

India

LGBTI

Landscape Analysis of Political,
Economic, and Social
Conditions
June 2021



Executive
Summary



ASTRAEA LESBIAN FOUNDATION FOR JUSTICE

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Executive Summary

Since Astraea’s previous landscape analysis in 2016, there have been significant shifts in the political, legal and socio-cultural landscape for queer and trans people in India.¹ Broadly, the rise of a right-wing religious national government and the hardening of a conservative status quo have had grave implications for all minorities. There have been both incremental and historic advances in the recognition of queer and trans people’s rights as well as troubling setbacks. Throughout this period, diverse and vibrant movements led by queer and trans people continued to grow. This report outlines the key developments and challenges impacting these movements over the last five years and provides recommendations for funders interested in supporting them.

Since the groundbreaking 2014 Supreme Court ruling in National Legal Services Authority (NALSA) v. Union of India—which acknowledged the fundamental rights of trans people and gave broad directives to the central and state governments on affirmative action, public health, social welfare and other services to be made available for trans people—there have been both notable signs of progress and new challenges. In 2018, many in India and around the world celebrated the repeal of Section 377 of the Indian Penal Code, following years of legal struggle. This colonial-era law criminalized consensual sexual conduct between adults of the same sex and had been weaponized against queer people.

At the same time, a series of government-drafted bills, purportedly to protect the rights of trans people, led to widespread protests because of their discriminatory and harmful provisions. Despite years of advocacy, many of the provisions in the 2019 Transgender Persons Act are in direct contravention of the spirit and letter of the NALSA judgment—including the right to the self-determination of gender identity and affirmative action for trans people. Rules for operationalizing the Act, issued in September

2020, attempt to address some of the law’s shortcomings, but problematic and confusing regulations remain.

Though organizing for the rights and concerns of intersex people is growing, awareness and understanding of these issues remains low. The few court rulings and laws that touch on intersex issues have grouped intersex people solely under a transgender umbrella. The one notable exception has been the 2019 ruling by the Madras High Court, which ordered the local government to prohibit surgery on infants born with intersex variations until those individuals could themselves consent.

These developments come within a context of eroding democracy and shrinking civic space. In 2020, India’s Foreign Contribution Regulation Act (FCRA) was amended to further restrict nonprofit organizations from receiving foreign funding. The changes create additional regulations and certification requirements, heightening government scrutiny and limiting how groups may use the foreign funds they receive. For smaller organizations, including queer and trans collectives or unregistered groups, the FCRA impacts their ability to access foreign funding, even from larger local partners.

Despite these challenges, queer and trans organizing continues to flourish and with a notably intersectional lens. Beyond ensuring the inclusion of queer and trans leadership and priorities in other social movements, queer and trans activists are creating initiatives addressing the complex, layered identities and experiences of queer and trans people across movements and issues including caste, religion, ethnicity, and disability.

Within such a rapidly changing context, it is vital that funders respond to the emerging needs and priorities of India’s queer and trans movements while supporting the continued growth of visionary and innovative work.

¹ This report uses “queer and trans” to encompass gender, sexual and romantic minorities, including but not limited to lesbian, bisexual, gay, trans, intersex, non-binary, gender non-conforming, agender, aromantic, and asexual people.

Case Study:

The Impact of COVID-19 on Trans People's Rights in India

Given the widespread discrimination, barriers to access, and violence that trans people already face in India, they have been disproportionately impacted by the COVID-19 crisis. The situation has been particularly dire for Dalit trans people, who are heavily discriminated against within India's caste-based hierarchy. Yet the national response has been inadequate. According to the Ministry of Social Justice and Empowerment, as of March 2021, the central government has only provided a one-time payment of INR 1,500 (approx. 20 USD) to transgender people. According to various trans activists and media reports, this allowance reached only about 4,500 trans people, roughly 1% of the total transgender population as per the 2011 census.² At present, the Ministry says, a composite welfare scheme for transgender people is "being formulated."³

Only the Kerala state government has taken measures to provide welfare specifically for trans people in light of the pandemic, and quarantine and testing centers for trans people and sex workers have only been established in the states of West Bengal and Manipur.

The pandemic and national lockdown have had direct and overwhelming effects on trans community members' livelihoods and access to food, shelter, and healthcare. In appeals to the government, trans community members and trans-led organizations noted that the community was left out of the relief package announced by the government in

March 2020.⁴ They highlighted the reliance of many trans people on forms of informal work now made impossible by the lockdown and the increased challenges in accessing essential services, including healthcare and housing, for this already marginalized and stigmatized community. They asked that authorities provide a subsistence income, ensure access to food and essential medication, and block forced evictions of trans people.

Meanwhile, testimonies from around the country described the devastating impact of the pandemic on the community. At a press conference in New Delhi in June 2020, a trans activist said that the Ministry of Social Justice and Empowerment had allotted INR 5 crore (less than \$700,000 USD) to aid working class people (including transgender people, sex workers and migrant laborers), but the money had reached very few. They also highlighted how gender affirmation processes, including hormone therapy, were interrupted or stopped because of lockdown measures.⁵

At the same press conference, activists pointed out that discrimination against trans people and sex workers manifested in disinformation about the spread of the novel coronavirus, including through posters that appeared in cities and towns reading, "Keep transgenders away as COVID spreads through them." Another activist noted the increased surveillance and domestic violence that trans people were vulnerable to when required to stay home.

2 Hindustan Times (2020, May 6). Transgender activists write to Centre demanding support during Covid-19 crisis. Retrieved from <https://www.hindustantimes.com/india-news/transgender-activists-write-to-centre-demanding-support-during-covid-19-crisis/story-v8vV8kEquqfjX3YEvODM.html>

3 Government of India, Ministry of Social Justice & Empowerment (2021, March 16). *Schemes of Welfare Measures for Transgender Persons* [Press release]. Retrieved from: <https://pib.gov.in/PressReleasePage.aspx?PRID=1705130>

4 Transgender Community Worst Hit by COVID-19 Lockdown, Activists Appeal For Essential Help as Less Than 1% Received NISD Grant. (2020, May 1). *India.com*. Retrieved from <https://www.india.com/viral/transgender-community-worst-hit-by-covid-19-lockdown-activists-appeal-for-essential-help-as-less-than-1-received-nisd-grant-4016828/>.

5 Chaudhary, S. (2020). Just 1% of trans persons and sex workers receive government relief so far. *The Citizen*. Retrieved from <https://www.thecitizen.in/index.php/en/NewsDetail/index/7/18870/Just-1-of-Transpersons-and-Sex-Workers-Receive-Government-Relief-So-Far>



Photo credit: Ondede

According to another queer activist, during the lockdown, some trans men were forcibly separated from their partners, and some were forced to marry people whom their families chose. People living with HIV “could not access anti-retroviral therapy centers and medication, as they were advised not to visit these centers, except during emergencies,” they reported. They also said that the message “stay home, stay safe” ignored the situation of trans people who faced eviction or threats of eviction during the pandemic because they paid rent and bills late or were unable to pay them at all. “Further, some trans persons lack reliable housing,” they added.⁶

Drawing upon interviews with trans people and trans rights activists in Kolkata, a trans activist in West Bengal pointed to the unaccounted-for mental health impact of the pandemic on trans communities. “The health and well-being of the trans community has suffered decades of institutional neglect and the

6 Interview by the author.

Covid-19 pandemic has intensified this suffering,” she wrote.⁷ Lockdown measures distanced trans people from much needed and relied upon sources of community care and support.

Another queer writer and teacher shared, “If this ‘movement’ had made headway in terms of justice beyond endless dialogue with the law, one would not have seen the degree of abandonment of trans folk in the middle of the pandemic and the boundless, staggering ways in which [marginalized trans people] have made home, joy, security, sovereignty for the community. Any autonomy is impossible without material and infrastructural help.”⁸

7 Roy, R. (2020, July 28). Coronavirus: Kolkata’s trans community has been locked out of healthcare and livelihood. *Scroll.in*. Retrieved from <https://scroll.in/article/968182/coronavirus-kolkatas-trans-community-has-been-locked-out-of-healthcare-and-livelihood>

8 Interview by the author.

Timeline of Legal Advancements Related to Queer and Trans Rights

- 2009** The Delhi High Court reads down Section 377 of the Indian Penal Code, which criminalizes sex “against the order of nature” between consenting adults.
- 2013** India’s Supreme Court overturns the 2009 Delhi High Court judgment and reinstates Section 377.
- 2014** The Supreme Court passes the landmark NALSA ruling, acknowledging the fundamental rights of transgender people in India, including the right to self-determination of gender. The Ministry of Social Justice and Empowerment produces an Expert Committee report on issues relating to transgender people.
- 2015** The Upper House of Parliament passes a private member’s bill on the rights of transgender people introduced by Member of Parliament Tiruchi Siva.
- 2016** The government of India introduces the Transgender Persons (Protection of Rights) Bill, which is widely opposed by the trans community.
- 2017** The Supreme Court of India holds that the right to privacy is a fundamental right protected under the Indian Constitution, and that sexual orientation is included in this right. Further, it affirms that rights exist so that majoritarian views do not threaten minority communities.
- A parliamentary standing committee submits its report on the Transgender Persons Bill, recommending substantial changes.
- Parliament passes the HIV/AIDS (Prevention and Control) Act 2017.
- 2018** The Supreme Court reverses its 2013 judgment and repeals Section 377, declaring it unconstitutional.
- The government of India introduces an updated version of the Transgender Persons Bill but rejects many of the parliamentary standing committee’s recommendations.
- 2019** The Transgender Persons Act is passed.
- The Madras High Court directs the Tamil Nadu government to ban sex assignment surgeries on intersex infants and children.
- 2020** The government issues rules for implementing the Transgender Persons Act.

Recommendations for Funders:

- Make sustained, flexible funding, capacity building and other resources more accessible to queer and trans communities, particularly socio-economically marginalized, non-urban and harder-to-reach groups.
- Develop long-term strategies to fund and build the capacity of emerging and smaller organizations.
- Identify and support those most marginalized and underrepresented within queer and trans movements.
- Invest in cross-issue and cross-regional movement building, with a special focus on those marginalized by religion, caste, ethnicity, and disability.
- Support intersex individuals and collectives to increase visibility and advance the rights of intersex people in India.
- Invest in holistic security for queer and trans groups in the face of increasing surveillance, curbs on civil society, and attacks on minorities and human rights defenders.
- Invest in proactive strategies to support movement actors and collectives in expanding India's civic space.
- Invest in research on the specific conditions queer and trans people face related to violence and discrimination; access to justice, healthcare, housing, education and employment; affirmative action; and other pressing human rights issues.
- Support organizations and collectives working to increase access to justice and advocating against violence and discrimination by the police and judiciary.
- Increase funding for organizations and collectives working to promote a more holistic, equitable approach to healthcare that addresses a full range of health concerns and reflects a more inclusive understanding of gender and sexuality.
- Support capacity building for socio-economically disadvantaged and caste-oppressed queer and trans individuals, including professional development, networking, and community building opportunities both within and outside India.

