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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **ANALYSIS OF THE LEGAL FRAMEWORK IN INDIA FOR THE PROTECTION OF LGBTQ HEALTH RIGHTS**

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## **I. Introduction**

The term LGBTQ refers to individuals with diverse sexual orientations and gender identities, including lesbian, gay, bisexual, transgender and queer or questioning persons. It reflects the diversity of human sexuality that goes beyond the traditional understanding of gender and sexual identity. Despite growing awareness and recognition, members of the LGBTQ community have historically faced stigma, discrimination and social exclusion in many areas of life.

Prejudice, homophobia and transphobia have contributed to the marginalisation of LGBTQ individuals, often denying them equal opportunities and basic human rights. These challenges are visible in various sectors such as employment, education, housing and particularly in healthcare. Access to healthcare is a fundamental human right essential for ensuring the dignity and well-being of every individual.<sup>1</sup>

Although international human rights principles emphasise equality and dignity for all individuals, LGBTQ persons frequently experience unequal treatment in healthcare settings. In India, recent legal developments have contributed to recognising the rights of sexual minorities, particularly through enactment, judicial decisions that decriminalised consensual same-sex relationships.<sup>2</sup> However, significant legal and structural challenges remain in ensuring equitable access to healthcare services for LGBTQ individuals.

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<sup>1</sup> United Nations, Universal Declaration of Human Rights, 1948.

<sup>2</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (SC).

## **II. Mental and Physical Health Challenges of LGBTQ Persons**

Access to healthcare is widely recognised as a fundamental human right that is essential for ensuring human dignity and well-being. However, many individuals belonging to the LGBTQ community face significant challenges in accessing healthcare services. Social stigma, discrimination and exclusion often prevent them from receiving adequate medical care, thereby affecting their physical and mental health.<sup>3</sup>

A major reason for these challenges is the dominance of heteronormative assumptions in society. Many social institutions, including healthcare systems, are built around the idea that only two genders exist and that heterosexuality is the normal or natural sexual orientation. As a result, individuals who do not conform to these norms—such as lesbian, gay, bisexual, transgender and intersex persons—are often overlooked or misunderstood by healthcare providers, policymakers and other institutions. This lack of recognition can lead to the neglect of their specific health needs and may discourage them from seeking medical assistance.

Historically, LGBTQ individuals have also been subjected to serious human rights violations because of their sexual orientation or gender identity. In many parts of the world, they have faced violence, harassment, and discrimination that threaten both their physical safety and mental well-being. Practices such as forced medical treatments, including so-called “conversion therapies,” and non-consensual medical procedures have further violated their dignity and autonomy.<sup>4</sup>

The consequences of such discrimination are reflected in the health outcomes of LGBTQ persons. Studies show that sexual minorities are more vulnerable to mental health issues such as depression, anxiety and suicidal tendencies due to social rejection and stigma. They may also face higher risks of substance abuse, unsafe sexual practices and certain health conditions. These issues highlight the urgent need for inclusive healthcare systems that recognise the specific health needs of LGBTQ individuals and ensure that they can access medical services without fear of discrimination or prejudice.

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<sup>3</sup> United Nations, Universal Declaration of Human Rights, 1948, art. 25 (recognising the right to health and well-being).

<sup>4</sup> World Health Organization, *Discrimination in Health Care Settings against LGBT People* (2015).

### **III. LGBTQ Health Rights in the International Human Rights Framework**

The protection of the health rights of LGBTQ persons is closely connected with several fundamental human rights recognised under international law. These include the right to the highest attainable standard of health, freedom from discrimination, the right to life and personal security and protection from torture or cruel, inhuman or degrading treatment. When these rights are violated, the health and well-being of individuals belonging to sexual and gender minorities are significantly affected.

International human rights instruments recognise that every individual has the right to enjoy the highest attainable standard of physical and mental health. This principle is reflected in major global human rights documents such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>5</sup> These instruments make it clear that the right to health belongs to everyone, regardless of their sexual orientation or gender identity.

The United Nations Committee on Economic, Social and Cultural Rights has clarified that discrimination based on sexual orientation or gender identity is incompatible with the principle of equality under international human rights law.<sup>6</sup> This interpretation follows earlier decisions of international bodies which recognised that discrimination based on sexual orientation falls within the broader prohibition of discrimination on the basis of sex.<sup>7</sup> Courts and human rights institutions have repeatedly emphasised that negative attitudes of the majority toward sexual minorities cannot justify unequal treatment under the law.

Another significant development in this area is the adoption of the Yogyakarta Principles (2007), which explain how existing international human rights law applies to issues relating to sexual orientation and gender identity. These principles affirm that all individuals are entitled to the enjoyment of human rights without discrimination. Principle 17 specifically recognises the right

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<sup>5</sup> United Nations, Universal Declaration of Human Rights, 1948, art. 25; International Covenant on Economic, Social and Cultural Rights, 1966, art. 12.

<sup>6</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (2000).

<sup>7</sup> Toonen v. Australia, Communication No. 488/1992, U.N. Human Rights Committee, CCPR/C/50/D/488/1992 (1994).

of everyone to the highest attainable standard of health, including sexual and reproductive health.<sup>8</sup> It also outlines state obligations such as ensuring access to healthcare services, maintaining confidentiality of medical information and developing inclusive health policies that address the needs of LGBTQ persons.

Principle 18 further emphasises that no individual should be forced to undergo medical or psychological treatment based on their sexual orientation or gender identity. Sexual orientation and gender identity should not be treated as illnesses that require correction or suppression.<sup>9</sup> These principles therefore provide important guidance for states in ensuring that healthcare systems respect the dignity and autonomy of LGBTQ individuals.

Despite the recognition of these rights in international law, many LGBTQ persons continue to face barriers in accessing healthcare. In several countries, laws criminalising same-sex relationships and widespread social stigma create an environment where individuals are unable to seek medical care without fear of discrimination or punishment. Such legal and social barriers can negatively affect both physical and mental health.

Violence against LGBTQ persons remains a serious human rights concern. Individuals may face physical attacks, sexual violence and even killings because of their sexual orientation or gender identity. International human rights law recognises that every person has an inherent right to life and security of person.<sup>10</sup> States therefore have an obligation to protect individuals from violence and to investigate and punish acts of hate-motivated crimes against sexual and gender minorities.

Reports from human rights organisations have documented numerous cases of violence against LGBTQ individuals around the world, including hate crimes, “honour killings,” and sexual assault. Such violence not only threatens the right to life but also has severe psychological and health consequences for victims and their communities.

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<sup>8</sup> International Commission of Jurists (ICJ), Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity Principle 17(2007)

<sup>9</sup> Ibid., Principle 18.

<sup>10</sup> International Covenant on Civil and Political Rights art. 6 & 9.1966

LGBTQ persons in many countries are also subjected to practices that amount to torture or degrading treatment. These may include forced medical examinations, involuntary sterilisation, or other medical procedures carried out without consent. International human rights law strictly prohibits torture and other forms of cruel or degrading treatment.<sup>11</sup>

Human rights experts have repeatedly condemned practices such as forced anal examinations, coercive medical testing, and involuntary gender-related surgeries performed without informed consent. These procedures often have no medical justification and can cause long-term physical and psychological harm. Protecting LGBTQ individuals from such abuses is therefore an essential part of ensuring respect for their dignity and fundamental right.

#### **IV. Health Issues and Challenges of the LGBTQ Community**

The health and healthcare needs of LGBTQ individuals are influenced by several social and structural factors. Stigma, discrimination, lack of awareness and limitations within healthcare policies often create barriers that prevent sexual minorities from receiving appropriate medical care. Research indicates that certain health concerns disproportionately affect LGBTQ populations, including mental health issues, substance use, and tobacco consumption.

Mental health problems such as depression and anxiety are reported at higher levels among gay and bisexual individuals compared to the general population. Eating disorders are also more common among gay and bisexual men than among heterosexual men. Similarly, studies show that lesbian women are more likely to experience obesity, which increases their risk of cardiovascular diseases.<sup>12</sup>

- **Attitudes and Knowledge of Healthcare Professionals**

One of the major barriers to healthcare for LGBTQ individuals is the limited awareness and sensitivity among healthcare providers. Some patients have reported experiences of denial of treatment, verbal abuse, or disrespectful behaviour from medical professionals.

In many cases, healthcare providers lack adequate training regarding the health concerns

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<sup>11</sup> United Nations Committee Against Torture, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

<sup>12</sup> World Health Organization, Sexual Health, Human Rights and the Law (2015).

of LGBTQ persons, which can lead to discomfort or uncertainty in providing appropriate care. This gap in knowledge may ultimately result in inadequate healthcare services for LGBTQ patients.

- **Fear of Discrimination and Non-Disclosure of Identity**

Previous negative experiences within healthcare settings can make LGBTQ individuals hesitant to seek medical assistance. Many patients fear discrimination or judgement if they disclose their sexual orientation or gender identity. As a result, they may delay treatment or avoid healthcare services altogether. However, research suggests that when individuals feel comfortable sharing their identity with healthcare providers, it often leads to improved communication and better medical care.<sup>13</sup>

- **Gender-Affirming Surgery and the Health of Transgender Individuals**

One of the important medical issues connected with the well-being of transgender individuals is gender reassignment surgery, commonly referred to as gender-affirming surgery. This procedure is undertaken by individuals experiencing gender dysphoria, a condition in which a person's gender identity does not align with their biological sex characteristics. Medical treatments for gender dysphoria often involve a combination of psychological counselling, hormone therapy and surgical procedures. These surgeries help individuals align their bodies with their self-identified gender and often lead to improved psychological well-being and quality of life.

Surgery is generally considered the final stage in the transition process and is undertaken only after careful medical evaluation. Many healthcare providers require individuals to undergo counselling and obtain a formal diagnosis of gender dysphoria before proceeding with surgical treatment. Hormone therapy is typically initiated before surgery in order to develop secondary sex characteristics consistent with the person's gender identity.

Research indicates that many individuals who undergo gender-affirming surgery report improvements in their psychological well-being and overall quality of life. Studies have shown reductions in gender dysphoria, anxiety, and depression following surgery. In

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<sup>13</sup> American Psychological Association, Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients (2012).

addition, many patients report increased satisfaction with their bodies and improved social adjustment.

However, individuals may still face social challenges such as discrimination and stigma. Support from family, community, and mental health professionals is therefore essential in helping individuals adjust to life after surgery. Psychological counselling and social acceptance can play a crucial role in improving long-term outcomes.

## **V. LGBTQ Health Rights protection in the Indian Legal Scenario**

The protection of health rights for LGBTQ individuals in India has gradually evolved through constitutional interpretation and judicial intervention. However, despite these developments, several legal, social, and institutional barriers continue to affect the ability of LGBTQ persons to fully enjoy their right to health. In the Indian constitutional scheme, right to health is linked with fundamental rights such as equality, dignity, privacy, and personal liberty guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India. These provisions collectively establish that every individual, regardless of their sexual orientation or gender identity, is entitled to equal protection of the law and the right to live with dignity.<sup>14</sup>

Article 14 ensures equality before the law and equal protection of the laws, while Article 15 prohibits discrimination on the grounds of sex. Judicial interpretation has expanded the scope of this provision to include discrimination based on sexual orientation and gender identity. Similarly, Article 19 protects freedom of expression, which also includes the right of individuals to express their gender identity and Article 21 guarantees the right to life and personal liberty, which has been interpreted to include the right to health, dignity, and privacy. Together, these constitutional guarantees form the legal foundation for the protection of LGBTQ rights in India.

A major turning point in the recognition of LGBTQ rights occurred with the landmark decision in *Navtej Singh Johar v. Union of India*. In this case, the Supreme Court partially struck down Section 377 of the Indian Penal Code, which had previously criminalised consensual same-sex relationships between adults. The Court held that such criminalisation violated fundamental rights

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<sup>14</sup> Constitution of India, article. 14, 15, 19, and 21

including equality, freedom of expression and the right to privacy and dignity. The judgment affirmed that sexual orientation is an intrinsic and natural aspect of an individual's identity and that LGBTQ persons are entitled to the same constitutional protections as any other citizen.<sup>15</sup>

Another important judgment in this context is *National Legal Services Authority v. Union of India*. In this case, the Supreme Court recognised transgender persons as a “third gender” and affirmed their right to self-identify their gender. The Court emphasised that denying recognition to transgender persons would amount to a violation of Articles 14, 19 and 21 of the Constitution. It also directed the government to implement welfare measures, including improved healthcare facilities and social security schemes, for transgender individuals. Despite this progressive ruling, many transgender persons continue to face difficulties in accessing inclusive healthcare services due to lack of awareness, inadequate medical infrastructure and persistent social stigma.<sup>16</sup>

The recognition of privacy as a fundamental right further strengthened the protection of LGBTQ rights in India. In *Justice K. S. Puttaswamy v. Union of India*<sup>17</sup>, the Supreme Court held that privacy is an essential part of the right to life and personal liberty under Article 21. The Court also acknowledged that sexual orientation forms an integral aspect of individual autonomy and identity. This decision laid an important constitutional foundation for the later decriminalisation of same-sex relations in the *Navtej Singh Johar* case. Despite these important judicial developments, the health rights of LGBTQ persons still face several practical challenges.

Another challenge relates to the existence of harmful practices such as conversion therapy, which attempts to change an individual's sexual orientation or gender identity through psychological or medical interventions. In *S. Sushma v. Commissioner of Police*<sup>18</sup>, the Madras High Court strongly criticised such practices and directed authorities to take steps to prevent them and promote awareness regarding LGBTQ rights. The Court emphasised the need for sensitisation programs for medical professionals, police officials and educational institutions to ensure a more inclusive environment.

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<sup>15</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (SC).

<sup>16</sup> *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438 (India).

<sup>17</sup> (2017) 10 SCC 1 (India)

<sup>18</sup> 2021 5 MLJ 9 (Mad)

Social stigma also continues to affect the ability of LGBTQ persons to access healthcare. Many individuals hesitate to disclose their sexual orientation or gender identity to healthcare providers due to fear of discrimination or breach of confidentiality. This reluctance can lead to misdiagnosis, inadequate treatment, and reduced access to preventive healthcare services. Mental health issues, including anxiety, depression and stress arising from social exclusion, further compound these challenges.

In addition, the lack of legal recognition of same-sex relationships has indirect consequences for healthcare access. Without recognition of same-sex marriages or partnerships, LGBTQ individuals may face difficulties in obtaining benefits such as spousal health insurance, medical decision-making rights and family-based healthcare schemes. These limitations highlight the continuing gap between constitutional ideals and the lived realities of LGBTQ persons in India.

## **VI. Health Rights of Transgender Persons under the Transgender Persons (Protection of Rights) Act, 2019.**

While constitutional jurisprudence in India has significantly advanced the recognition and protection of transgender persons rights, legislative intervention was considered necessary to translate these constitutional guarantees into practical safeguards. In this context, the Transgender Persons (Protection of Rights) Act, 2019 was enacted with the objective of prohibiting discrimination against transgender persons and ensuring their access to education, employment, healthcare, and public services.

The Act was introduced as a statutory response to the principles laid down by the Supreme Court in *National Legal Services Authority v. Union of India*<sup>19</sup>, which recognised transgender persons as a “third gender” and affirmed their fundamental rights under Articles 14, 19, and 21 of the Constitution of India. Through this legislation, the State attempted to provide a structured legal framework to protect transgender persons from discrimination and to promote their social inclusion.

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<sup>19</sup> (2014) 5 S.C.C. 438 (India)

Building on this constitutional recognition, the Transgender Persons (Protection of Rights) Act, 2019 contains specific provisions relating to healthcare. Section 15 of the Act directs the appropriate government to take several steps to improve healthcare access for transgender persons. One of the measures includes establishing separate Human Immunodeficiency Virus (HIV) sero-surveillance centres to monitor and address the health risks faced by transgender communities in accordance with the guidelines issued by the National AIDS Control Organisation.<sup>20</sup> This measure reflects the recognition that transgender persons often face a higher risk of HIV infection due to social exclusion, economic marginalization and limited access to preventive healthcare services.

The Act also requires the government to ensure the availability of medical facilities that support gender-affirming care, including sex reassignment surgery and hormonal therapy.<sup>21</sup> These medical interventions are significant for many transgender individuals as they help align their physical characteristics with their gender identity, thereby contributing to their psychological well-being and dignity. In addition, the legislation emphasizes the importance of providing counselling services before and after such medical procedures in order to support individuals during the transition process.<sup>22</sup>

Another notable provision under the Act is the requirement to develop a health manual relating to gender-affirming procedures in accordance with the guidelines of the World Professional Association for Transgender Health (WPATH).<sup>23</sup> Such guidelines are intended to ensure that gender-affirming healthcare services follow internationally accepted medical and ethical standards.

Further, the Act recognizes the need to address the lack of awareness among healthcare professionals regarding transgender health issues. To address this concern, the government is required to review medical education curricula and encourage research so that doctors and healthcare providers are better equipped to understand and treat the specific health needs of

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<sup>20</sup> Transgender Persons (Protection of Rights) Act, 2019 Sec 15(a)

<sup>21</sup> Id. Sec15(b)

<sup>22</sup> Id. Sec15(c)

<sup>23</sup> Id. Sec15(d)

transgender persons.<sup>24</sup> The Act also seeks to facilitate easier access for transgender persons to hospitals and healthcare institutions<sup>25</sup> and calls for the introduction of comprehensive health insurance schemes to cover the cost of gender-affirming treatments, including surgeries, hormone therapy, laser therapy, and other medical services.<sup>26</sup>

Although these provisions represent an important step toward recognizing transgender health rights, their implementation remains a significant challenge. In practice, many healthcare institutions still lack the necessary infrastructure, trained professionals and inclusive policies required to provide gender-affirming care.<sup>27</sup> As a result, transgender persons are often forced to rely on private medical facilities, which can be expensive and sometimes unsafe due to inadequate regulation.

Another issue that indirectly affects healthcare access is the certification process introduced under the Act, which requires transgender persons to obtain a certificate of identity from the District Magistrate. Critics argue that this administrative requirement undermines the principle of self-identification recognized by the Supreme Court in *NALSA v. Union of India*. By requiring official certification, the law places transgender persons in a position where their gender identity must be validated by state authorities, which raises concerns about privacy, dignity, and bodily autonomy.

From a broader human rights perspective, international standards such as the Yogyakarta Principles emphasize that every individual has the right to the highest attainable standard of health without discrimination based on gender identity. These principles highlight the obligation of states to ensure accessible and inclusive healthcare services for transgender persons.

In short, the Act represents a significant step toward recognizing the healthcare needs of transgender persons in India. The Act introduces several important measures, including HIV surveillance programs, gender-affirming medical care, counselling services, medical education reforms and health insurance coverage. However, the effectiveness of these provisions ultimately

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<sup>24</sup> Id. Sec15(e)

<sup>25</sup> Id. Sec15(f)

<sup>26</sup> Id. Sec15(g)

<sup>27</sup> National Human Rights Commission, Study on Human Rights of Transgender Persons in India 68–72 (2018)

depends on their proper implementation. Without adequate infrastructure, trained healthcare professionals and strong anti-discrimination policies, the health rights of transgender persons may remain largely aspirational rather than fully realized.

## **VII. Conclusion**

International human rights standards recognise the right to health as a universal human right and states are obligated to ensure that healthcare systems are inclusive and accessible to all individuals. This includes developing policies that specifically address the healthcare needs of LGBTQ persons. While some countries have taken progressive steps to provide inclusive healthcare coverage and anti-discrimination protections, many healthcare systems around the world still remain insufficiently responsive to the needs of sexual and gender minorities. Although legal and social awareness regarding LGBTQ rights has increased in recent years, the healthcare needs of this community are still not fully addressed in many parts of the world, including India.

Access to healthcare for LGBTQ individuals in India continues to be both a legal and social challenge, even though the law has gradually begun to recognise and protect their rights. The Constitution of India, particularly Articles 14, 19, and 21, guarantees equality, freedom and the right to live with dignity. Through judicial interpretation, these constitutional protections have been extended to include people of diverse sexual orientations and gender identities, establishing a strong constitutional basis for safeguarding their health rights.

A significant development in this regard was the Supreme Court's decision in *National Legal Services Authority v. Union of India* (2014). The judgment emphasised that the right to live with dignity includes the right to access healthcare and other essential services without discrimination. Following this decision, the *Transgender Persons (Protection of Rights) Act, 2019* was enacted to provide legal recognition and certain safeguards for transgender persons. The Act places responsibility on the government to take measures to ensure appropriate healthcare facilities, including access to medical treatment, gender-affirming procedures and other necessary health services.

Despite these legal protections, many LGBTQ individuals in India still face serious difficulties when seeking healthcare. Social stigma, lack of awareness among healthcare professionals and weak implementation of laws often create barriers. In many situations, discrimination, prejudice and insensitive treatment discourage individuals from approaching healthcare institutions, which can negatively affect both their physical and mental well-being.

For this reason, legal recognition alone is not enough. There must also be meaningful efforts to ensure that these rights are effectively implemented. This includes improving awareness among healthcare providers, introducing training and sensitisation programmes and developing policies that address the specific health needs of LGBTQ communities. Strong institutional support and active government intervention are also necessary to ensure that discrimination is addressed and healthcare services become more inclusive.

Health education is another important aspect of protecting the right to health for LGBTI persons. In many societies, school curricula do not adequately address issues related to sexual orientation and gender identity. The absence of such education reinforces heteronormative assumptions and limits awareness about sexual and gender diversity. Inclusive health education can help reduce stigma, promote understanding, and ensure that young people especially those identifying as LGBTI have access to accurate information necessary for maintaining their health and well-being.<sup>28</sup>

In conclusion, although India has made notable progress through constitutional interpretation and legislative measures, the journey toward ensuring equal healthcare access for LGBTQ individuals is still ongoing. Ensuring that these legal protections translate into real and accessible healthcare services is essential to uphold the constitutional values of equality, dignity and justice for all members of society.

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<sup>28</sup> World Health Organization, *Sexual Health, Human Rights and the Law* (2015).