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RAINBOW JUSTICE: HOW INDIAN COURTS AND HUMAN RIGHTS WATCHDOGS CHAMPION LGBTQIA+ RIGHTS?

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ABSTRACT:

The protection and recognition of LGBTQIA+ rights are now a vital component of human rights discussion. LGBTQIA+ individuals have traditionally been subject to systematized discrimination, social stigmatization, and legal marginalization. This paper explores international conventions and national legal provisions that protect the rights of LGBTQIA+ individuals, as well as the social and legal frameworks that do so. In India, the Transgender Persons (Protection of Rights) Act 2019 is a big step towards inclusivity but has also been criticized on the lines of its implementation and sufficiency. This paper critically examines the provisions of the Act, judicial dicta, and the plight of transgender persons who still suffer from employment discrimination, denial of access to healthcare, and social marginalization. In addition, the place of judicial activism and the changing understanding of constitutional rights are investigated, with a particular focus on the need to affirm gender identity as a constitutional right. The paper also touches on comparative legal opinions in other jurisdictions to indicate best practices and potential reforms. In conclusion, providing full realization of LGBTQIA+ rights demands not only legal acknowledgment but also changed societal attitudes. A multidimensional strategy that synthesizes legal, social, and policy reforms is essential to accomplish real inclusivity and equality for LGBTQIA+ people in Indian society. This research adds value to the debate by highlighting gaps and suggesting holistic solutions.

Keywords: Transgender Rights, Legal Recognition, Gender Identity, Human Rights Law, Social Inclusion.

INTRODUCTION:

For everyone, especially the LGBTQIA+ community, to live with dignity, equality, and justice, human rights must be upheld and promoted. Despite the fact that freedom from violence and

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discrimination is a fundamental component of human rights law, LGBTQIA+ individuals continue to face societal stigma, legal barriers, and systematic exclusion worldwide. LGBTQIA+ rights have recently been established in India by court decisions and legislative amendments, demonstrating a trend toward more inclusion. The full integration of LGBTQIA+ people into society is nevertheless hampered by ingrained biases and institutional shortcomings, notwithstanding these legal advancements.

Various landmark court decisions and several policy initiatives started by the Union and the states have all influenced the country's acceptance of LGBTQIA+ rights. A turning point in the history of judicial trends regarding the rights of the LGBTQIA+ community was reached in 2014 when the Supreme Court acknowledged the rights of transgender people in the NALSA v. Union of India.[1] Ruling, upholding their right to self-identification, and urging affirmative action measures.

In addition, the landmark ruling in Navtej Singh Johar v. Union of India[2], which decriminalised homosexuals' consensual sexual relations by striking down Section 377 of the Indian Penal Code ("IPC"), 1860, was a significant win for LGBTQIA+ rights and deserves to be immortalised in golden words. The lived realities of LGBTQIA+ people in India, however, continue to be difficult despite these court rulings. These difficulties include discrimination in public services, healthcare, education, and employment. It is important to note that in accordance with this decriminalization, the authors of the new criminal laws ensured that the new code, Bharatiya Nyaya Sanhita, 2023 ("BNS")[3]Did not contain such a provision. The BNS, which has replaced the IPC, has faced criticism for maintaining a gender-specific stance on sexual offences. Various activists and legal experts contend that the absence of gender-neutral rape provisions perpetuates injustice for male and transgender survivors, stressing that sexual assault violates bodily autonomy regardless of the victim's gender.[4]

Human rights commissions, which are established under the Protection of Human Rights Act, 1993[5], both at the national[6] and state levels[7]Serve as key institutional mechanisms to uphold

[1] (2014) 5 SCC 438.
[2] (2018) 10 SCC 1.
[3] Bharatiya Nyaya Sanhita 2023, 10, No. 45, Act of Parliament (India).
[4] The Hindu, 'Gang-rape of UP man highlights need for Section 377 in BNS Bill' Hindu (25 Feb. 2024, 8:00 P.M.), https://www.thehindu.com/news/national/gang-rape-of-up-man-highlights-need-for-section-377-in-bns-bill/article68320575.ece
[5] The Protection of Human Rights Act 1993,1 No.10, Act of Parliament (India).
[6] The Protection of Human Rights Act 1993,3, No.10, Act of Parliament (India).
[7] The Protection of Human Rights Act 1993, 45, No.10, Act of Parliament (India).

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constitutional guarantees and protect vulnerable communities from discrimination and injustice. The National Human Rights Commission (NHRC) and various State Human Rights Commissions (SHRC) play a pivotal role in addressing grievances, recommending policy changes, and advocating for the rights of marginalized groups, including LGBTQIA+ persons. By playing advisory roles, intervening in public interest, and making recommendations to government agencies, these commissions have assisted the wider movement for LGBTQIA+ rights in India. Their influence is still limited, though, by structural and legislative limitations. However, their impact remains limited due to structural and legislative constraints.

One of the significant legislative measures aimed at ensuring the rights of transgender persons in India is The Transgender Persons (Protection of Rights) Act, 2019 ["Transgender Act"], which was enacted after the *NALSA* judgement, and the scheme of the Act is largely inspired and based upon the same.[8] While the Transgender Act was thought to be the move towards legal and social integration, it has also been seriously criticized for being limiting and administrative. The condition, enshrined under the Act, of a certificate of identity on gender recognition in line with which a medical examination is mandatory negates the self-identification principle that was enunciated in the *NALSA* ruling. In addition, the Act does not have strong enforcement provisions to counter discrimination in education, employment, and public places, rendering it ineffective in providing concrete protections to transgender people. The NHRC and SHRC can help fill these loopholes by agitating for policy changes, monitoring the enforcement of protective legislation, and redressing violations of LGBTQIA+ rights.

In light of these realities, this paper seeks to critically analyze the performance of judicial institutions and human rights commissions in protecting LGBTQIA+ rights, evaluate the extent of challenges they face in implementing such protections, and suggest reforms to further bolster their effectiveness in guaranteeing nondiscriminatory access to legal and social protection. It will examine the current legal framework, assess the performance of human rights commissions in dealing with LGBTQIA+ concerns, and consider international best practices that may be emulated in India. In so doing, the paper aims to add to the existing debate on enhancing human rights protections for LGBTQIA+ persons and promoting their full and equal inclusion in society.

[8] The Transgender Persons (Protection of Rights) Act 2019 No.40, Act of Parliament (India).

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LEGAL FRAMEWORK AND JUDICIAL PRONOUNCEMENTS GOVERNING LGBTQIA+ RIGHTS IN INDIA:

Legal affirmation of LGBTQIA+ rights in India has taken a remarkable path through judicial orders and legislative steps. Although the Indian Constitution enshrines equality, dignity, and non-discrimination, overt statutory safeguards for LGBTQIA+ individuals are meager. The judiciary has come to the fore to uphold LGBTQIA+ rights by declaring discriminatory laws unconstitutional and reinforcing constitutional safeguards. Moreover, legislative actions like The Transgender Persons (Protection of Rights) Act, 2019, have attempted to grant legal recognition and protect the rights of transgender individuals. Yet, even with these advancements, loopholes continue to exist in the implementation of legal safeguards, and social exclusion continues to be a concern.

The Constitution of India, though silent on sexual orientation and gender identity, has been interpreted by courts to include protections for LGBTQIA+ persons. Article 14[9], which guarantees equality before the law, has been invoked to challenge discrimination against LGBTQIA+ individuals. Article 15[10]Which prohibits discrimination on grounds of sex, has been interpreted to include sexual orientation and gender identity, thus extending protection against systemic exclusion. Similarly, Article 19[11], which guarantees freedom of expression, has been cited in defence of an individual's right to express their gender identity. The right to life and personal liberty under Article 21[12] Has been instrumental in securing LGBTQIA+ rights, with courts affirming that it includes the right to dignity, privacy, and autonomy. These constitutional safeguards have provided the foundation for progressive judicial interventions that have significantly shaped LGBTQIA+ rights in India.

A series of landmark judicial pronouncements have contributed to expanding LGBTQIA+ rights. In *NALSA v Union of India*[13], the Supreme Court recognized transgender persons as a 'third gender' and upheld their right to self-identify their gender, irrespective of medical procedures. The Court also directed the government to provide affirmative action in education and employment for transgender individuals, recognizing them as a socially and educationally

[9] Constitution of India 1950, art. 14, Act of Parliament (India).
[10] Constitution of India 1950, art. 15, Act of Parliament (India).
[11] Constitution of India 1950, art. 19, Act of Parliament (India).
[12] Constitution of India 1950, art. 21, Act of Parliament (India).
[13] NALSA , National Legal Services Authority! (last visited Feb. 25 2025).

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backward class. However, despite the ruling, implementation has been inconsistent, and many transgender individuals continue to face exclusion from social and economic opportunities.

In *Justice K.S. Puttaswamy (Retd.) v Union of India*[14]The Supreme Court ruled that the right to privacy is a fundamental right under Article 21. The judgment had far-reaching implications for LGBTQIA+ rights, as it explicitly stated that sexual orientation is an essential attribute of privacy and personal liberty. This paved the way for the historic ruling in *Navtej Singh Johar v Union of India.*[15], where the Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized consensual same-sex relationships. The Court held that Section 377 violated Articles 14, 15, 19, and 21, as it unfairly targeted LGBTQIA+ individuals and was rooted in colonial-era prejudices. The judgment not only decriminalized homosexuality but also acknowledged the historical oppression of LGBTQIA+ individuals, urging the state to take affirmative measures to ensure their social inclusion and dignity.

Beyond decriminalization, courts have also sought to expand legal protections for LGBTQIA+ individuals in areas such as family and employment rights. In *Deepika Singh v. Central Administrative Tribunal*[16], the Supreme Court recognized non-heteronormative family structures, ruling that familial benefits cannot be denied to same-sex couples. This marked a step forward in recognizing diverse family units. In *Anamika v Union of India*[17], the petitioner, a transgender woman, challenged the constitutionality of Section 354A of the Indian Penal Code (IPC), which pertains to sexual harassment. She argued that the provision's language, specifically referencing 'a man' committing an offense against 'a woman, ' effectively excluded transgender individuals from its protective scope. This exclusion, she contended, violated Articles 14 (right to equality), 15 (prohibition of discrimination), and 21 (protection of life and personal liberty) of the Indian Constitution.[18] The Delhi High Court, acknowledging the petitioner's identity as a woman and taking into consideration and recording the reply of the Commissioner of Police, Delhi, allowed her to file a complaint under Section 354A IPC in the wake of guidelines issued under the *NALSA* judgement.[19] This decision underscored the

[14] (2017) 10 SCC 1.
[15] 2018 SC 4321
[16] (2022) 7 SCC 295.
[17] 2019 (1) RCR (Criminal) 594.
[18] Anamika v Union of India, MANU/DE/4785/2018.
[19] Indian Penal Code 1860, 354, No. 45, Act of Parliament (India).

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judiciary's recognition of gender self-identification and highlighted the need for legal provisions to be interpreted inclusively, ensuring protection for all individuals, regardless of their gender identity.[20] In *M. Srinivasan*,[21] the High Court of Madras also ruled that the application of sexual harassment laws must extend to anyone who identifies as a woman and not be limited to cisgender women. The Court also extended the protection from being abused to a transgender person by recognizing her identity as a woman and bringing her in the ambit of Tamil Nadu Prohibition of Harassment of Women Act, 2002,[22] and IPC offences *inter alia*. The Courts have even stepped in to protect LGBTQIA+ individuals from suffering violence at the hands of the State Police forces and awarded compensation to the families of victims suffering custodial deaths at the hands of State Police.[23]

In *Arunkumar's* case[24], the petitioners—a cisgender man and his partner, a transgender woman— approached the Madras High Court and sought legal recognition of their marriage under the Hindu Marriage Act, 1955. Their application for marriage registration was denied by authorities on the grounds that the Hindu Marriage Act did not explicitly recognize a marriage between a cisgender man and a transgender woman. The Madras High Court ruled in favour of the petitioners, stating that a marriage solemnized between a male and a transwoman, both professing the Hindu religion, was valid under the (Hindu Marriage) Act. The court emphasized that the term 'bride' in Section 5 of the Hindu Marriage Act[25] should be interpreted to include transgender individuals who identify as women. This interpretation aligns with the Supreme Court's recognition of the rights of transgender persons to self-identify their gender, as established in the *National Legal Services Authority (NALSA) v Union of India* case.[26] Furthermore, the court addressed the issue of non-consensual genital-normalizing surgeries on intersex infants and children. It directed the Tamil Nadu government to prohibit such surgeries except in life-threatening situations, thereby upholding the bodily autonomy and rights of intersex individuals.[27] This case was the pioneer case in India, which granted the right to marry

[20] Oxford Human Rights Hub, 'A Regression of Rights? The Exclusion of LGBTQI+ Individuals from the Supreme Court of India's Sexual Harassment Regulations' (2023) (Feb.25, 2025, 8:00 P.M.) https://ohrh.law.ox.ac.uk/a-regression-of-rights-the-exclusion-of-lgbtqi-individuals-from-the-supreme-court-of-indias-sexual-harassment-regulations/.
[21] M. Srinivasan v State through the Inspector of Police & Anr., MANU/TN/7740/2020.
[22] Tamil Nadu Prohibition of Harassment of Women Act 2002, 3, No. 44, Act of Parliament (India).
[23] Jayalakshmi v State of Tamil Nadu, W.A. No. 1130 of 2006 and WP. No. 24160 of 2006.
[24] Arunkumar & Anr. v The Inspector General of Registration & Ors., AIR 2019 Mad. 265.
[25] Hindu Marriage Act 1955, 5, No. 25, Act of Parliament (India).
[26] AIR 2019 Madras 265.
[27] ibid.

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to the members of transgender community with cisgender partners under the Hindu Personal Law, provided both parties are Hindus by faith.

In *Binu Tamta v. High Court of Delhi*[28]The Supreme Court of India declined a petition seeking to amend its 2013 regulations on sexual harassment to include LGBTQIA+ individuals. The existing regulations define an 'aggrieved woman' as any female subjected to sexual harassment within the court premises, thereby excluding those who do not identify strictly as female. The Court reasoned that altering this definition could dilute the regulations' intent, which is to provide special protections for women under Article 15(3) of the Constitution of India. Critics argue that this decision overlooks the inherent inclusivity of the term 'aggrieved woman, ' potentially excluding transgender individuals who identify as women from seeking redress under these regulations. This exclusion may deter LGBTQIA+ individuals from reporting workplace sexual harassment, as complaints from non-females are often treated as internal disciplinary matters rather than being addressed within the established legal framework.

This stance in *Binu Tamta*[29] Contrasts with the Supreme Court's earlier progressive rulings, such as the National Legal Services Authority (NALSA) judgment, which recognized transgender individuals as a third gender, affirming their constitutional rights. By not extending the sexual harassment regulations to encompass LGBTQIA+ individuals, the Court missed an opportunity to reinforce its commitment to equality and non-discrimination for all, irrespective of gender identity.[30]

In *Pinki Pramanik v State of West Bengal*[31], a national-level female athlete was accused of sexual assault and rape by a woman she had cohabited with for three years. Following her arrest, Pinki was subjected to multiple invasive medical examinations to determine her gender. The tests classified her as an intersex person with a 'disorder of sexual development'. Since Indian Penal Code provisions on rape apply specifically to men, the court examined whether Pinki could legally be considered a 'man' for the offence. Concluding that she was incapable of penetrative intercourse, the court acquitted her. The case underscores the systemic discrimination faced by gender non-conforming and intersex individuals, including forced

[28] Miscellaneous Application No. 2308/2023 in W.P. (C) No. 162 of 2013.
[29] ibid.
[30] Oxford Human Rights Hub, 'A Regression of Rights? The Exclusion of LGBTQI+ Individuals from the Supreme Court of India's Sexual Harassment Regulations' (2023), (Feb. 25, 2025, 8:00 P.M.) https://ohrh.law.ox.ac.uk/a-regression-of-rights-the-exclusion-of-lgbtqi-individuals-from-the-supreme-court-of-indias-sexual-harassment-regulations/.
[31] 2014 (4) ECrN 905.

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medical examinations, incarceration in male prison cells, and violations of dignity and privacy. It highlights the urgent need for legal recognition and protection of the rights of transgender and intersex persons within India's criminal justice system.

In *Anjali Guru Sanjana Jaan v. State of Maharashtra & Ors.*[32] the Aurangabad bench of Bombay High Court while referring to section 4(2)[33] of the Transgender Persons Act, 2019 allowed a transwoman to contest elections from wards reserved for women, provided they identified themselves as female and wanted to be legally recognized as a woman. This set out a new era of political emancipation for the transgenders in post *NALSA* era. In another Public Interest Litigation filed by *V. Vasanta Mogli,*[34] the Telangana High Court struck down the Telangana Eunuchs Act, 1329 Fasli[35], which mandated the maintenance of a register of 'eunuchs' based upon the premise that they were involved in kidnapping or emasculating boys, as well as committing or abetting unnatural offences. It also authorized the arrest of transgender persons without a warrant and criminalized their presence in public spaces while dressed in female attire. The High Court while drawing parallels with the Criminal Tribes Act, 1871 (repealed in 1952) held that the impugned legislation was completely contrary to constitutional philosophy and was manifestly arbitrary as it criminalised the entire transgender community, at the same time violating the human rights of entire community by intruding into their private sphere and dignity. The Court recognized transgender persons as one of the most deprived communities and held that they could not be excluded from the Aasara Pension Scheme[36], directing the government to extend coverage to them, similar to other marginalized groups. Furthermore, in *Karnataka Sexual Minorities Forum v State of Karnataka & Ors.*,[37] the Karnataka High Court struck down section 36A of the Karnataka Police Act, 1963, as it was an adaptation of the Telangana Act[38] as adapted and applicable to the Gulbarga region of the State of Karnataka. The said provision allowed the Commissioner of Police to curb 'undesirable activities of eunuchs' among regulating other activities. The High Court struck down this provision as violative of Articles 14, 15, 19, and 21 of the Constitution of India.

[32] 2021 (3) Mh Lj 674.
[33] The Transgender Persons (Protection of Rights) Act 2019, 4(2), No. 40, Act of Parliament (India).
[34] SCC OnLine TS 168.
[35] The Telangana Eunuchs Act 1329 F (No. XVI of 1329 F.), 1919, Act of Parliament (India).
[36] Government of Telangana, Aasara Pensions Scheme (Telangana Government, 2014) https://www.aasara.telangana.gov.in (last visited Feb. 25, 2025).
[37] 2017 KHC 3031-DB.
[38] Telangana Act, 5, No. 35, Act of Parliament (India).

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In *Karan Tripathi v NCRB*[39]The petitioner challenged the exclusion of transgender persons from the gender classification in the Prison Statistics India (PSI) reports published by the NCRB. The Delhi High Court was tasked with addressing the lack of official documentation on incarcerated transgender individuals. During the proceedings, the NCRB informed all states and union territories that transgender persons would be included in future PSI reports from 2020 onwards. Additionally, a two-day sensitization workshop was planned for prison authorities. This case underscores the importance of accurate data collection to ensure adequate infrastructure and policies that safeguard the rights and welfare of transgender persons in prisons.

However, in *Supriyo @ Supriya @ Supriya Chakraborty v Union of India*[40], the Supreme Court refused to legalize same-sex marriage, even under the Special Marriage Act, 1954[41], stating that it was a matter for legislative action rather than judicial intervention. While the Court refrained from granting marriage equality, it urged the government to form a committee to address LGBTQIA+ rights in relationships, including inheritance, adoption, and social security benefits. The ruling in *Supriyo* underscored the urgent and dire need for policy reforms to ensure equal civil rights for individuals identifying as LGBTQIA+.

The Transgender Persons (Protection of Rights) Act, 2019, was introduced as a legislative response to the *NALSA* judgment, which aims to provide legal recognition and protection for transgender persons. The Transgender Act prohibits discrimination in education, employment, healthcare, and public spaces and also establishes a National Council for Transgender Persons[42] to ensure and monitor the implementation of the same. However, the Act has been widely criticized for its shortcomings. The requirement for gender identity certification[43], which mandates that an individual must undergo a screening process, is not in congruence with the *NALSA* ruling's affirmation of self-identification. Additionally, the Act is deficient in terms of strong penalties for discrimination, making enforcement and implementation of the same further weaker.[44] Further, it fails to provide reservations in education and employment, despite the Supreme Court's directives in *NALSA*. While the enactment of the Transgender Act

[39] W.P. (C) 9596/2020.
[40] [2023] 16 SCR 1209.
[41] Special Marriage Act 1954,3, No. 43, Act of Parliament (India).
[42] The Transgender Persons (Protection of Rights) Act 2019, s. 16, No. 40, Act of Parliament (India).
[43] The Transgender Persons (Protection of Rights) Act 2019, s 6, No. 40, Act of Parliament (India).
[44] The Transgender Persons (Protection of Rights) Act 2019, s 18, No. 40, Act of Parliament (India).

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represents a step forward towards the journey of recognising queer individuals, further reforms are *sine qua non* to make it truly inclusive and effective in protecting transgender rights.

Legal Recognition and Definition:

In India, transgender persons are legally recognized as the 'third gender' or 'other' gender, enjoying the same status and fundamental rights as male and female citizens. The Supreme Court's landmark judgment in 2014, *NALSA v Union of India & Ors.*[45], officially declared 'transgender' as the third gender, ensuring their entitlement to fundamental rights under Articles 14 (Equality), 15 (Non-Discrimination), 16 (Equal Opportunity in Public Employment), 19(1)(a) (Right to Free Speech), and 21 (Right to Life) of the Constitution of India. The Transgender Persons (Protection of Rights) Act, 2019, further defines a transgender person as someone whose gender does not match the gender assigned at birth, including trans-men, trans-women, individuals with inter-sex variations, gender-queer persons, and those with socio-cultural identities like *kinner*, *hijra*, *aravani*, and *jogta*.[46] In XXX case[47], the Court affirmed a minor's right to protection from non-consensual medical procedures, even if initiated by parents or guardians, thereby reinforcing the principle of self-determination.

The Courts across the territory of India have, time and again since the NALSA case, instructed the Union Government.[48] and State Government(s)[49] To frame inclusive policies by collaborating with the National Council for Transgender Persons to devise a policy framework to provide reasonable accommodation for transgender persons in employment relating to the matters of recognition of identity, employment, promotion, and recruitment and to consult with stakeholders in doing so.

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[45] NALSA, *Supra Note 13*, at
[46] The Transgender Persons (Protection of Rights) Act 2019, s 2(k), No. 40, Act of Parliament (India).
[47] XXX and Ors. v The Health Secretary, Director of Health Services and Ors., ILR 2023 (3) Kerala 789.
[48] Shanavi Ponnusamy v Ministry of Civil Aviation and Anr., 2022 SCC OnLine SC 1581.
[49] Nangai v Superintendent of Police, (2014) 4 MLJ 12; G. Nagalakshmi v Director General of Police (2014) 7 MLJ 452; T. Thanusu v The Secretary to Government of Tamil Nadu (2014) 6 MLJ 93; Atri Kar v The Union of India and Ors., MANU/WB/1684/2017; Swapna and Ors. v The Chief Secretary, Government of Tamil Nadu and Ors., MANU/TN/4374/2016; Ganga Kumari v State of Rajasthan, 2017 (4) WLN 554 (Raj.); Rano and Ors. v State of Uttarakhand 2018 (4) RCR (Civil) 671; Matam Gangabhavani v State of Andhra Pradesh and Ors., 2022 (3) ALT 32, 2022 APHC 1371; Mrinal Barik v The State of West Bengal and Ors., MANU/WB/1431/2024; Chinder Pal Singh v The Chief Secretary and Ors., 2023 RJ-JP 11257.

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Also, in 2023 Allahabad High Court in *Neha Singh*[50] The court recognised the constitutional right of an employee to get sex reassignment surgery and obligated the State to allow such employees diagnosed with gender dysphoria to undergo the surgery. The court also ruled that if such right of an individual is not recognised, it will lead to 'gender identity disorder syndrome' and eventually may become fatal as such a person may suffer from disorder, anxiety, depression, negative self-image and dislike of one's sexual anatomy.

Prohibition of Discrimination:

The Act explicitly prohibits discrimination against transgender persons in various domains, including education, employment, healthcare, access to public goods and services, the right to movement, the right to reside, rent, or otherwise occupy property, opportunity to hold public or private office, and access to government or private establishments.[51] This comprehensive prohibition ensures that transgender individuals can participate fully and equally in all aspects of life without fear of discrimination or exclusion. The Kerala High Court upheld the Kerala Administrative Tribunal's (KAT) order allowing a transgender woman to apply for the position of female housekeeper in the Kerala State Beverages Corporation. The Court emphasized that denying her application based on her transgender identity would violate her fundamental rights under Articles 14, 15, and 21 of the Constitution of India. It reaffirmed the principles laid down in NALSA v. Union of India, recognizing the right of transgender persons to self-identify their gender. The decision strengthened transgender rights and upheld the principle of equality in public employment opportunities.[52] In *Sweety*[53] The Court ruled that the transgender person has a right to inherit the property under the Guru-Chela system of property inheritance if the relation can be adduced by evidence.

Right to Residence:

Transgender persons have the right to reside in the household where their immediate family members reside.[54] In cases where such arrangements are not possible, they have the right to seek accommodation in rehabilitation centers or other facilities provided by the government. This provision ensures that transgender individuals are not rendered homeless or forced into

[50] Neha Singh v State of Uttar Pradesh, Writ App. No. 7796 of 2023.
[51] The Transgender Persons (Protection of Rights) Act 2019, ss 14, 15, No. 40, Act of Parliament (India).
[52] Kerala Public Service Commission v Aneera Kabeer, 2023 SCC OnLine Ker 4241.
[53] Sweety v General Public, AIR 2016 HP 148.
[54] The Transgender Persons (Protection of Rights) Act 2019, s 12, No. 40, Act of Parliament (India).

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unsafe living conditions due to their gender identity. Any person who is an adult of consenting age has undoubtedly the right to wander about or associate with like-minded people and cannot be compelled to be at his parental home, nor can the homosexual couples be harassed by the state authorities or other individuals if they want to stay together and live together, provided they are adults of consenting age.[55]

Employment Rights:

The Act mandates that no government or private entity can discriminate against transgender persons in matters of employment, including recruitment and promotion.[56] It also makes it obligatory for organizations to appoint a complaint officer to deal with complaints pertaining to contraventions of the Transgender Act, so transgender employees have an official channel to complain about and seek redressal for any discrimination or unjust treatment they experience at work.[57]

Education and Healthcare:

Educational institutions, wholly or partially maintained out of State funds or recognized by the government, are required to provide inclusive education and opportunities for sports[58], recreation, and leisure activities for transgender persons without discrimination.[59] In the domain of healthcare, the government is tasked with ensuring access to comprehensive medical care, including sex reassignment surgery ("SRS") and hormonal therapy, counselling, and HIV surveillance.[60] These measures aim to address the unique healthcare needs of transgender individuals and promote their overall well-being. In *Queerythm's* case[61], the petitioners challenged the discriminatory and derogatory language in medical textbooks that portrayed LGBTQIA+ identities as mental disorders or perversions. They argued that such content reinforced harmful stereotypes and violated fundamental rights under Article 21 of the Constitution. The Kerala High Court directed the Under-Graduate Medical Education Board,

[55] S. Sushma and Ors. v Commissioner of Police, Greater Chennai Police and Ors., (2021) 5 MLJ 9; Tessy James v The Director General of Police, Thiruvanathapuram, 2018 (3) RCR (Criminal) 587; Mansur Rahman v Superintendent of Police, 2018 SCC Online Mad 3250.
[56] The Transgender Persons (Protection of Rights) Act 2019, s 9, No. 40, Act of Parliament (India).
[57] The Transgender Persons (Protection of Rights) Act 2019, s 10, No. 40, Act of Parliament (India).
[58] Anamika v State of Kerala and Ors., W.P. (C) No. 24571 of 2022 (V).
[59] National Cadet Corps and Ors. v Hina Haneefa and Ors., 2024 KER 15417.
[60] Veera Yadav v The Chief Secretary Government of Bihar, Civil Writ Jurisdiction Case No. 5627 of 2020.
[61] Queerythm and Anr. v National Medical Commission and Ors., 2021 SCC OnLine Ker 8590.

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New Delhi, to review the grievances and seek input from the Kerala University of Health Sciences. The review was to be completed within eight weeks. This case is significant as it urged medical education authorities to reassess prejudicial content in curricula, though the extent of implementation remains uncertain.

For the aspect of sports, we can have another new category of event altogether on the lines of 'Paralympics' under the banner and name of 'Queerlympics' so as to avoid any potential conflicts.[62] This arises out of the fact that individuals from the LGBTQIA+ community are allowed in categories of either men or women.

Another precedent titled *Sumita Kumari v State of West Bengal*[63] Reeks of discrimination in the healthcare sector even by the State, Sumita Kumari, a transwoman, was denied enrollment as an ASHA worker, for her being a transwoman. The High Court of Calcutta upheld the rejection, upholding and ruling the reasoning provided in reply by the State regarding the rejection of the petitioner's application, that the eligibility criteria under the NRHM scheme, restricting applications to married/divorced/widowed women, were not discriminatory. It reasoned that discrimination would exist only if men/women were eligible while excluding transgender persons from any such employment. The aspect of the intersectionality of transgender rights to identity and their right to health, coupled with the right to employment, was not taken into consideration in this case.

Right to Self-Perceived Gender Identity:

The Act acknowledges the right of individuals to self-perceived gender identity. Transgender persons can apply for a certificate of identity from the District Magistrate affirming their gender identity as transgender.[64] This certificate serves as a valid proof of identity for all official documents. For those who undergo medical interventions to change their gender, the Act provides a mechanism to revise the certificate to reflect their updated gender identity.[65] This process ensures that transgender individuals have official recognition of their gender identity,

[62] Vox, 'The Olympics' new approach to trans athletes, explained', Vox (Feb. 25, 2025, 8:00 P.M.) https://www.vox.com/culture/364032/trans-athletes-olympics-2024.
[63] WP 8911 (W) of 2015; MANU/WB/1489/2015.
[64] The Transgender Persons (Protection of Rights) Act 2019, s. 5, 6, No. 40, Act of Parliament (India).
[65] The Transgender Persons (Protection of Rights) Act 2019, s. 7, No. 40, Act of Parliament (India).

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facilitating their access to various rights and services. Drawing from the cases such as *Mulla Faizal*[66] where the Court ruled that section 15[67] of Registration of Births and Deaths Act, 1969 and Rule 12(4) of rules made thereunder permit concerned certificate issuing authority to correct an entry regarding birth in birth register if same is erroneous in substance or has been improperly made. The Court in the said case allowed the appellant to get a corrected certificate issued from the authorities.

In *Christina Lobo v State of Karnataka*[68] The court allowed the petitioner to change her name and gender identity in all her records, including educational and identity documents, issued and carried out even before the enforcement of the Transgender Persons (Protection of Rights) Act 2019 as rule 3[69] The Transgender Persons (Protection of Rights) Rules, 2020, removes the condition of application for a certificate of identity if such change was carried out prior to the enforcement of the Act in 2019. In *Ms. X v State of Uttarakhand*[70], the High Court addressed the misclassification of a transwoman's sexual assault complaint under Section 377 of the IPC, which deals with unnatural offences, rather than under rape laws. The authorities refused to recognize her as a woman for legal purposes. The Court strongly criticized the State and Investigating Officer for disregarding the NALSA judgment, affirming that since the petitioner self-identified as female, she must be legally treated as such. This case is significant for affirming the right to gender self-determination in criminal law and recognizing that rape laws apply to transwomen based on their psychological and gender identity.

In *Shivani 'Shivy' Bhat v State of NCT of Delhi*[71] The Delhi High Court placed sexual orientation and gender identity as essential aspects of the fundamental right to self-determination, dignity, and freedom. The Court also ruled that the right of trans persons not to be wrongfully confined by their family and subjected to harassment due to their gender identity is violative of their rights of self-determination.

Welfare Measures and Offenses:

[66] Mulla Faizal v State of Gujarat, (2000) 2 GLR 1553.
[67] Registration of Births and Deaths Act 1969, s 15, No. 18, Act of Parliament (India).
[68] 2020 KHC 16249.
[69] The Transgender Persons (Protection of Rights) Rules 2020 [G.S.R. 592 (E)], r. 3, No. 40, Act of Parliament (India).
[70] AIR 2019 Utr 138.
[71] 2015 (4) JCC 2476.

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The government is obligated to formulate welfare schemes and programs to facilitate the social, economic, and educational advancement of transgender persons. Additionally, the Act criminalizes certain offenses against transgender individuals, including forced or bonded labor (excluding compulsory government service), denial of use of public places, removal from a household or village, and physical or sexual abuse. These offenses are punishable with imprisonment ranging from six months to two years and a fine, providing legal recourse for transgender individuals facing such violations.[72] During Covid-19 as well many of the Courts came to the rescue and aid of the transgender community with regard to welfare schemes and their benefits percolating to the last person in society.[73] These cases drew attention to the state's responsibilities to introduce and implement welfare schemes for transgender persons, particularly in times of crises. In *Jasmine Kaur Chhabra v Union of India*[74] The Delhi High Court directed for building separate public toilets for Transgender/Third Gender persons. The Lucknow bench of Allahabad High Court in *Ashish Kumar Misra*[75] Upheld the fundamental right to food security for transgender persons and that they can be considered as heads of households under the National Food Security Act, 2013.[76]

On the whole, the discussion above underscores India's commitment to upholding the rights and dignity of transgender persons through robust legal frameworks and protections. By addressing various aspects of discrimination and providing mechanisms for legal recognition and welfare, the Transgender Persons (Protection of Rights) Act, 2019, and its accompanying Rules aim to foster an inclusive society where transgender individuals can lead lives of equality and respect.

Despite the progress made through judicial pronouncements and legislative measures, India lacks a comprehensive anti-discrimination law that explicitly protects individuals based on sexual orientation and gender identity. While Supreme Court rulings have expanded constitutional protections, the absence of strong statutory enforcement mechanisms continues to hinder full inclusion. Many rights granted by the judiciary remain unenforceable in workplaces, educational institutions, and public spaces, leading to continued marginalization.

[72] The Transgender Persons (Protection of Rights) Act 2019, s. 18, No. 40, Act of Parliament (India).
[73] K. Kabeer @ Aneera Kabeer v State of Kerala, WP (C) No. 9980 of 2020 (S); Veera Yadav v The Chief Secretary Government of Bihar, Civil Writ Jurisdiction Case No. 5627 of 2020.
[74] 2024 DHC 3921-DB.
[75] Ashish Kumar Misra v Bharat Sarkar, 2015 (4) RCR (Civil) 327.
[76] National Food Security Act 2013, s 13(2), No. 20, Act of Parliament (India).

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Countries like Canada[77] and South Africa[78] have enacted anti-discrimination laws that provide explicit protections for LGBTQIA+ individuals in all aspects of life, including employment, healthcare, and family rights. India must adopt a similar approach to provide full legal protection beyond decriminalization and ensure equal opportunities for LGBTQIA+ individuals.

The legal landscape for LGBTQIA+ rights in India has undoubtedly evolved, driven primarily by progressive judicial interpretations and incremental legislative efforts. Nonetheless, there are discrepancies in the implementation, enforcement, and wider civil rights acknowledgment. Although the courts have established basic rights (first-generation rights) for LGBTQIA+ people, their real-life experiences are still influenced by social biases, policy momentum, and institutional deficits. In the future, legal protection must be strengthened, there needs to be active legislative change and institutional responsibility to help ensure that LGBTQIA+ people can exist with dignity, equality, and uncompromised participation in society.

ROLE OF HUMAN RIGHTS COMMISSIONS IN LGBTQIA+ RIGHTS PROTECTION AND CHALLENGES FACED THERE UNDER:

Human rights commissions have a crucial role to play in the protection and promotion of the rights of LGBTQIA+ individuals by providing non-discriminatory access to legal, social, and economic protections. In India, the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) are institutional watchdogs to protect the rights of marginalized groups, including LGBTQIA+ persons. These commissions have the mandate of investigating human rights abuses, proposing policy changes, and advising the government on legislation to promote equality and dignity for all persons irrespective of sexual orientation or gender identity. Over the years, the NHRC has taken significant steps, including issuing advisories against conversion therapy[79], recommending changes to the Transgender Persons (Protection of Rights) Act, 2019, and intervening in cases of violence and discrimination

[77] Canada, Canadian Human Rights Act (1985).
[78] Constitution of the Republic of South Africa, https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-04-feb-1997 (last visited Feb. 25, 2025).
[79] National Human Rights Commission, New Delhi, Advisory for Ensuring the Welfare of Transgender Persons, bearing No. R-51/2/2023 - PRPP (RU-2), NHRC (Feb. 25, 2025, 8:00 P.M.) https://nhrc.nic.in/sites/default/files/Advisory%20for%20ensuring%20the%20welfare%20of%20Transgender%20Persons_Sep2023.pdf.

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against LGBTQIA+ persons. However, despite these efforts, human rights commissions face several legal, structural, and social challenges in effectively enforcing LGBTQIA+ rights.

One of the primary functions of human rights commissions is legal and policy advocacy to promote legislative reforms that safeguard LGBTQIA+ rights. The NHRC has played an instrumental role in highlighting deficiencies in the Transgender Persons (Protection of Rights) Act, 2019, particularly regarding its restrictive provisions on gender identity certification and its failure to mandate affirmative action measures for transgender individuals. Additionally, the NHRC has recommended the enactment of a comprehensive anti-discrimination law that explicitly protects individuals based on sexual orientation and gender identity, similar to laws in countries like Canada and South Africa. However, the lack of enforcement power remains a significant limitation.[80] While human rights commissions can issue recommendations, they do not have the authority to implement them directly, leaving their directives subject to governmental discretion.[81] This weakens their ability to effect meaningful legal and policy changes.

Another critical role of human rights commissions is grievance redressal and intervention in cases of discrimination and violence. LGBTQIA+ persons in India frequently face workplace discrimination, healthcare denial, housing exclusion, and police harassment.[82] The NHRC has, in certain cases, taken cognizance of such violations and ordered authorities to take remedial measures. But the biggest challenge is the underreporting of LGBTQIA+ rights violations, primarily because of fear of stigma, distrust of law enforcement, and the lack of LGBTQIA+-specific complaint mechanisms in human rights commissions. Additionally, even when complaints are filed, enforcement of recommendations is weak since human rights commissions have no authority to punish violators directly.

Public sensitization and awareness activities constitute another important area of intervention. Human Rights Institutions, in a country like India, can influence public debate and institutional behaviour to create a more inclusive society. This would involve educational courses,

[80] The Protection of Human Rights Act 1993, s. 18, No. 10, Act of Parliament (India).
[81] Id at 2128.
[82] Arora L, Bhujang PM and Sivakami M, 'Understanding Discrimination against LGBTQIA+ Patients in Indian Hospitals Using a Human Rights Perspective: An Exploratory Qualitative Study' (2022) 29 (2) Sexual and Reproductive Health Matters 2104678, PUB Med (Feb. 25, 2025, 8:00 P.M.), Understanding discrimination against LGBTQIA+ patients in Indian hospitals using a human rights perspective: an exploratory qualitative study - PubMed.

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sensitization drives in workplaces, and engagement with civil society organizations to mainstream gender-inclusive policies. Though there has been some progress on this front, these activities are sporadic and do not have institutionalized frameworks for long-term effects. Moreover, prejudices within law enforcement organizations and court systems still remain an obstacle to delivering justice for LGBTQIA+ people. Lack of training and sensitivity among police officers and judicial officers usually leads to the insensitive treatment of cases, further deterring LGBTQIA+ individuals from approaching the law.[83]

A significant challenge in the effective functioning of human rights commissions is political and societal resistance. LGBTQIA+ rights remain a politically sensitive issue, and commissions often face pressure from conservative groups that oppose progressive policies. This has led to delays in implementing LGBTQIA+-inclusive recommendations, limiting the commissions' ability to drive substantial change. Additionally, institutional constraints such as budgetary limitations, lack of representation of LGBTQIA+ persons in commissions, and bureaucratic inefficiencies hinder their effectiveness in addressing LGBTQIA+ concerns.

To strengthen the role of human rights commissions in protecting LGBTQIA+ rights, several reforms are necessary. First, the NHRC and SHRCs should establish dedicated LGBTQIA+ rights cells to handle complaints, provide legal assistance, and monitor the implementation of protective laws. Second, commissions must work toward building institutional capacity by training their members, law enforcement agencies, and judicial officers in handling LGBTQIA+ issues with sensitivity and legal awareness. Third, there is an urgent need for greater enforcement powers for human rights commissions to ensure compliance with their recommendations. Lastly, fostering international collaborations with countries that have strong LGBTQIA+ rights frameworks can help India adopt best practices for protecting and promoting LGBTQIA+ rights.

While human rights commissions in India have made notable contributions to advancing LGBTQIA+ rights, their impact remains limited by structural, legal, and societal challenges. Strengthening their legal mandate, improving grievance redressal mechanisms, enhancing public sensitization efforts, and ensuring greater institutional autonomy are essential steps

[83] Sheikh D, 'Queer Rights and the Puttaswamy Judgment' (2017) 52 (51) Economic & Political Weekly, EPW (Feb. 25, 2025, 8:00 P.M.), https://www.epw.in/journal/2017/51/privacy-after-puttaswamy-judgment/queer-rights-and-puttaswamy-judgment.html.

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toward making human rights commissions more effective in protecting the dignity, equality, and rights of LGBTQIA+ individuals in India.

COMPARATIVE ANALYSIS WITH INTERNATIONAL BEST PRACTICES:

The protection of LGBTQIA+ rights is diverse across jurisdictions, with some having strong legal systems to guarantee equality and non-discrimination and others still criminalizing or stigmatizing LGBTQIA+ individuals. An international comparative study of best practices can yield useful lessons to enhance India's response to LGBTQIA+ rights, especially in the legal, institutional, and policy arenas. Nations like Canada, South Africa, the United Kingdom, and the United States have adopted broad-ranging measures to safeguard LGBTQIA+ individuals, setting standards for human rights protection. An exploration of these practices presents possible avenues for legal change, policy upgrading, and greater enforcement in India.

One of the key areas where international best practices differ significantly from India is the existence of comprehensive anti-discrimination laws. Countries such as Canada and South Africa have explicit legal provisions that protect individuals from discrimination based on sexual orientation and gender identity. In Canada, the Canadian Human Rights Act[84] Includes sexual orientation and gender identity as protected grounds, ensuring that LGBTQIA+ individuals receive equal treatment in employment, housing, education, and public services. Similarly, South Africa's Constitution, one of the most progressive globally, explicitly prohibits discrimination on the basis of sexual orientation, making it one of the first countries to provide constitutional protection to LGBTQIA+ persons.[85] In contrast, India lacks a dedicated anti-discrimination law, and while the Supreme Court of India has provided constitutional protection to LGBTQIA+ persons under Articles 14, 15, and 21 by way of judicial interpretation, the absence of a statutory framework makes enforcement challenging. Introducing a comprehensive anti-discrimination law in India, modeled on Canada and South Africa, would provide stronger legal safeguards for LGBTQIA+ individuals.

[84] Canadian Human Rights Act, https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#:~:text=3%20(1)%20For%20all%20purposes,which%20a%20pardon%20has%20been (last visited Feb. 25, 2025).

[85] Constitution of the Republic of South Africa, https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-04-feb-1997 (last visited Feb. 25, 2025).

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Another area where India can learn from international best practices is same-sex marriage and civil unions. Several countries, including the United Kingdom, the United States, and Canada, have legalized same-sex marriage, granting LGBTQIA+ couples equal rights in inheritance, taxation, healthcare, and adoption. In contrast, India's Supreme Court in *Supriyo @ Supriya Chakraborty v Union of India*[86] declined to legalize same-sex marriage, stating that it was a matter for the legislature to decide. While the Court acknowledged the need to recognize LGBTQIA+ relationships, there remains no legal framework for marriage equality or civil unions in India. The absence of legal recognition affects same-sex couples' ability to adopt children, share property, and access social security benefits. Adopting a legal framework for civil unions or marriage equality, akin to the UK's Civil Partnership Act[87] or Canada's Marriage for Civil Purposes Act[88], would significantly enhance LGBTQIA+ rights in India.

In terms of gender identity recognition, India has made progress through the *NALSA v Union of India* ruling and the Transgender Persons (Protection of Rights) Act, 2019. However, the requirement for a medical certification process under the Act has been widely criticized as restrictive and violative of self-identification rights. In contrast, Argentina's Gender Identity Law[89] It is considered a gold standard as it allows individuals to self-identify their gender without medical or psychological evaluation. Similarly, Malta's Gender Identity, Gender Expression, and Sex Characteristics Act[90] Ensures that transgender persons can legally change their gender identity through a simple administrative process. India could reform its legal framework to allow for gender self-identification without intrusive medical requirements, ensuring that transgender and non-binary individuals can exercise their rights without bureaucratic barriers.

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[86] [2023] 16 SCR 1209.
[87] Civil Partnership Act (2004), https://commonslibrary.parliament.uk/research-briefings/cbp-8609/#:~:text=The%20Civil%20Partnership%20Act%202004,any%20part%20of%20the%20UK.(last visited Feb. 25, 2025).
[88] Marriage for Civil Purposes Act (2005), https://laws-lois.justice.gc.ca/eng/annualstatutes/2005_33/page-1.html#:~:text=Civil%20Marriage%20Act-,S.C.%202005%2C%20c.,to%20marriage%20for%20civil%20purposes; .(last visited Feb. 25, 2025).
[89] Gender Identity Law, https://globalhealth.usc.edu/wp-content/uploads/2017/03/english-translation-of-argentina_s-gender-identity-law-as-approved-by-the-senate-of-argentina-on-may-8-2012.pdf .(last visited Feb. 25, 2025).
[90] Gender Expression, and Sex Characteristics Act, https://legislation.mt/eli/cap/540/eng/pdf, .(last visited Feb. 25, 2025).

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Workplace protections for LGBTQIA+ individuals also vary significantly across jurisdictions. In the United States, the Supreme Court ruling in *Bostock v. Clayton County*[91] affirmed that discrimination based on sexual orientation or gender identity is prohibited under Title VII of the Civil Rights Act, 1964.[92] The ruling ensures that LGBTQIA+ employees cannot be terminated or discriminated against in hiring and promotions. In contrast, India lacks explicit workplace protections for LGBTQIA+ persons. While the Supreme Court in *Navtej Singh Johar v Union of India* recognized employment discrimination faced by LGBTQIA+ individuals, there are no legally mandated workplace protections under Indian labor laws, despite enacting the new labor codes during Covid-19, as we've seen in the case of *Binu Tamta*[93]. Adopting policies similar to the US and Canada, which mandate non-discrimination policies in the workplace, corporate diversity initiatives, and government oversight, would strengthen LGBTQIA+ employment rights in India.

Another crucial aspect of LGBTQIA+ rights protection is healthcare access and legal measures against conversion therapy. The United Kingdom and Germany have implemented strict bans on conversion therapy, recognizing it as a human rights violation. In Germany, the Protection Against Conversion Practices Act[94] Criminalizes medical or psychological attempts to change an individual's sexual orientation or gender identity. In contrast, while India's NHRC has condemned conversion therapy[95], it remains legal in many parts of the country, and there is no explicit legislation banning the practice.[96] India could follow the UK and Germany's example by criminalizing conversion therapy and ensuring LGBTQIA+-inclusive healthcare services, particularly for mental health and gender-affirming treatments.

International best practices also emphasize inclusive education policies and public sensitization efforts. In the Netherlands, LGBTQIA+ inclusive education is mandatory in schools, ensuring that students are taught about gender diversity, sexual orientation, and inclusivity from an early

[91] 590 US (2020) (US SC).
[92] Wikipedia, https://en.wikipedia.org/wiki/Civil_Rights_Act_of_1964#:~:text=The%20Civil%20Rights%20Act%20of,42:%20Public%20Health%20and%20Welfare, .(last visited Feb. 25, 2025).
[93] (2014) 13 SCC 305.
[94] Germany, Protection Against Conversion Practices Act (2020).
[95] NHRC, https://nhrc.nic.in/sites/default/files/Compendium_NHRC_Advisories_2024.pdf (last visited Feb. 25, 2025).
[96] The Conversion Therapy (Prohibition) Bill 2022, (Bill No. 47), Lok Sabha (India).

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age. Similarly, in Sweden[97] and Canada[98], government-funded campaigns promote LGBTQIA+ rights awareness and counteract misinformation and prejudice. In contrast, LGBTQIA+ education in India remains nonexistent in school curricula, and public awareness campaigns are limited. Implementing inclusive education policies, teacher training programs, and awareness initiatives modelled on the Netherlands.[99] And Canada would help reduce stigma and discrimination against LGBTQIA+ individuals in India.

On the whole, while India has made significant progress in LGBTQIA+ rights through judicial pronouncements and legislative measures, substantial gaps remain in anti-discrimination protections, marriage and family rights, gender identity recognition, workplace equality, healthcare access, and education policies. By learning from international best practices, India can strengthen its legal framework, enhance institutional protections, and create a more inclusive and equitable society for LGBTQIA+ individuals. Implementing comprehensive anti-discrimination laws, legal recognition for same-sex relationships, gender self-identification rights, workplace protections, healthcare reforms, and inclusive education policies would align India's LGBTQIA+ rights framework with the global best standards and ensure full equality and dignity for all.

CONCLUSION AND SUGGESTIONS:

The protection and promotion of LGBTQIA+ rights are essential to ensuring a just and inclusive society. While India has made significant progress through judicial pronouncements and legislative measures, such as the decriminalization of homosexuality in *Navtej Singh Johar v Union of India*[100] and the legal recognition of transgender persons in *NALSA v Union of India*[101], several challenges still persist. The absence of a comprehensive anti-discrimination

[97] Williams Institute, 'Global Acceptance Index: Measuring LGBT Inclusion Worldwide' (2023), William Institute (Feb. 25, 2025, 8:00 P.M.), https://williamsinstitute.law.ucla.edu/publications/global-acceptance-index-lgbt/.
[98] Government of the Netherlands, 'Combating Discrimination and Violence Against LGBTIQ+ People' (2023), Government (Feb. 25, 2025, 8:00 P.M.), https://www.government.nl/topics/gender-equality/combating-discrimination-and-violence-against-lgbtiq-people.
[99] Education Profiles, 'Comprehensive Sexuality Education in the Netherlands' (2023), Education Profile (Feb. 25, 2025, 8:00 P.M.), https://education-profiles.org/europe-and-northern-america/netherlands/~comprehensive-sexuality-education.
[100] AIR 2018 SC 4321.
[101] NALSA, *Supra Note 13*, at .

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law, the lack of legal recognition for same-sex relationships, and bureaucratic hurdles in gender identity recognition continue to hinder full equality for LGBTQIA+ individuals. Human rights commissions, both at the national and state levels, have a crucial role to play in addressing these gaps by advocating for policy reforms, ensuring the effective implementation of existing laws, and creating inclusive social environments. However, the impact of such progressive measures and policies remains limited due to structural, legal, and enforcement challenges.

One of India's main problems in its LGBTQIA+ rights regime is the absence of statutory anti-discrimination protections. In contrast to nations like Canada and South Africa, where sexual orientation and gender identity are routinely recognized under anti-discrimination legislation, India's approach mostly depends on judicial interpretations of constitutional rights to safeguard LGBTQIA+ individuals. This leads to uncertainty in enforcement because most legal protections are non-codified and depend on judicial discretion. Thus, one central recommendation is enacting a national anti-discrimination law that will prohibit discrimination explicitly on the basis of sexual orientation, gender identity, and gender expression in matters of employment, education, health care, housing, and access to public services. The legislation should be both public and private in its purview and effect and have good enforcement provisions.

Another significant concern is the lack of legal recognition for same-sex relationships, even in the nature of a civil union. While the Supreme Court in *Supriyo @ Supriya Chakraborty v Union of India*[102] Acknowledging the need for legal protections for LGBTQIA+ couples, it refrained from legalizing same-sex marriage or civil unions, leaving it to the legislature, as it needed a major overhaul in the legislative scheme of marriage laws applicable in the country. The Court even refused to grant recognition to such marriages or unions under the Special Marriage Act, 1954. This creates legal and social insecurity for LGBTQIA+ partners, as they remain excluded from rights related to inheritance, adoption, taxation, and spousal benefits. India must consider legalizing civil unions or same-sex marriage, as seen in countries such as the UK, Canada, and the US, to ensure equal rights for LGBTQIA+ couples in matters of family law and social security. The authors are of the view that the minority view in *Supriyo* could serve as the guiding light amidst the tumultuous times for the recognition of unions of individuals confirming to non-binary identities, however the majority view in the same case

[102] Supriyo, *Supra Note 40, at*

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will serve as a ticking clock placed in the chambers of legislatures so as to constantly remind them of their forgotten trysts made with '*We, the people of India*' to bring in the necessary social change, as the people of non-binary genders also form a part of '*We, the people of Indi*a'.

Additionally, gender identity recognition laws in India remain restrictive and do not fully align with the right to self-identification upheld in the NALSA judgment. The Transgender Persons (Protection of Rights) Act, 2019, has been criticized for requiring medical certification for gender identity recognition, which violates the principle of self-identification. Countries such as Argentina and Malta allow for gender identity recognition through a simple administrative process without medical intervention. India should amend its laws to remove the requirement for medical screening and adopt a self-declaration model to affirm the dignity and autonomy of transgender and non-binary individuals.

Judicial institutions and Human rights commissions in India should also take proactive steps to address workplace discrimination, police harassment, and healthcare disparities faced by LGBTQIA+ individuals. The NHRC and SHRCs must establish dedicated LGBTQIA+ grievance redressal mechanisms, including LGBTQIA+ rights cells, to handle cases of employment discrimination, housing bias, and healthcare denial. Additionally, workplace protections must be strengthened by introducing legal mandates for diversity and inclusion policies in government and corporate sectors, similar to the Equal Employment Opportunity Commission[103] in the US.

Another critical area that requires attention is public awareness and sensitization. Schools and universities should incorporate LGBTQIA+-inclusive education to combat stereotypes and discrimination from an early age. Countries such as the Netherlands[104] Sweden has LGBTQIA+ awareness programs as part of their school curricula. Implementing similar programs in India, along with mandatory sensitivity training for law enforcement officers, healthcare professionals, and educators, can significantly improve social acceptance and institutional responses to LGBTQIA+ issues.

Furthermore, India lacks specific laws prohibiting conversion therapy, a practice that has been banned in Germany, the UK, and several US states. Conversion therapy is a human rights

[103] Equal Employment Opportunity Commission, https://www.eeoc.gov (last visited Feb. 25, 2025).
[104] Rutgers, https://rutgers.international/wp-content/uploads/2023/02/20230123-CSE-factsheet-Rutgers.pdf (last visited Feb. 25, 2025).

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violation that inflicts severe psychological and emotional harm on LGBTQIA+ individuals. The NHRC should recommend the criminalization of conversion therapy and ensure that mental health services in India are LGBTQIA+-affirmative rather than pathologizing diverse sexual orientations and gender identities. To strengthen the overall LGBTQIA+ rights framework, international best practices must be incorporated into India's legal and policy framework. Human rights commissions must work in coordination with international human rights agencies, including the United Nations Human Rights Council (UNHRC) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)[105], to create best practice models for the protection of LGBTQIA+ people. Regular reports and reviews must be done to evaluate the enforcement of LGBTQIA+ rights in India.

Finally, though India has taken exemplary steps towards legal recognition and constitutional protection for LGBTQIA+ individuals, systemic discrimination, absence of statutory protection, and social prejudices remain strong challenges. It is time to consider the situation and initiate remedial measures to rectify the situation. Strengthening institutions of human rights, law reform, and promoting social inclusion through campaigns for awareness are pivotal steps towards creating equal dignity for all LGBTQIA+ individuals. With the integration of holistic anti-discrimination legislations, same-sex unions becoming legalized, the process of recognition of gender identities enhanced, and the prohibition on conversion therapy, India can evolve into a practically inclusive legal as well as societal paradigm that shelters and empowers every individual, regardless of his/her sexual orientation or gender identity.

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[105] International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 'ILGA World' (Feb. 25, 2025, 8:00 P.M.) https://ilga.org/

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