGBTQIA+ individuals in India remain legally unrecognised or inadequately addressed.<sup>8</sup> While the courts have paved the way for a more inclusive legal imagination, large sections of the queer community continue to live in legal grey zones, with limited protections and rights. The following areas illustrate the pressing gaps that persist:

#### **1. Absence of Comprehensive Anti-Discrimination Legislation**

India still lacks a nationwide anti-discrimination law that explicitly protects individuals from being treated unfairly on the grounds of sexual orientation, gender identity, or gender expression.<sup>9</sup> As a result, queer individuals routinely face exclusion in education, employment, housing, healthcare, and public services, with little to no legal recourse. While constitutional provisions offer some

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<sup>7</sup>Supriyo @ Supriya Chakraborty & Another v. Union of India, [2023] 16 S.C.R. 1209 (India) [hereinafter *Supriyo Case*].

<sup>8</sup> INTERNATIONAL LABOUR ORGANIZATION, *INCLUSION OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX AND QUEER (LGBTIQ+) PERSONS IN THE WORLD OF WORK: A LEARNING GUIDE* (2022), <https://researchrepository.ilo.org/esploro/outputs/encyclopediaEntry/Inclusion-of-lesbian-gay-bisexual-transgender/995219459602676#file-1>.

<sup>9</sup> *Legal Protection for LGBTQ+ Rights in India: Progress and Challenges*, Lawful Legal (Oct. 19, 2024), <https://lawfullegal.in/legal-protection-for-lgbtq-rights-in-india-progress-and-challenges/>.

protection, there is no enforceable statutory framework to address everyday instances of discrimination.<sup>1011</sup>

## **2. Conversion Therapy and Its Continued Practice**

In *S. Sushma v. Commissioner of Police*<sup>12</sup>, the Madras High Court strongly condemned conversion therapy and directed the State to take action against practitioners of such harmful practices.<sup>1</sup> However, there is still no legislation at the national level that bans or criminalises conversion therapy. Many LGBTQIA+ individuals, especially youth, continue to be coerced into psychiatric or religious interventions that seek to alter their identity, often with traumatic consequences.<sup>13</sup>

## **3. Implementation Gaps in Trans Rights Legislation**

The Transgender Persons (Protection of Rights) Act, 2019<sup>14</sup>, which was meant to safeguard the rights of transgender individuals, has been widely criticised by activists and legal scholars. The Act deviates from the self-identification principle affirmed by the Supreme Court in *NALSA v. Union of India*<sup>15</sup>, instead requiring trans persons to undergo certification processes that are invasive and inconsistent across states. In practice, many transgender individuals continue to face harassment, social exclusion, and denial of basic services, including healthcare and employment opportunities.

## **4. Marriage, Family, and Legal Recognition**

Same-sex couples in India are not permitted to marry, jointly adopt children, or inherit property as a legal family unit.<sup>16</sup> The Supreme Court in *Supriyo v. Union of India*<sup>17</sup> acknowledged the dignity of queer relationships,<sup>3</sup> but fell short of extending legal protections. This legal void denies queer

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<sup>10</sup> *Advisories issued to ensure rights of people in queer relationships: Govt to Lok Sabha*, The Hindu (Feb. 8, 2024), <https://www.thehindu.com/news/cities/Delhi/advisories-issued-to-ensure-rights-of-people-in-queer-relationships-govt-to-lok-sabha/article69180089.ece>.

<sup>11</sup> The Quint (@thequint), *Ahead of the Assembly elections, what has queer Maharashtra been promised by the parties?*, Instagram (Nov. 18, 2024), [https://www.instagram.com/p/DCg6EUZzn\\_f/](https://www.instagram.com/p/DCg6EUZzn_f/) (last visited May 31, 2025).

<sup>12</sup> *S. Sushma v. Commissioner of Police*, W.P. No. 7284 of 2021

<sup>13</sup> *S. Sushma and Ors. v. Commissioner of Police, Greater Chennai Police and Ors.*, W.P. No. 7284 of 2021, MANU/TN/3963/2021 (Madras HC June 7, 2021), <https://translaw.clpr.org.in/case-law/s-sushma-and-ors-v-commissioner-of-police-greater-chennai-police-and-ors/>.

<sup>14</sup> The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India)

<sup>15</sup> *NALSA*, supra note 1.

<sup>16</sup> Srishti Jaswal, *India's LGBTQ community battles same-sex marriage 'heartbreak' from court*, Al Jazeera (Oct. 24, 2023), <https://www.aljazeera.com/news/2023/10/24/india-lgbtq-supreme-court-same-sex-marriage-rights>.

<sup>17</sup> *Supriyo Case*, supra note 6.

couples access to vital rights such as spousal insurance, next-of-kin status in hospitals, pension benefits, and family recognition in housing and immigration matters. Without family law reform, queer partnerships remain vulnerable and unprotected.

#### **5. Mental Health and Medical Care**

Access to affirming and inclusive healthcare remains limited. Many healthcare professionals lack adequate training in treating LGBTQIA+ individuals with sensitivity and respect. Transgender persons, in particular, report being misgendered, denied gender-affirming procedures, or subjected to ridicule and negligence in medical settings. Although mental healthcare is covered under the Mental Healthcare Act, 2017<sup>18</sup>, queer individuals often face stigma or receive inadequate support in therapeutic contexts.

#### **6. Barriers in Identity Documentation**

Obtaining accurate identity documents that reflect an individual's gender identity continues to be a bureaucratic and inconsistent process. Despite the right to self-identification recognised in NALSA,<sup>19</sup> many trans and non-binary individuals face delays, rejections, or demands for medical evidence when seeking to update official records such as Aadhaar cards, passports, or academic certificates. Without valid identification, access to education, employment, travel, and banking remains obstructed.

These legal silences expose the distance between judicial recognition and lived reality. Rights, when not accompanied by effective implementation and policy reform, often fail to reach those most in need. Legal progress, while commendable, must be followed by comprehensive legislative measures, institutional accountability, and societal education. Until then, the promise of equality remains incomplete for many queer Indians.

### **IV. Everyday Discrimination: Beyond the Courtroom**

In the face of legal exclusions and social stigma, queer communities in India have continually built their own ecosystems of care, resistance, and affirmation. These community-led efforts reveal the

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<sup>18</sup> Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).

<sup>19</sup> NALSA, supra note 1.

immense strength and solidarity that emerge even in hostile environments. Where state systems fall short, collective action and alternative kinship structures fill the gap.

### **Chosen**

### **Families**

For many LGBTQIA+ individuals, rejection by biological families is a painful reality. In response, they turn to “chosen families”, networks of close friends and peers who offer emotional, financial, and practical support. These relationships, formed through trust and shared experience, often serve as lifelines during periods of crisis such as homelessness, illness, or mental distress. Chosen families not only affirm queer identities but also redefine the very concept of kinship outside heteronormative norms.<sup>20</sup>

### **Support**

### **Groups**

### **and**

### **Grassroots**

### **Collectives**

Across the country, queer-led organisations and informal support groups have emerged to provide essential services. These include helplines, legal aid, mental health counselling, and safe housing options. For young people facing isolation, especially in small towns and conservative households, these collectives become crucial spaces for healing and self-expression. Many such groups also engage in advocacy and capacity-building, empowering individuals to navigate legal and medical systems.<sup>21</sup>

### **Pride**

### **Marches**

### **and**

### **Cultural**

### **Expression**

Despite facing opposition from authorities, moral policing, and financial constraints, Pride

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<sup>20</sup> *The petition you need to know about from the same-sex marriage hearings that start today*, Mint Lounge (Apr. 18, 2023), <https://www.livemint.com/mint-lounge/ideas/the-petition-you-need-to-know-about-from-the-same-sex-marriage-hearings-that-start-today-111681805877468.html>.

<sup>21</sup> *Indian Queer NGOs & Support Groups On Instagram*, Gaysi Family (June 23, 2020), <https://gaysifamily.com/lifestyle/indian-queer-ngos-support-groups-on-instagram/>.

marches have taken place in numerous Indian cities<sup>22</sup>, from Delhi<sup>23</sup> and Mumbai<sup>24</sup> to Bhubaneswar<sup>25</sup>, Kolkata<sup>26</sup> and Guwahati<sup>27</sup>.

These events, alongside queer film festivals, poetry readings, theatre productions, and art exhibitions, create visibility and celebrate diversity. They also challenge dominant narratives by showcasing queer joy, resistance, and creativity in public spaces.

### **Advocacy and Everyday Activism**

While large-scale legislative change is slow, everyday acts of resistance form the backbone of queer advocacy in India. Trans women helping peers obtain identity documents, queer lawyers<sup>28</sup> litigating against workplace discrimination<sup>29</sup>, student collectives challenging discriminatory hostel policies, and educators introducing inclusive curricula, all represent critical, decentralised activism. These efforts not only address immediate needs but also chip away at systemic injustice.<sup>30</sup>

### **Digital Platforms and Virtual Solidarity**

For many, particularly those in rural areas or still closeted, digital spaces provide essential access

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<sup>22</sup> Hamsadhvani Alagarsamy, *The History Of Pride Parades In India*, Feminism in India (June 24, 2019), <https://feminisminindia.com/2019/06/24/pride-parades-india-history/>.

<sup>23</sup> *Pics: Thousands gather to take part in 14th Delhi Queer Pride Parade*, India Today (Nov. 26, 2023), <https://www.indiatoday.in/cities/delhi/story/delhi-queer-pride-parade-lgbtqia-protest-rights-marriage-love-2467816-2023-11-26>.

<sup>24</sup> Debarati S. Sen, *Mumbaikars unite for love and equality at pride parade*, The Times of India (Feb. 2, 2025), <https://timesofindia.indiatimes.com/city/mumbai/mumbaikars-unite-for-love-and-equality-at-pride-parade/articleshow/117863445.cms>.

<sup>25</sup> Minati Singha, *Pride march for equality in Bhubaneswar*, The Times of India (July 22, 2024), <https://timesofindia.indiatimes.com/city/bhubaneswar/pride-march-for-equality-in-bhubaneswar/articleshow/111912594.cms>.

<sup>26</sup> Sandip Roy, *LGBTQ+: India's first Pride march which made history*, BBC News (July 25, 2023), <https://www.bbc.com/news/world-asia-india-66220514>.

<sup>27</sup> *Guwahati: Over 500 Celebrate Inclusivity and Empowerment at Queer Pride Parade*, The Sentinel Assam (Dec. 23, 2024), <https://www.sentinelassam.com/cities/guwahati-city/guwahati-over-500-celebrate-inclusivity-and-empowerment-at-queer-pride-parade>.

<sup>28</sup> *Meet the lawyers working to change the law on homosexuality in India*, YourStory (July 6, 2018), <https://yourstory.com/2018/07/lawyers-changing-law-homosexuality-law-india>.

<sup>29</sup> JAIME M. GRANT ET AL., *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY* (National Center for Transgender Equality & National Gay and Lesbian Task Force 2011), <https://www.thetaskforce.org/resources/injustice-every-turn-report-national-transgender-discrimination-survey/>.

<sup>30</sup> The Quint (@thequint), *Ahead of the Assembly elections, what has queer Maharashtra been promised by the parties?*, Instagram (Nov. 18, 2024), [https://www.instagram.com/p/DCg6EUZzn\\_f/](https://www.instagram.com/p/DCg6EUZzn_f/) (last visited May 31, 2025).

to information, affirmation, and peer support. Online communities, through blogs<sup>31</sup>, support groups, social media pages, and queer influencers, help people feel seen and connected across physical boundaries.

The internet has become a powerful tool for organising, sharing resources, and building resilience in environments where offline support may be scarce or unsafe. These stories remind us that queer survival is not passive endurance but an active, creative, and collective pursuit of dignity.

Even in the absence of full legal inclusion, queer people in India continue to resist erasure, build community, and reimagine what justice and care can look like from the ground up.

## **V. Trans Rights: Between Recognition and Reality**

The legal recognition of transgender identities in India began with promise. The Supreme Court's judgment in *NALSA v. Union of India* (2014)<sup>32</sup> marked a watershed moment, affirming the right to self-identify one's gender and directing the state to ensure social, economic, and legal inclusion for transgender persons. This was followed by the enactment of the Transgender Persons (Protection of Rights) Act, 2019<sup>33</sup>. Despite legal recognition, the lived experiences of transgender individuals continue to reflect a significant and concerning disconnect from social reality.

### **Challenges in the Transgender Persons Act**

Although the Act was introduced as a measure to protect trans rights, it has been widely criticised by activists and scholars for its procedural shortcomings and ideological contradictions. The law does not fully embrace the self-identification principle affirmed by the Supreme Court in *NALSA*<sup>34</sup>. Instead, it introduces a bureaucratic process requiring trans persons to apply for a "transgender certificate" and, in the case of legal recognition as male or female, to submit proof of gender-

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<sup>31</sup> *Blogs & Guides for all LGBTQ+ Identities*, The Rainbow Stores, [https://www.therainbowstores.com/blogs/blogs-guides?srltid=AfmBOopVNS1SfJBt00WQnMrQv0aqNktXnzRFEDo8\\_JqbOjB\\_w\\_fOGboe](https://www.therainbowstores.com/blogs/blogs-guides?srltid=AfmBOopVNS1SfJBt00WQnMrQv0aqNktXnzRFEDo8_JqbOjB_w_fOGboe).

<sup>32</sup> *NALSA*, supra note 1.

<sup>33</sup> The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India)

<sup>34</sup> *NALSA*, supra note 1.

affirming surgery. These requirements are not only invasive but also inaccessible to many who lack financial means or fear medical discrimination.<sup>35</sup>

### **Structural Exclusion and Unsafe Work**

Due to deep-rooted transphobia<sup>36</sup>, many trans individuals are systematically excluded from educational institutions and formal employment. Discrimination, stigma, and a lack of institutional support force many into unsafe or precarious forms of work, including begging and sex work. These occupations, often criminalised or informal, leave trans people without protection, legal recourse, or stable income, reinforcing cycles of poverty and vulnerability.<sup>37</sup>

### **Barriers to Basic Rights and Services**

Accessing essential documents such as Aadhaar cards, voter IDs, and passports remains a significant hurdle. Trans people often face rejection or long delays when attempting to amend their gender markers. Similarly, securing safe and non-discriminatory housing is an uphill task, particularly for those estranged from their families. Healthcare services, too, are frequently inadequate. Reports of misgendering, denial of care, or coercion in medical settings are widespread, and gender-affirming procedures remain inaccessible for many due to cost or stigma.<sup>38</sup>

### **Multiplicity of Trans Experiences**

Transgender communities in India are not monolithic. The experiences of Hijra<sup>39</sup> and Aravani communities<sup>40</sup>, often visible but marginalised, differ sharply from those of trans men who struggle with social invisibility, or non-binary individuals whose identities are not legally recognised at all.

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<sup>35</sup> *The fight for intersex rights in India: A medical ethics and social justice perspective*, The Hindu (Feb. 12, 2024), <https://www.thehindu.com/sci-tech/health/the-fight-for-intersex-rights-in-india-a-medical-ethics-and-social-justice-perspective/article69218867.ece>.

<sup>36</sup> Priyanka Dasgupta, *Transphobia deeply rooted among educated class*, The Times of India (Apr. 16, 2017), <https://timesofindia.indiatimes.com/city/kolkata/transphobia-deeply-rooted-among-educated-class/articleshow/58200051.cms>.

<sup>37</sup> JAIME M. GRANT ET AL., *NATIONAL TRANSGENDER DISCRIMINATION SURVEY: FULL REPORT ON THE EXPERIENCES OF TRANSGENDER PEOPLE* (National Center for Transgender Equality and National Gay and Lesbian Task Force 2011), [https://transequality.org/sites/default/files/docs/resources/NTDS\\_Report.pdf](https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf).

<sup>38</sup> Vedaanti Bakshi, *Transgender Identification Documents in India: A Critical Analysis*, LegalOnus L.J., Vol. 1, Issue 6 (May 6, 2025), <https://legalonus.com/transgender-identification-documents-in-india-a-critical-analysis/>.

<sup>39</sup> Alex Parmar-Yee, *The Hijras taught me that being Trans and Indian is enduring*, QueerAF (May 7, 2024), <https://www.wearequeer.af.com/the-hijras-taught-me-that-being-trans-and-indian-is-enduring/>.

<sup>40</sup> Aarefa Johari, *Hijra, kothi, aravani: a quick guide to transgender terminology*, Scroll.in (Apr. 17, 2014), <https://scroll.in/article/662023/hijra-kothi-aravani-a-quick-guide-to-transgender-terminology>.

Many trans men report being erased in both activist discourse and policy frameworks, while non-binary persons face daily misrecognition and institutional denial. This diversity of experiences calls for more nuanced and inclusive policies that reflect the full spectrum of gender variance.

### **Community Care and Resilience**

In the absence of adequate state support, trans communities have long relied on mutual aid. Elders within Hijra communities often play critical roles in providing guidance, protection, and emotional support. Local collectives and NGOs assist with medical expenses, identity documentation, legal aid, and crisis response. These networks reflect extraordinary resilience and solidarity in the face of structural neglect and active hostility.

The journey towards trans equality in India must go beyond legal formalities. While legal recognition is an important foundation, it must be accompanied by genuine access to rights, resources, and respect. Policies must prioritise dignity, self-determination, and economic empowerment. The future of trans rights in India rests not only in courtrooms and statutes but in transforming the everyday conditions under which trans people live, work, and thrive.

## **VI. The Way Forward: From Legal Change to Lived Equality**

As India stands at a pivotal moment between recognition and reform, the journey towards full LGBTQIA+ inclusion remains unfinished. Legal victories, while significant, must now be matched by structural changes that affect daily life. The real measure of progress lies not only in courtrooms but in classrooms, clinics, homes, and public spaces. Achieving lived equality demands a multi-layered approach that addresses legal gaps, institutional failures, and social prejudice.

### **1. Enacting Comprehensive Anti-Discrimination Legislation**

India urgently requires a robust anti-discrimination law that explicitly prohibits unfair treatment on the grounds of sexual orientation, gender identity, and gender expression. Such legislation should protect individuals in education, employment, housing, healthcare, and public services. Legal protection must not remain a privilege for the few but be a guaranteed right for all.<sup>41</sup>

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<sup>41</sup> *India: End Rampant Discrimination in the Justice System Based on Sexual Orientation and Gender Identity*, INT'L COMM'N OF JURISTS (Feb. 24, 2017), <https://www.icj.org/india-end-rampant-discrimination-in-the-justice-system-based-on-sexual-orientation-and-gender-identity/>.

## **2. Nationwide Ban on Conversion Therapy**

Conversion therapy is a deeply harmful practice with no scientific or ethical basis.<sup>42</sup> While the judiciary has condemned it in isolated rulings, a nationwide legislative ban is essential. This should be accompanied by penalties for offenders and support services for survivors. The law must affirm unequivocally that no one should be punished or pathologised for being who they are.

## **3. Reforming the Implementation of Trans Rights**

The Transgender Persons (Protection of Rights) Act, 2019<sup>43</sup>, must be amended to align with the self-identification principle upheld by the Supreme Court in *NALSA*<sup>44</sup>. Procedures for accessing identity documents must be simplified and made respectful. Public services, particularly education, employment, housing, and healthcare, must be made accessible through policy reform and institutional sensitisation.

## **4. Legal Recognition of Queer Families**

The law must recognise and support the diverse ways in which people form families. This means extending rights like marriage, adoption, inheritance, and spousal benefits to queer couples. Without such recognition, these relationships remain exposed to legal and social vulnerabilities. Protecting love, care, and companionship is not just a legal necessity, it is a reflection of our shared commitment to dignity, equality, and belonging.

## **5. Inclusive Education and Affirming Healthcare**

Curricula must include comprehensive, age-appropriate, and scientifically accurate information on gender and sexuality. Schools should be safe and affirming spaces for queer youth. Likewise, healthcare providers must be trained in inclusive and non-discriminatory care. Medical education must incorporate LGBTQIA+ issues to ensure respectful and effective service delivery.<sup>45</sup>

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<sup>42</sup> *Explained | The ban on conversion therapy for the LGBTQIA+ community*, The Hindu (Sept. 2, 2022), <https://www.thehindu.com/news/national/explained-the-ban-on-conversion-therapy-for-the-lgbtqia-community/article65853083.ece>.

<sup>43</sup> The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India)

<sup>44</sup> *NALSA*, supra note 1.

<sup>45</sup> *The fight for intersex rights in India: A medical ethics and social justice perspective*, The Hindu (Feb. 12, 2024), <https://www.thehindu.com/sci-tech/health/the-fight-for-intersex-rights-in-india-a-medical-ethics-and-social-justice-perspective/article69218867.ece>.

## **6. Sensitisation of Key Stakeholders**

For legal rights to be effective, those tasked with implementing them must be adequately trained. Police officers, teachers, healthcare workers, social workers, judges, and government officials must undergo sensitisation programmes. Legal change is futile if the people enforcing it continue to operate from ignorance or prejudice.

## **7. Authentic and Responsible Media Representation**

The media plays a powerful role in shaping public perceptions. It must move beyond harmful stereotypes and tokenistic portrayals to reflect the diversity and complexity of queer lives. Positive representation can foster empathy, reduce stigma, and humanise marginalised identities.

## **8. Community-Centred Policymaking**

Laws and policies concerning LGBTQIA+ persons must be created in genuine consultation with the communities they affect. Inclusion is not meaningful unless it is participatory. Queer individuals and organisations bring critical insight into their own realities, needs, and aspirations, and must be empowered to shape the systems that govern them.

Inclusion is not a singular event or legal threshold, it is a continuous, everyday commitment. Legal reform is a vital beginning, but true equality requires empathy, education, and empowerment. A society cannot be considered just until every queer person is free not only to exist, but to live, love, express, and belong without fear. The road ahead is long, but the direction is clear. It is time to move from symbolic recognition to substantive change, towards a future where dignity is not conditional and rights are not negotiable.

## **VII. Grassroots Resistance and Queer Joy**

Across India, from bustling cities to remote villages, queer individuals and communities are quietly transforming the landscape of resistance and care. Often without institutional backing or legal recognition, they build networks of survival and celebration through everyday acts of solidarity, creativity, and courage. These grassroots efforts challenge systemic neglect not through grand declarations, but through shared meals, open doors, safe spaces, and joyous expression.

## **Mutual Aid and Survival Networks**

In the absence of reliable state support, queer individuals and collectives have established mutual

aid networks to meet essential needs, especially during emergencies. During the COVID-19 lockdown, various groups (NGOs, etc) in Mumbai collaborated with queer volunteers to deliver food to homeless trans persons and daily wage workers<sup>46</sup>. Similarly, *Nazariya*<sup>47</sup>, a Delhi-based queer feminist resource group, provided ration kits, sanitation supplies, and emergency funds to LGBTQIA+ individuals left out of government relief schemes. These acts of collective care demonstrate how survival is not merely a personal struggle but a shared political act.

### **Safe Spaces and Community Homes**

Queer safe spaces offer sanctuary from rejection and violence. In Chennai, *Thozhi*<sup>48</sup>, a trans-women-led collective, runs an informal community home where trans women can find shelter, meals, and support while pursuing education or employment. In Kolkata, *Sappho for Equality*<sup>49</sup> operates both as a support forum and a shelter for queer women and trans persons. These community homes are often the only option for those who have been evicted or abandoned by their families. They are spaces of affirmation, healing, and hope.

### **Celebrating Queer Culture**

Joy itself becomes resistance in a world that often silences queer lives. Pride marches, poetry readings, drag shows, and film festivals are not only cultural expressions but also political declarations. Events like the *Reel Desires*<sup>50</sup> queer film festival in Chennai and the *QAM (Queer Azadi Mumbai)*<sup>51</sup> Pride week showcase not just visibility but agency. Drag performers such as *Betta Naan Stop*<sup>52</sup> in Bengaluru and *Rani Ko-HE-Nur*<sup>53</sup> in Mumbai use art and humour to

<sup>46</sup> *Maha: Transgenders provide free meals to poor during lockdown*, The Economic Times (Apr. 22, 2020), <https://economictimes.indiatimes.com/news/india/maha-transgenders-provide-free-meals-to-poor-during-lockdown/articleshow/75289310.cms>.

<sup>47</sup> *Nazariya Foundation*, <https://thenazariyafoundation.org/> (last visited May 31, 2025).

<sup>48</sup> *Thozhi Chennai* (@thozhi\_chennai), Instagram, [https://www.instagram.com/thozhi\\_chennai/](https://www.instagram.com/thozhi_chennai/) (last visited May 31, 2025).

<sup>49</sup> *Sappho for Equality*, <https://www.sapphokolkata.in/> (last visited May 31, 2025).

<sup>50</sup> *Catch films about the LGBTQIA+ community at Reel Desires: Chennai's International Queer Film Festival*, The Hindu (May 31, 2024), <https://www.thehindu.com/entertainment/catch-films-about-the-lgbtqia-community-at-reels-desire-chennais-international-queer-film-festival/article68520286.ece>.

<sup>51</sup> *Queer Azaadi Mumbai* (@queerazaadimumbai), Instagram, <https://www.instagram.com/queerazaadimumbai/> (last visited May 31, 2025).

<sup>52</sup> *Betta Naan Stop* (@bettanaanastop), Instagram, <https://www.instagram.com/bettanaanastop/> (last visited May 31, 2025).

<sup>53</sup> *Sushant Divgikar* (@sushantdivgikr), Instagram, <https://www.instagram.com/sushantdivgikr/> (last visited May 31, 2025).

dismantle gender norms, promote inclusion, and foster inter-community dialogue. These celebrations are radical acts of self-love and collective pride.

### **Stories from Small Towns and Villages**

While visibility is often associated with urban centres, powerful queer stories also emerge from India's smaller towns and rural regions. In Baramati, Maharashtra, a government school teacher became a lifeline for queer students, helping them access counselling and protection from bullying. In Manipur, the *Ya All* collective<sup>54</sup>, run by queer youth, provides peer counselling, organises workshops, and promotes safe spaces for queer individuals in the Northeast. In Tamil Nadu, trans farmers have begun collective farming initiatives, asserting economic independence and community pride.

### **Healing Through Art and Expression**

Art has become a vital medium for both healing and protest. Theatre groups like *The Patchworks Ensemble*<sup>55</sup> in Mumbai and *Rangayan*<sup>56</sup> in Karnataka use drama and storytelling to depict queer narratives with sensitivity and nuance. In Assam, visual artist *Priyanka Paul* uses illustration to educate, inspire, and challenge societal norms. Dance, too, has become a form of expression and reclamation, trans performers in Kerala have turned to *Mohiniyattam* and *Bharatanatyam*, traditionally cisgender female spaces, to assert identity and cultural belonging.

This grassroots energy is not merely reactive, it is generative. Queer individuals are building futures not only in spite of exclusion, but through love, laughter, and solidarity. Brick by brick, hug by hug, song by song, they are laying the foundations of inclusion from the ground up. It is in these everyday actions, whether in a crowded Delhi apartment or a small classroom in Nagaland, that true belonging begins to take root. The law may take time to catch up, but queer futures are already unfolding, crafted by the hands of those who refuse to be unseen.

## **VIII. Towards a Queer Constitutionalism**

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<sup>54</sup> *Ya All*, <https://www.yaall.org/> (last visited May 31, 2025).

<sup>55</sup> *Patchworks Ensemble* (@patchworksensemble), Instagram, <https://www.instagram.com/patchworksensemble/> (last visited May 31, 2025).

<sup>56</sup> TNN, *Sridhar Rangayan: We want to enable Indian LGBTQIA+ lives to come alive on screens*, Times of India (May 8, 2020), <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/sridhar-rangayan-we-want-to-enable-indian-lgbtqia-lives-to-come-alive-on-screens/articleshow/75627679.cms>

To realise the full promise of equality under the Indian Constitution, legal recognition of LGBTQIA+ persons must evolve into a deeper, more expansive vision, one that understands queer rights not as peripheral or exceptional, but as intrinsic to the democratic ethos of justice, liberty, and dignity. This requires structural, legal, and cultural transformations that embed queer inclusion into the heart of public life and constitutional governance.

**1. Enacting Comprehensive Anti-Discrimination Legislation**

India urgently requires a national anti-discrimination framework that explicitly includes sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). Such a law must guarantee protection across employment, education, healthcare, housing, and access to public services. Crucially, it must include independent redress mechanisms, timelines for inquiry, and remedies for victims. Precedents from jurisdictions like South Africa and Argentina illustrate the transformative impact of such inclusive legal frameworks.

**2. Ensuring Equal Family Rights**

Legal reform must extend to the domain of family law, ensuring that queer individuals and couples are not denied the rights afforded to others. This includes the right to marry, adopt, inherit, access spousal benefits, and be legally recognised as a family unit. The law must also recognise non-traditional family structures such as chosen families, co-parenting arrangements, and communal caregiving models, which reflect the lived realities of many queer people in India.

**3. Mainstreaming Queer Rights in Public Policy**

Queer inclusion must be integrated into the design and delivery of public services. This includes curriculum reform, introducing age-appropriate and affirming education on gender, sexuality, and queer histories, affirmative action measures, such as reservations in education and employment for transgender persons, in line with *NALSA*'s directives, gender-affirming healthcare, made available through public health schemes like Ayushman Bharat, including surgeries, counselling, and hormone therapy, these steps would move beyond symbolic inclusion towards material justice.

**4. Accountability from Statutory Bodies**

Institutions like the National Human Rights Commission (NHRC)<sup>57</sup>, the National Commission

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<sup>57</sup> National Human Rights Commission of India, <https://nhrc.nic.in> (last visited May 31, 2025).

for Women (NCW)<sup>58</sup>, and the National Commission for Protection of Child Rights (NCPCR)<sup>59</sup> must actively engage with LGBTQIA+ concerns. This requires establishing dedicated LGBTQIA+ cells to handle complaints and track violations, auditing inclusion in state programmes and welfare schemes, publishing periodic public reports on queer rights, discrimination trends, and state compliance with constitutional mandates. Their silence or passivity should no longer be acceptable.

### **5. Sensitisation and Capacity-Building for Key Stakeholders**

The impact of legal change is often blunted by the ignorance or hostility of frontline institutions. Police officers, schoolteachers, healthcare professionals, prison officials, and judges must receive comprehensive training on LGBTQIA+ issues. Without sustained sensitisation, rights on paper will continue to translate into rights denied in practice.

### **6. "Nothing About Us Without Us": Participation in Policymaking**

For inclusion to be authentic, queer persons must be directly involved in shaping the laws and policies that affect their lives. This means not merely a tokenistic representation, but meaningful participation through advisory boards at state and central levels, community consultations during policy drafting, leadership roles for queer individuals across regions, castes, religions, and class backgrounds, etc.

Legal frameworks must reflect the knowledge and lived experience of queer communities themselves. Only then can they become instruments of liberation rather than erasure.

To build a queer constitutionalism is to reaffirm the very spirit of the Indian Constitution, its commitment to dignity, equality, and justice for all. Queer rights are not niche concerns or political luxuries; they are about the right to live freely, love openly, and exist safely. As India reimagines its future, its laws and institutions must no longer speak only for the majority but for every voice historically pushed to the margins. A truly inclusive democracy must make space for those who have always existed, but have not yet been fully seen.

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<sup>58</sup> National Commission for Women, <https://ncw.nic.in> (last visited May 31, 2025).

<sup>59</sup> National Commission for Protection of Child Rights, <https://www.ncPCR.gov.in> (last visited May 31, 2025).

## **IX. Conclusion: Law Is Not Enough Without Love**

India's journey towards LGBTQIA+ inclusion has witnessed landmark legal victories, each one a testament to courage, resilience, and the power of the Constitution. But law, by itself, is only the scaffolding. The true edifice of equality must be built with something deeper: love, acceptance, and a shared sense of belonging.

Take the story of X (identity hidden due to privacy as requested by the person), a trans man who lived his life in a quiet town. Disowned by his family, he didn't retreat, he created a local support group, offering refuge, strength, and solidarity to others like him. X's quiet bravery reminds us that transformation often begins not in courtrooms, but in living rooms, community halls, and hearts.

Legal rights can shield us from discrimination, but they cannot teach a parent to accept, a teacher to affirm, or a neighbour to stand up. That learning comes from love. A society that truly includes queer people must go beyond tolerance to celebration, schools that reflect every identity, workplaces that uplift difference, homes that cherish truth, and streets that feel like home.

Inclusion is not a passive state. It asks something of all of us. To speak out when silence enables harm. To listen without judgment. To unlearn prejudice and reimagine the norms that have kept so many at the margins.

The fight for LGBTQIA+ rights is not only about the freedom to love, it is also about the freedom to live fully, visibly, and with pride. As we shape a future grounded in justice, let us hold fast to a simple truth: no one is truly free until everyone is. And law, without love, will never be enough.