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# Right to Authentic Expression, Identity and Social Media and the Policing of LGBTQ++

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## ABSTRACT

*The Constitution protects queer expression, yet, the authors contend, the state continues to police queer expression. This dichotomy forms the central contradiction explored in this paper. This paper also explores the belief that "media influence" is misinterpreted as indoctrination or propaganda and argues that visibility challenges normative power dynamics rather than "creating identities". In India, through mechanisms of legal and algorithmic data regulations in the guise of morality and protection, content suppression through bureaucratic ethics and technical adherence is now, the authors contend, passively used to regulate social media queer expression. The authors argue that the legislature's reluctance to codify provisions to secure equal protection for achieving equality has resulted in constitutionally void promises. This study argues that the Indian state persists in regulating LGBTQ++ visibility while denying any intention to discriminate, through examination of important judicial rulings, regulatory frameworks and case studies.*

***Keywords:*** *Equality, Non-Discrimination, Algorithmic governance, Censorship*

## I. INTRODUCTION

In 2018, India made a historic move toward human dignity and equality intrinsic to every individual when the Supreme Court in *Navtej Singh Johar v. Union of India*[1] read down Section 377 of the Indian Penal Code in so far as it criminalised consensual sexual acts of adults in private. This law, which was a remnant of colonial rule, was an intrusion into the private sphere directed towards all genders; however, this law was being used to make consensual same-sex relationships illegal. This landmark judgment became a starting point for the Indian Constitution's larger promise of freedom and dignity, not just for the LGBTQ++ community but in revealing the heart of the Constitution in sync with free democratic societies. The Court's rationale was clear: the right to life and equality cannot be separated from the right to privacy, freedom and choice in matters of identity and intimacy. By doing this, the courts made India's constitutional morality fit with the idea that there can be no real democracy without privacy and individual liberty. But since *Navtej Johar*, the authors contend, India's political leaders have

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[1] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

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been quiet about and even opposed to making LGBTQ++ people equal citizens. The Indian Parliament has not enacted a general law to protect LGBTQ++ persons from discrimination in jobs, schools, social media or healthcare, even though a separate opinion in *Supriyo v. Union of India* has recorded the need for an anti-discrimination law to proceed beyond decriminalization to substantive equality.[2] The authors read this as reluctance on the part of elected representatives to pass laws that give equal rights to citizens. The Union Government, which had earlier left the matter of decriminalising same-sex relationships to the "wisdom" of the judiciary,[3] has since, in the marriage equality matter before the Court, contended that the issue must be decided by the legislature and raised concern about overreach by the courts;[4] it is argued that this overlooks the duty to make laws that ensure equality to every living person. On this view, the position is juxtaposed: the constitutional courts defend the rights of every citizen of this country, while the elected offices are reluctant to provide every citizen the same status and equal rights.

This paradox is even more evident in the space of digital communications. Social media sites, especially Facebook, YouTube, Instagram, and OTT spaces, have become very important places for gay people to recognize themselves and build communities. For a lot of unrepresented LGBTQ++ Indians, algorithmic recommendation systems work like unexpected mirrors, bringing up content that relates to their lives and letting them express themselves in ways that aren't always possible in the physical world. However, this rise in visibility has also caused a typical pushback. People often assert that queer content online "promotes homosexuality," "influences children," or "erodes Indian culture."

In October 2021, Dabur India Limited had to pull its holiday commercial showing a same-sex couple enjoying Karva Chauth, a Hindu festival, when a state politician threatened legal action on a public platform.[5] In the authors' view, the very existence of such incidents, with no safeguard mechanism, raises questions about how far the commitment to democracy and equality is carried into practice. For example, in November 2023, a very disturbing event made the importance of gay visibility very clear: a 16-year-old LGBTQ++ makeup artist from Ujjain died by suicide, reportedly after being the target of ongoing online hatred and homophobic remarks on an Instagram reel in which he wore a saree, which was a departure from the typical gender roles that most of us are used to. There are reports to suggest that the comment area of

[2] *Supriyo v. Union of India*, 2023 INSC 920 (India), ¶ 27 (Kaul, J.).
[3] *Navtej Singh Johar v. Union of India*, Writ Petition (Criminal) No. 76 of 2016, judgment of Sept. 6, 2018, ¶ 36 (Misra, C.J.) (India).
[4] *Supriyo*, *supra* note 2, ¶ 42(g) (Chandrachud, C.J.).
[5] Suparna Sharma, *LGBTQ Ad in India Pulled After Backlash. But Could It Pay Off?*, AL JAZEERA (Nov. 2, 2021), https://www.aljazeera.com/economy/2021/11/2/lgbtq-ad-in-india-pulled-after-backlash-but-could-it-payoff.

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his Instagram reel was filled with more than 4,000 abusive comments.[6] This shows how social media content that conveyed identity and self-expression can become an opportunity for moral policing. This tragedy isn't simply a human loss; it shows how, even though consensual same-sex relationships are no longer a crime in India, institutional failure in homes, schools, regulatory frameworks, and platforms still makes LGBTQ++ expression unsafe and open to hate.

These kinds of incidents are just a few shock value incidents which made it to the mainstream media, indicating a moral panic that social media recruits or influences and therefore needs to be silenced. The narrative about "promotion" is nothing new. It reflects the colonial rationale of Section 377, which saw same-sex relationships as evil and needing to be stopped. The framework of regulation has shifted. Today, a complicated network of legal, administrative, and computational regulations keeps an eye on LGBTQ++ visibility. The Government, under the Information Technology Act 2000 (IT Act) and its Intermediary Guidelines of 2021, can ask social media platforms to block or take down content for reasons that include "decency or morality".[7] It is argued that this gives both government agencies and intermediaries a free hand to suppress LGBTQ++ visibility in the guise of protectionism. On this view, the State may not bluntly go after LGBTQ++ identity anymore, but other imprecise criteria, broad definitions and digital infrastructure can make LGBTQ++ persons invisible. The outcome is a more delicate style of policing which uses technology instead of criminal law's harsh punishments.

The Apex Court has held and reiterated in many judgments that the right to privacy and self-expression are important parts of human dignity, but it is argued that the rules that control online content work in the opposite way and treat LGBTQ++ visibility as a risk, and not a guaranteed right. Platforms often go too far when it comes to censorship because they are afraid of legal action and are often threatened. They take down or demote queer content and it is marked as "sensitive," while similar pictures or content of cisgender or opposite gender users go unchecked,[8] leaving out LGBTQ++ creators, artists and activists. So, even if *Navtej Johar* won in court, queer voices are still at risk of being erased by digital gatekeeping and moral policing

[6] Navya Kharbanda, *16-year-old queer child Pranshu dies by suicide due to bullying; Did we fail as a society? Mental health expert opines*, HINDUSTAN TIMES (Nov. 28, 2023, 5:38 PM IST), https://www.hindustantimes.com/htcity/cinema/16yearold-queer-child-pranshu-dies-by-suicide-due-to-bullying-did-we-fail-as-a-society-mental-health-expert-opines-101701172202794.html.

[7] The Information Technology Act, No. 21 of 2000, INDIA CODE (2000), § 79(3)(b); Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, GAZETTE OF INDIA, Feb. 25, 2021, as amended, r. 3(1)(d).

[8] Ada Romero Pastor, *The Censorship of LGBTQ+ Content Online Corresponds with Declines in Freedom for Everyone*, TECHPOLICY.PRESS (Oct. 30, 2024), https://www.techpolicy.press/the-censorship-of-lgbtq-content-online-corresponds-with-declines-in-freedom-for-everyone/.

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on digital platforms. Decriminalization was a crucial first step, but it is not the last step toward freeing LGBTQ++ people. If lawmakers do not have the political and social will to make progress in the law and the rules, the constitutional promise of dignity could be compromised by these very systems. The courts have told us that freedom and privacy are part of democracy. The next step is to make sure that the law, and the digital systems it supports, also show that truth.

## II. The "promotion," "indoctrination" narrative: a moral panic

The "promotion" narrative, the assertion that heightened visibility of LGBTQ++ identities in media "recruits" or "influences" individuals to embrace queer orientations, persists as one of the most entrenched discourses on queer representation. Although these statements have not firmly established themselves in India's mainstream political discourse, or at least not in the open, they have significantly influenced discussions in nations such as the United States, where anti-gender mobilizations have markedly intensified in the past decade. Hate-speech networks, conservative factions, and orchestrated misinformation campaigns have exploited the notion that queer visibility puts children at risk or undermines societal stability, often labelling it as "woke" culture. A 2022 report from the Human Rights Campaign and the Center for Countering Digital Hate revealed that "grooming" rhetoric on social media increased by over 400% in the month after the passage of Florida's "Don't Say Gay or Trans" bill,[9] demonstrating the rapid engineering and amplification of moral panic in the digital ecosystem.[10]

With the globalization of digital culture and the rapid dissemination of discursive trends across borders, it is likely that analogous narratives will soon resonate within Indian public discourse, considering that U.S. owned platforms dominate India's digital ecosystem. American narratives more often than not spill over and also gain traction in India, of which preliminary indications are already apparent. In a 2023 interview, the popular Bollywood actor Ameesha Patel reportedly expressed apprehensions regarding the representation of LGBTQ++ themes on streaming platforms, implying that such content necessitates shielding children's eyes or parental controls.[11] Although she did not employ the explicit terminology of "recruitment," such comments may indicate a latent apprehension that LGBTQ++ depiction in the digital ecosystem inherently presents a moral hazard, a mood frequently preceding or coinciding with more overt

[9] CS/CS/H.B. 1557, 2022 Leg., Reg. Sess. (Fla. 2022) (Parental Rights in Education), ch. 2022-22, Laws of Fla.
[10] Human Rights Campaign & Center for Countering Digital Hate, *Digital Hate: Social Media's Role in Amplifying Dangerous Lies About LGBTQ+ People* (Aug. 10, 2022), https://hrc-prod-requests.s3-us-west-2.amazonaws.com/CCDH-HRC-Digital-Hate-Report-2022-single-pages.pdf.
[11] *Ameesha Patel's Recent Remarks: Questioning the Approach to Inclusive Content*, Times of India (July 12, 2023, 18:08 IST), https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/ameesha-patels-recent-remarks-questioning-the-approach-to-inclusive-content/articleshow/101701289.cms.

"promotion" discourse. LGBTQ++ visibility is characterized as a societal threat necessitating restriction, with children shown as susceptible and in need of safeguarding from these negative influences. The argument of "protecting minors" or "protecting culture" thus serves as a persistent mechanism for media and state entities to regulate, restrict, or prohibit LGBTQ++ content, thus diminishing representation under the pretext of paternalism, taking away freedom of autonomy and, more importantly, self-discovery.

This panic-induced dynamic profoundly influences the subsequent legal responses that are gaining traction in countries like Russia, Hungary, Georgia and Bulgaria, focusing on the representation and inclusive expression surrounding LGBTQ++ relationships and gender diversity, particularly in materials and data available to minors, where, in certain countries, limitations now apply to all age groups. Policies and prohibitions on queer content in media, stringent censorship regulations, and legal measures against producers and distributors frequently arise as direct repercussions of the moral panic around LGBTQ++ visibility. The legal framework, shaped by societal anxieties around "recruitment," "indoctrination" and child protection, often emphasizes regulation over inclusion, individual liberty or freedom of expression.

## III. Doctrinal analysis: the law and the regulation of queer expression

The legal framework in India regarding LGBTQ++ expression is characterized by a significant conflict. The Supreme Court's constitutional jurisprudence has unequivocally upheld the dignity, liberty, and equality of LGBTQ++ individuals. However, statutory and regulatory frameworks, especially those pertaining to film, broadcast, and digital platforms, continue with ambiguous criteria of "decency," "morality," and "public order," allowing both administrative and commercial entities to monitor LGBTQ++ visibility. Political requirements can play a huge role in censorship algorithms, as in China, where they are deployed in accordance with political or other priorities set by the state. Algorithms are not just machine learning technical systems but socio-technical systems, non-neutral systems giving effect to the desires and goals of their designers, deployers and users.[12] The outcome, it is argued, is a system in which the Constitution guarantees protection, which remains mostly on paper because regulatory structures frequently stay in obscurity.

[12] Jennifer Cobbe, *Algorithmic Censorship by Social Platforms: Power and Resistance*, 34 Phil. & Tech. 739 (2021), https://doi.org/10.1007/s13347-020-00429-0.

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In the past decade, India's Supreme Court rulings have established a clear individual liberty rights affirming basis for LGBTQ++ self-expression. The Court has acknowledged sexual orientation and gender identity as essential elements of persons safeguarded by Articles 14, 19, and 21 in a series of major rulings.

In 2018, in *Navtej Singh Johar v. Union of India*,[13] the Apex Court determined that the criminalization of consensual same-sex relationships under Section 377 of the Indian Penal Code infringed upon equality, dignity, and privacy rights. Sexual orientation was acknowledged as an intrinsic aspect of identity, with the decision grounded on constitutional morality rather than public morality. This signified a pivotal transformation for queer identity as not only accepted but also constitutionally safeguarded.

In 2014, in *NALSA v. Union of India*,[14] the Apex Court upheld the right to self-identify gender as fundamental to dignity under Article 21. By acknowledging transgender individuals as a "third gender," the Court affirmed that self-identity and its expression, encompassing portrayal in public discourse, media, and art, are constitutionally protected. This protection, the authors contend, is now curtailed by the 2026 amendment to the Transgender Persons (Protection of Rights) Act 2019,[15] which omits the right to self-perceived gender identity and requires the District Magistrate to examine the recommendation of a medical board before issuing the certificate of identity, taking away the autonomy of self-identification and replacing it with a state designated identity, a state imposed limitation on the freedom of expression.

The right to privacy ruling of 2017 in *K.S. Puttaswamy v. Union of India*[16] affirmed that individual autonomy, bodily integrity, and personal identity choices are fundamental aspects of Article 21. The Court specifically recognized that privacy safeguards sexual orientation and expression from governmental interference, offering a constitutional barrier against capricious examination or surveillance of LGBTQ++ lives and their social media content. It is argued that the recent amendment to the 2019 Act also puts this ruling in limbo.

The Apex Court also, in *S. Khushboo v. Kanniammal*,[17] determined that expressions concerning sexuality cannot be restricted solely due to their potential to offend conservative sensibilities. The social morality of the larger public cannot override individual dignity and autonomy.

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[13] *Navtej Singh Johar*, *supra* note 1.
[14] *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).
[15] The Transgender Persons (Protection of Rights) Amendment Act, No. 3 of 2026, INDIA CODE (2026), §§ 2–4, in force from May 25, 2026 by Notification S.O. 2620(E) (May 22, 2026), amending The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, INDIA CODE (2019), §§ 2(k), 4(2), 6(1).
[16] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[17] *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 (India).

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In *Aveek Sarkar v. State of West Bengal*[18] the Apex Court gave precedence to context and meaning over moralistic interpretations by adopting the contemporary "community standard test" and discarding the outdated *Hicklin* test for obscenity. This benchmark is important for protecting LGBTQ++ artistic and narrative expression from being deemed obscene just for challenging heteronormativity.

The Court in *Shreya Singhal v. Union of India*[19] invalidated Section 66A of the IT Act because of its vagueness and its extensive range and emphasised that prohibitions on expression must be precisely defined. This ruling of the Apex Court displays a very important doctrinal tool for challenging the suppression of LGBTQ++ content under vaguely defined criteria such as "morality," "offensiveness," or "public order." Collectively, these rulings establish a robust constitutional framework that safeguards LGBTQ++ identity, autonomy, and expression in both private and public domains.

Although there is constitutional progress in the domain of self-expression and identity, legal frameworks like Section 69A of the Information Technology Act, 2000 and the rules under it continue to exist with vague, expansive criteria that can enable state entities and internet intermediaries to curtail queer visibility. And although morality is not expressly cited as a basis for content restriction in Section 69A, the authors contend that the expansive definition of "public order" and the ambiguous nature of blocking protocols permit the indirect targeting of LGBTQ++ themes. Blocking orders frequently remain confidential, which, it is argued, facilitates censorship devoid of public accountability. Instagram's moderation systems have a reported propensity to classify LGBTQ++ content with hashtags like #lesbian or #bi as "sexually explicit" or "sensitive," under the pretext of content regulation, while permitting similar content of cisgender users to go unchecked.[20]

### A. Information Technology Rules, 2021/2023

The Intermediary Guidelines[21] establish rigorous due-diligence requirements for platforms and mandate the removal of content classified as "obscene," "insulting," "harassing," or otherwise illegal. Regardless of the neutral framing of these categories, they effectively incentivize platforms to implement conservative moderation measures to mitigate liability risks. This leads to self-censorship, particularly when LGBTQ++ content is erroneously categorized as sexual, obscene, or "sensitive."

[18] *Aveek Sarkar v. State of W.B.*, (2014) 4 SCC 257 (India).
[19] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).
[20] Romero Pastor, *supra* note 8.
[21] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, GAZETTE OF INDIA, Feb. 25, 2021, G.S.R. 139(E), as amended, including by G.S.R. 275(E) (Apr. 6, 2023).

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### B. Cinematograph Act

In traditional media, as per the Cinematograph Act of 1952, the Central Board of Film Certification is obligated to verify that films do not violate standards of "decency" or "morality."[22] Such subjective factors have historically resulted in cuts or rejections for films featuring non-traditional sexual themes. For instance, *Lipstick Under My Burkha* (2017) was initially denied certification due to its characterization as "lady-oriented" and the inclusion of sexual scenes from a female point of view,[23] which, it is argued, highlights entrenched gendered and heteronormative biases. The refusal also cited the broad ground that the content had a "sensitive touch about one particular section of society".[24] These instances demonstrate how legislative language can stifle LGBTQ++ narratives.

### C. Cable Television Networks (Regulation) Act, 1995

Section 5 of the Act forbids the transmission of programmes that do not conform to the prescribed Programme Code, which bars any programme that "offends against good taste or decency" or contains "anything obscene."[25] These ambiguous rules can allow for arbitrary suppression of LGBTQ++ narratives in television broadcasts.

### D. Judicial boundaries

Despite the Supreme Court establishing a robust individual liberty framework, it has not explicitly applied constitutional morality to the regulation of digital information, which still lacks explicit judicial boundaries. No definitive precedent currently exists to determine whether Section 69A or the IT Rules may be employed to limit constitutionally protected queer content. This gap provides the executive considerable discretion to govern online LGBTQ++ expression.

The next phase of constitutional evolution must ensure that digital regulation upholds and does not undermine the rights upheld in *Navtej Johar*, *NALSA*, and *Puttaswamy*. India's constitutional jurisprudence robustly safeguards LGBTQ++ identity and expression, but legal ambiguity and digital regulatory frameworks persist in allowing administrative and algorithmic surveillance of LGBTQ++ visibility. Tackling this disparity necessitates a judicial commitment to constitutional morality, rather than societal bias, in guiding the interpretation and application of laws pertaining to LGBTQ++ expression, in both physical and digital spheres.

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[22] The Cinematograph Act, No. 37 of 1952, INDIA CODE (1952), § 5B.
[23] *Shocker: Here's why Censor Board 'banned' 'Lipstick Under My Burkha'*, FINANCIAL EXPRESS (Feb. 24, 2017), https://www.financialexpress.com/life/entertainment-shocker-heres-why-censor-board-banned-lipstick-under-my-burkha-565369/.
[24] *Shocker*, *supra* note 23.
[25] The Cable Television Networks (Regulation) Act, No. 7 of 1995, INDIA CODE (1995), § 5; Cable Television Networks Rules, 1994, r. 6(1)(a), (d).

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## IV. Comparative and International Perspectives

Some countries worldwide have enacted explicit, severely punitive "propaganda" or "promotion" legislation against what they call "non-traditional sexual relations," aimed at curbing the visibility of LGBTQ++ content on social media, in film, online, in advertising or in public. The 2013 "gay propaganda" law in Russia initially forbade the distribution of positive information regarding LGBTQ++ identities to minors. In 2022, the State Duma (the lower house of parliament) sought to extend these restrictions, leading to significant amendments that penalized the dissemination of neutral or positive LGBTQ++ information even to adults, imposing substantial fines and facilitating the blocking of online content.[26] The effect of this legislation is not to outlaw same-sex relations but to silence any public discussion on LGBTQ++ issues.[27]

Following the Russian model, Hungary's legislative revisions in 2020-2021 imposed extensive restrictions on the representation and discourse of LGBTQ++ content to minors. As enacted, the 2021 regulations prohibited the depiction or "promotion" of homosexuality and gender reassignment to individuals under 18 years old, limited educational curricula, and restricted youth access to LGBTQ++ resources, enforced through administrative penalties and censorship actions, which had a huge impact on the freedom of expression, the right to equality, liberty and the right to education. These laws on the surface might have looked as if they were intended to protect minors, but the broad restrictions contained in the "Hungarian propaganda law" did not meet the intelligible differentia test and imposed a blanket ban on all content, amounting to discrimination based on sexual orientation and gender identity.[28]

Outside of Europe, some countries have implemented stringent limitations on LGBTQ++ campaigning and expression. The Anti-Homosexuality Act of Uganda (2023), one of the world's harshest in curtailing the rights of LGBTQ++ people, included severely punitive measures,

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[26] Human Rights Watch, *Russia: Expanded 'Gay Propaganda' Ban Progresses Toward Law* (Nov. 25, 2022), https://www.hrw.org/news/2022/11/25/russia-expanded-gay-propaganda-ban-progresses-toward-law.

[27] Andrey Shashkov, *How Far Will Russia's Wartime Anti-LGBTQ+ Campaign Go?*, Carnegie Politika (June 25, 2025), https://carnegieendowment.org/russia-eurasia/politika/2025/06/russia-new-lgbt-repressions?lang=en.

[28] Amnesty International, *Hungary: The Russian-style Propaganda Law Violates Human Rights and Threatens LGBTI People* (July 22, 2021), EUR 27/4492/2021, https://www.amnesty.org/es/wp-content/uploads/2021/07/EUR2744922021ENGLISH.pdf; *see also* Case C-769/22, *Commission v. Hungary* (CJEU Apr. 21, 2026), https://curia.europa.eu/site/jcms/p1_1000082657/en/judgment-c-769/22-commission-v-hungary; *Hungarian Parliament Amends Orbán-Era 'Child Protection' Law, Removing Anti-LGBTQ Provisions*, Brussels Signal (Oct. 13, 2026), https://brusselssignal.eu/2026/10/hungarian-parliament-amends-orban-era-child-protection-law-removing-anti-lgbtq-provisions/.

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criminalizing the "promotion of homosexuality" and imposing lengthy prison sentences, even extending to representatives of human rights organizations.[29]

Indonesia was reported in May 2024 to be heading towards heightened regulatory scrutiny of broadcast content, with its parliament deliberating on banning LGBTQ++ content in broadcasting. Such laws, if enacted, are not only discriminatory but also, in the words of a filmmaker quoted in the report, undermine "people's capacity to filter what they watch."[30]

India currently lacks a statute that resembles the explicit "promotion" bans enacted in Russia and Hungary. However, the authors contend, the same results are often attained through what can be termed soft censorship: the regulation of visibility through vague moral guidelines, discretionary regulatory power, and pressures for platform compliance. On this view, these instruments allow complaints from ultra conservative entities, arbitrary enforcement by local authorities, or proactive removals by platforms to effectively restrict the dissemination of LGBTQ++ content, without the legislative precision or broader noise that a direct "promotion" statute would incite. This renders censorship less apparent yet almost equally potent. Soft censorship of this kind aligns with a wider global trend. While certain nations implement overt legal prohibitions, others attain comparable suppression via administrative discretion, platform regulation, and moral-panic narratives (such as invoking "child protection" or indoctrination). Both techniques culminate in the same result of diminished visibility and heightened vulnerability of LGBTQ++ groups.

## V. THE PROTECTION GAP

Homophobia and transphobia constitute a form of abuse, online or offline, that may manifest as physical violence. LGBTQ++ individuals frequently encounter widespread online trolling and digital harassment, encompassing homophobic abuse, doxing, and organized mass reporting. A study on the detection of homophobia and transphobia in YouTube comments describes such abuse as taking the shape of physical violence such as murder, mutilation or beating and sexual violence such as rape, and gives examples of such comments directed at LGBTQ++ individuals.[31] While current legislation includes measures against criminal intimidation and general prohibitions on internet harassment, manifested in Sections 78, 351 and 353 of the

[29] HUMAN RIGHTS WATCH, *Uganda: Court Upholds Anti-Homosexuality Act* (Apr. 4, 2024), https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act.
[30] REUTERS, *Indonesia Mulls Ban on Investigative Journalism, LGBT Content* (May 22, 2024), https://www.reuters.com/world/asia-pacific/indonesia-mulls-ban-investigative-journalism-lgbt-content-2024-05-22/.
[31] Bharathi Raja Chakravarthi, *Detection of Homophobia and Transphobia in YouTube Comments*, 18 INT'L J. DATA SCI. & ANALYTICS 49 (2024), https://doi.org/10.1007/s41060-023-00400-0.

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Bharatiya Nyaya Sanhita, 2023,[32] it is argued that implementation is inconsistent, and obstructed by societal biases, technical gaps, jurisdictional hurdles and downplaying within law enforcement agencies. At the same time, platform algorithms have been observed to disproportionately misclassify LGBTQ++ content as "sexual" or "sensitive," resulting in shadow-banning and diminished visibility.

Efforts must be made to bridge the gap between constitutional promise and regulatory practices. LGBTQ++ expression is not only excessively restricted through censorship, it is argued, but there is also a lack of protection against hate crimes against LGBTQ++ people. There is no specific legislation or framework dealing with online hate towards LGBTQ++ people, which exacerbates the vulnerability.

India is now positioned at a pivotal crossroads. Enhancing rights-based digital governance, reducing executive discretion, and harmonizing regulation with constitutional morality are crucial measures to guarantee that LGBTQ++ visibility is safeguarded rather than suppressed. Future jurisprudence must interpret ambiguous morality clauses to ensure strict compliance with Article 19(2), and must examine algorithmic censorship, especially when automatic moderation by platforms unfairly flags or diminishes queer-affirming content. It must insist on transparency in blocking orders and in removals by intermediaries. Only then can the constitutional commitments to dignity, equality, and autonomy for LGBTQ++ individuals be truly upheld in both legal frameworks and daily lives.

## VI. Conclusion

The statutory paradigm presently in India depicts a remarkable contradiction. On the one hand, the Supreme Court's leading cases in *NALSA* (2014), *Puttaswamy* (2017), and *Navtej Johar* (2018) set out a strong rights-based framework based on dignity, equality, privacy, and constitutional morality. These decisions hold that sexual orientation and gender identity are intrinsic to human identity, safeguarded in Articles 14, 19, and 21. On the other hand, regulatory mechanisms like the IT Rules, the Cinematograph Act, and moderation methods at the platform level still depend on imprecise, discretionary norms which make it easier to hide LGBTQ++ visibility. The dichotomy, as this paper argues, is that the Constitution protects LGBTQ++ identity from one standpoint, yet the State machinery continues to police queer expression. The constitutional provisions upholding the dignity, autonomy, and equality of queer individuals exist alongside administrative and platform mechanisms that limit LGBTQ++ visibility and the expression of the authentic self.

[32] The Bharatiya Nyaya Sanhita, No. 45 of 2023, India Code (2023), §§ 78, 351, 353.

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A rights centric, transparent, and accountable digital governance approach is very important going forward. This framework must include explicit protections against arbitrary removals, platform partiality, and excessive administrative power. Often, for many LGBTQ++ persons, especially those raised in unsupportive settings, discovering LGBTQ++ narratives online may represent the sole avenue for validation, solidarity, and the prospect of community. Legislation must acknowledge the susceptibility of LGBTQ++ individuals to online abuse and guarantee effective protection and access to remedies. Regulatory practices must match constitutional principles for social media and digital spaces to function as authentic platforms for self-expression, rather than as mechanisms of monitoring and repression of LGBTQ++ identities.

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