The Regulation, Reclamation, and Resistance of Queer Kinship in Contemporary India

Katyayani Sinha

Accepted: 5 April 2022 / Published online: 23 August 2022
© The Author(s), under exclusive licence to Springer Nature B.V. 2022

Abstract
Since 2014, two legislative actions, the Transgender Persons (Protection of Rights) Act 2019, and the Draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021, have been pivotal in re-inscribing the Indian state’s colonial policing of queer kinship networks. By criminalising relationalities outside the heteropatriarchal conjugal home, the sexual subaltern is exposed to the state’s mechanisms of rescue and rehabilitation. These developments have occurred alongside the constitutional recognition of privacy in K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 and the decriminalisation of the anti-sodomy law in Navtej Johar v. Union of India 2018 (10) SCALE 386 which have been celebrated as victories of self-determination and dignity for queer kinship. These judicial pronouncements, although symbolically pertinent, fail to materially protect queer kinship, and with the contemporary advocacy around queer marriage, the need for legal and cultural recognition has obfuscated the substantive needs of pre-existing queer alliances. Queer communities continue to organise for their own emancipation and despite their vulnerability, queer visibility offers a public counter-narrative of resistance and survival against the brutalities of society and the state.

Keywords Homeliness · Queer kinship · Queer domesticity · Self-determination · Sexual subaltern · Sociality · Surveillance

Introduction
The second term of Prime Minister Narendra Modi’s government has witnessed a drastic snowballing of the Indian state’s brutality. This is evident through some major developments in the form of state actions of hegemonic control, including quashing resistance and dissent. First, there has been a blatant rejection of
socio-economic demands and police violence against affected publics, deepening the wedge between the petitioners and the state (see Agarwal 2020; Human Rights Watch 2020). Second, there has been an alarming clampdown on academic freedom of expression and activist momentum through an onslaught of fabricated allegations and charge sheets of sedition, conspiracy to violence, terrorism, and rioting—resulting in a flurry of mass arrests. The accused have been booked under rigid anti-terror laws,¹ which are non-bailable and this has lead to arrestees languishing in prison, in some cases for years.² Third, the Parliament has passed several acts that have been criticised for furthering the agenda of anti-welfare, pro-privatisation, pro-Hindutva politics by intensifying surveillance.³ Fourth, the role of the judiciary has been passive, complicit, and facilitative of the government’s actions. The Supreme Court’s ‘legacy’ of ‘judicial activism’ in response to authoritarian executive and legislative measures of the 1970s deemed crucial in upholding the conscience of the welfare state, is diluted today.

These recent developments present an important contextual background to elaborate the first part of this article, where the rhetoric of the state’s heavy-handed, inaccessible lawmaking is evidenced through the oppressive legislative action of the Transgender Persons (Protection of Rights) 2019 (‘the Act’), and the Draft Trafficking in Persons (Prevention, Care and Rehabilitation) 2021 (‘the Bill’). These statutory commandments enforce heteronormative, gender-normative, and nuclear family formations, by endangering both the livelihood and cohabitation of queer communities. Through surveillance, identification, and enclosure, the queer person is ‘rescued’ from criminal deviancy and danger, and ‘rehabilitated’ to natal homes or incarcerated in state-run shelter homes.⁴ The insistence is that the biological, marital, and legally adoptive family or state institution is the only site of safety and care for the queer body. The autonomous queer body, seeking refuge from these spaces among queer kinfolk, is infantilised and coercively redirected to the state-ordained ‘family’.

In the second part, I will critically analyse types of judicial pronouncements for their insistence upon conjugal coupledom as the basis of familial ties and, conversely, their potential to protect multitudes of queer kinship. I will argue that whereas constitutional jurisprudence of sexual self-determination, privacy, and dignity offers queer freedoms, there are limitations to the liberal rights-based discourse for the substantive preservation of queer kinship. I will show that the seduction of queer marriage, capitalised by urbanised gay figures, has prioritised the need for publicly recognisable coupledom, and thus rendered socio-historic modes of queer kinship even more unsustainable and illegitimate than before (Butler 2002). The

---

1 The Unlawful Activities (Prevention) Amendment Act 2019 (UAPA).

2 In one instance of the Bhima Koregaon case, notable activists like Sudha Bharadwaj, Anand Teltumbde, Gautam Navlakha, and Varavara Rao have yet not received a conclusive acquittal since 2017.

3 Some of these recent laws include the Citizenship Amendment Act 2019, the Transgender Persons Act 2019, and the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act 2020.

4 s8(4) and s12(3) of the Transgender Persons (Protection of Rights) Act, 2019, and s8 and Chapter V of the Draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.
privatised, bourgeois interests of the public discourse around queer identity and individualism, then, has receded the justice for queer kinship, especially in the face of the Act and the Bill.

The third part then steers the conversation to focus on narratives of survival and resistance of queer kinship, despite the hostility, inefficacy, and abandonment of the law and the state as illustrated in the first two parts. I study the online space as a site which offers affirmations and financial support crucial for the survival of the queer body isolated from their community and livelihood, especially in the aftermath of the COVID-19 pandemic. I foreground creative projects ruminating on themes of healing and camaraderie, which reinvent queer kinship as strategies of survival and calibrations of care, sustaining a life of artistic expression, that are a transformative site of protest. This part challenges the state’s repression and alleged rights/protections to focus on regenerative stories of queer relationalities scripted by the community.

I will use the term ‘queer’ to include the wide breadth of the gender-nonconforming (GNC), LGBTQ+ community in India. Further, the term ‘trans’ is inclusive but not exhaustive of customary transgender identities of the Hijra, aravani, jogati, and kinnar communities, as well as contemporary non-binary identity spectrums in India.\textsuperscript{5} I present the terminology of ‘queer kinship’ to include configurations in the queer community that extend beyond sexual relationships or legal claims for recognition, i.e., queer marriage, adoption, succession and the claim for queer familial laws. Thus, queer ‘kinship’, in addition to cohabitating queer communities, refers to practices of care, affect, and resistance through divergent relationalities beyond coupledom and heteropatriarchal, sociological connotations of familial roles. Queer theorists have conceptualised such networks as “creative relational practices” (Dave 2012) and “relational commoning” (Muñoz 2019) and as political acts that strive to be repositories of relief against the brutalities of the state, which persecutes these very affiliations. Butler ideates “alternative” queer kinship practices as the breadth of “relationships of various kinds that negotiate the reproduction of life and the demands of death” (Butler 2002, 229). ‘Queer domesticity’ will be used to indicate familial life, affect, and practices of ‘homeliness’ in queer cohabitation.

**The Transgender Persons (Protection of Rights) Act 2019**

The ratification of the Act in 2019 was a grievous moment in the Indian state’s curtailment of queer freedoms, due to its commitment to monitor, control, and rehabilitate trans identity, residence, and livelihood. The Act represents a symbolic failure, because while it was ratified on the 70th anniversary of the Indian Constitution, it fundamentally undermines the constitutional right of self-determination of trans persons held in *NALSA v. Union of India*\textsuperscript{6}. The Act reinscribes its predecessor, the colonial Criminal Tribes Act 1871, and its 1879 Amendment (CTA) by categorising

---

\textsuperscript{5} The trans community in the Indian subcontinent comprises of geographically and culturally diverse groups with socio-historic nuances, e.g. Hijras and Kinnars from Northern India, Aravani or Thirunangi from Tamil Nadu, and Jogati from Maharashtra and Karnataka.

\textsuperscript{6} *National Legal Services Authority (NALSA) v. Union of India* (2014) 5 SCC 438.
trans communities as a threat to the natal, procreative, heteronormative family. Trans communities offering care, comfort, and respite to the trans person are deemed illegitimate, and the legally ordained family or state shelter possesses the sole custodial right over the trans body. The Act was formalised despite the sustained protests, press conferences, and communications to parliamentarians by the community (Fig. 1). The inability of the state to incorporate amendments in the law based on deliberations with the community is reflective of the institutional lacunae of a pre-legislative process in India (Jain 2020).

The surveillance of trans mobility, identity, and livelihood

In this section I will illustrate the connections between the Act and the colonial CTA, i.e., the invasive archiving of the domestic lives, discipleship networks, and livelihood of trans persons, to a subsequent immobility within state-monitored spaces (Hinchy 2019). The Act, firstly, undermines the constitutional right of self-determination of trans persons on the spectrum of male, female, or “third gender” as held in NALSA7 by introducing a mandate to appease state-ordained procedures to receive an identity certificate.8 This bureaucratic hurdle grants the state the arbitrary and prejudicial discretion to categorise ‘trans’ through a formulaic and medicalised lens. Jessica Hinchy has studied the CTA’s mandatory registration of ‘eunuchs’9 to gauge the existence of trans lives (Hinchy 2019), mirrored in the Act, through the state’s insertion of itself as an intermediary for the identification and affirmation of trans lives.

Second, s18(a) of the Act states that whoever “compels or entices a transgender person to indulge in the act of forced bonded labour” would be liable for imprisonment for a term between six months and two years, along with a fine. In a writ petition filed before the Supreme Court of India challenging the constitutionality of the Act, the petitioners, as members of the trans community,10 have expressed that this provision exposes the customary sources of livelihood, sustained by their non-heteronormative family structures, to target and attack. The failure of the Act to define the ambit of the vague terms “forced or bonded labour”, “compulsion”, and “enticement” exposes gurus to risk if chelas11 engage in badhai,12 begging, or sex work (CHLET 2019, 37).

---

7 Supra n 6 at 129.
8 Sections 5, 6 and 7 of the Transgender Persons Act 2019. An identity certificate as per Chapter III of the Act is a proof and prerequisite for the affirmation and recognition of the identity of trans person to confer subsequent rights
9 See Akshay Khanna (2016) and Hinchy (2019) to trace the colonial categorisation of the term ‘eunuch’, referring most often to the Hijra.
10 Grace Banu Ganeshan & Ors. v. Union of India & anr. W.P. (Civil) No. 406/2020 (2020). The petitioners are Grace Banu, Vyjayanti Vasanta Mogli, KMV Monalisa, Anindya Hajra, and Sirra Santosh—activists of the transgender community.
11 Guru-chela relationships are teacher–disciple hierarchical structures of Hijra gharanas or households. Hijra Gharanas are households centred around a guru and their chelas.
12 Badhai, or a ‘congratulatory gift’, is performed by Hijras at weddings, births, and celebrations, which concludes with seeking a monetary sum.
The CTA similarly prohibited registered trans persons from wearing ‘female’ clothing/adornments and performing in public through music or dance. The visual deviations from heteronormative appearances, in addition to the socio-cultural sources which earned trans bodies a livelihood, were barred. The discomfort around the “disorderly Hijra” in the public space originated from the Victorian expectations of public conduct (Hinchy 2019 89) and their presence could result in arrest without a warrant, followed by a fine or imprisonment (PUCL-K 2003). The domestic arrangements of Hijra gharanas allegedly contained kidnapped children (Hinchy 2019), where ‘compulsion and enticement’ produced ‘bonded labour’. The sanction is targeted towards both the trans communitarian support networks and the collective means to sustain a livelihood based on publicly disruptive gender non-conformity. The NALSA judgment was notable in declaring trans persons a “socially and educationally backward class” according to which affirmative reservations were due in educational institutions and in public appointments13. NALSA’s encouragement to the state to acknowledge and eradicate the backwardness of the community due to the historically limited sources of trans livelihood is overtaken with the criminalisation of intergenerational forms of sustenance by the Act.

Third, the writ petition challenging the Act construed the comprehensive application of sections 12, 3(f) and 3(g) to be in direct contravention of the constitutional right to reside and settle in any part of the territory of India14. It has been argued that the freedom of residence, occupation, and purchase of property is granted within the stringent boundaries of the natal home. These provisions bear an imprint of the CTA, with its mechanism of frequent yet unpredictable headcounts and sweep searches of trans residences (Nigam 1990; Hinchy 2019), which similarly embolden the state to inspect domestic arrangements and enforce spatial limits of trans cohabitation.

The state’s ‘family’

The definition of ‘family’ under s2(c) of the Act is “a group of people related by blood, marriage or by adoption; made in accordance with law”. Further, the “right of residence” under s12(a) imagines the right to reside in a household where parents or “immediate family” members reside. Thus, the conjoint reading of the two necessitates a paternalistic direction of the valid residence of a trans person only with legally ordained families, maintained through biological, marital, or adoptive routes. These provisions have been perceived as a direct challenge to the socio-cultural support systems and cohabitation webs of the gharana, guru-chela discipleship relationships that have historically aided the community from violent natal homes (Ray 2020). There is a likelihood of the resurrection of habeas corpus custody pleas filed by biological families towards trans persons fleeing harassment, sexual assault, and extortion from the petitioners (Arasu and Thangarajah 2012; Sheikh 2017), thus introducing a corrective assimilation of trans persons into the heteropatriarchal household.

13 Supra n 6 at 129.
14 The Constitution of India, 1950, Article 19(1)(e)
Arguably the most contested provision is s5 of the Act, which grants identity certificates to trans persons after the satisfaction of bureaucratic state procedure, approved by a district magistrate. The proviso states that, “in the case of a minor child, such application shall be made by a parent or a guardian of such child”. The effect of this section is that trans minors escaping violent homes towards supportive community networks cannot be aided by adoptive guardians to facilitate a procurement of identity certificates. This provision echoes the colonial anxiety of saving children from the predatory initiation and castration of Hijra households (Hinchy 2019). Further, s12(1) of the Act states that “no child shall be separated from parents or immediate family on the ground of being transgender”, insisting upon the residence of minors in their natal homes, regardless of the oppression in these spaces. This provision also reveals the state’s absenteeism and ignorance towards the need for gender-affirming support among dysphoric trans children. Lastly, s18(c) prescribes a punishment for forcing or causing a transgender person to leave their household, conflating a coercive abduction with a consensual departure or escape. By punishing the facilitators, the assistance offered by queer kinfolk to create a safe, affirming residence is jeopardised. In the final section evaluating the Act, I will discuss how measures of rescue and rehabilitation annihilate queer kinships through oppressive state action.

The rescue/rehabilitation framework

Courts are empowered to direct trans persons to rehabilitation centres under s12(3) if any parent or immediate family member is “unable to take care” of them. First, the section empowers the redirection of a trans body to a state-monitored establishment based only on the avowal of the biological family without a clear definition of what an inability to care includes. The section is not accompanied by an appeal provision, thus irreversibly mandating a trans person to reside with their biological family until the latter opts for a legally granted/permissable desertion. This is particularly alarming considering the insinuation of illegality of kinfolk who currently aid and support
trans persons. The Act predetermines the nature of care towards trans family members as burdensome, extraordinary and sympathetic to declarations of internalised judgment and expulsion.

The discretionary powers granted to the courts in the Act pertaining to the residence of the trans body find a parallel in the CTA, in which a magistrate was empowered to conduct arrests if registered members were found outside their designated areas (Nigam 1990). Whereas in the Act, the scope of such a designated area is the trans person’s biological kin, both acts strive to carefully confine and monitor the movement of trans persons. The district magistrate in the CTA could additionally devise a disciplinary code and construct “reformatory settlements” (Nigam 1990, 154), which are reflected in the rehabilitation centres of the Act. The Citizenship (Amendment) Act 2019, has exacerbated the disenfranchisement of trans persons, especially with the construction of detention camps for those lacking identity certificates (Rahman 2019). Finally, the Act ignores the paucity and structural inadequacies of rehabilitation centres and shelter homes for trans persons in India. A report from 2019 indicated that shelter homes were the most inaccessible for transgender persons, and the few which were operational shut down due to financial troubles (Action India et al. 2019). Thus, the Act systemically erases queer kinship, by restricting the residence of the trans person between the legally ordained family or a state institution.

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021

Since 2016, there have been numerous legislative and policy-oriented proposals in the ‘anti-trafficking’ crusade by the Ministry of Women and Child Development in India. The substantive premise of the Bill emboldens the surveillance state, like the Act, in victimising queer kinship with intersectional vulnerabilities who are living sexually subversive lives. I argue that cis women and queer and trans sex workers, in their domestic configuration, occupy arrangements and relationalities that are unlike the heteronormative nuclear family. In Svati Shah’s study of sex workers in Mumbai, for instance, households were predominantly headed by females, single women with children or adopted orphans, alongside the cohabitation of neighbours, relatives, and friends (Shah 2014). The Bill merges trafficked persons with sex workers, thus endangering the constitutional right of the latter group to practice their profession. 15 Shah noted that “abolitionist discourses” of the anti-trafficking framework exclude non-female persons, i.e., male and transgender sex workers, due to the gendered attribution of cis women sex workers as powerless victims (Shah 2014). Therefore, the queer sex worker falls outside the ambit of being ‘rescued’ from the evils of trafficking and forced prostitution (Kapur 2007), but instead receives blame for perpetrating immoral, deviant, and exploitative sex work. The Bill and the Act thus both grant state intervention within non-normative households and queer dwellings as an affront to the heteronorm as alleged sites of trafficking and sexual exploitation. Both

---

15 Supra n 14 at 19(1)(g)
legislative actions, then, seek to closely monitor and penalise queer kinship by fragmenting them and granting custody to the state or legally ordained kin.

**Surveillance and reporting mechanisms**

The Bill’s mandate of surveillance replicates the anxiety of the Act to monitor and sanction the queer home. The Bill conflates trafficking with sex work, since “sexual exploitation” is defined under s2(25) not only as financially motivated prostitution and sexual servitude, but also all other kinds of sexual services, including pornography. This is a remnant of the long history of conflating sex work with trafficking and forced prostitution in India, erasing the agency and dignified livelihood of sex workers.\(^\text{16}\)

As per s35(1), every person with the knowledge of trafficking or “reason to believe” that trafficking has occurred is obligated to report it to a proximate police station, and an intentional failure to inform the police would extend to an imprisonment up to three months or a fine of five thousand rupees. However, as per s35(2), a family member of the “trafficked person” is not persecuted for a failure to file a police report of their apprehension. A family member is defined under s35(3) as a husband, wife, child, or blood relative. This provision first empowers the neighbourhood to report their apprehensions of ‘illicit activities’ around queer dwellings, rendering legally illegible cohabitators vulnerable. It offers queer homes to the discretion, moral judgment, and voyeurism of the heteronormative state, which empowers submissions as ‘good faith’, and failures to complain as ‘guilt by association’. Residential spectators become pallbearers of the nuclear family, on a crusade against outliers and sexual subalterns, by participating in the punishment of difference. myriad issues of detention without fair trial or bail, homelessness, and police intrusion and harassment are likely to ensue. Second, family members that are not a spouse, child, or blood relative are open to persecution for non-reporting, only reinscribing the precarity of non-heteronormative domestic arrangements, e.g., non-monogamous households, trans homes, or a household of sex workers. The Bill thus performs a queering function, rendering the sexual subaltern a victim, perpetrator, and criminal of sexual exploitation alike.

**The rescue/rehabilitation framework**

The prime concern with the Bill is that the focus of the rehabilitation measures is coercive and focused exclusively on a unilateral transfer to shelter homes. First, this system prioritises hasty assimilation of sex workers to natal links, where instances of stigma and forced marriages preclude the person’s well-being. Second, for trafficked persons, community-based rehabilitation driven towards financial independence and access to welfare schemes where survivors reintegrate within their chosen community or family are ignored (Roy 2021). This forcible relocation of trafficking

\(^{16}\) See Menon (2009), Kotiswaran (2021) for a detailed engagement with the anti-trafficking discourse in India.
survivors and sex workers alike into protection homes is a violation of constitutional dignity, autonomy, and right to life.\(^\text{17}\) Rescue occurs through extrajudicial extraction by police and non-governmental organisation (NGO) raids which detain individuals in state-monitored remand homes as favourable compared to their previously ‘amoral’ spaces of disapproval (Shah 2014, 133).

It is pertinent to note the lacunae of the state in proclaimed institutional support to victims of trafficking. First, there are no apparent funds relegated for the establishment of protection homes or rehabilitation homes, exacerbating the lack of intent of state facilities (Roy 2021). It is crucial to note that while trans persons are recognised as victims of trafficking “other than women and children” in the Bill their shelters are to be segregated. It is interesting to comprehend the explanation for such, especially since the nomenclature of ‘women and children’ claims to historically imply a vulnerable category, where the queer survivor of trafficking finds no sympathy. Second, shelter homes for trans persons are mandated to be established at a minimum of one per state/union territory, unlike per district for women and children, which again, minimises state liability towards queer survivors of sexual exploitation furthers the narrative of state apathy. Finally, rather than harmonising pre-existing laws (Tandon 2017)\(^\text{18}\) surrounding the aid of trafficking victims and incorporating suggestions by sex workers to realise the greater effectivity of self-regulatory boards in providing relief to unwilling workers, the tabling of the Bill is deeply indicative of the ignorance of the state to the community’s needs (Jain and Rhoten 2017).

Since sex workers are not excluded from rehabilitation, a combined invocation of the Bill with the Immoral Traffic (Prevention) Act 1956 (ITPA), is likely to increase the of queer bodies/people in state institutions. A Supreme Court panel in 2011\(^\text{19}\) published an interim report arguing that sex workers living and working together for their mutual gain should be excluded from the ambit of the ITPA. Widespread incarceration in rehabilitation homes, however, continues without trials, evident from a 2018 report, which indicated that 76% of women in the sample size of 243 were denied the right to conduct voluntary sex work (Sangram 2018). This study further showed that the moral disapproval of sex work not only degraded women, but also deemed them to be ‘safe’ in the ‘custody’ of their families. The magistrate in these cases is the sole authority gauging the ‘suitability’ of the woman’s husband, parent, or guardian to receive the custody of the woman—making these interactions loaded with humiliation and shame. Often such a custodial transfer is accompanied by paternalistic affidavits with undertakings refraining from sex work in the future (Sangram 2018).\(^\text{20}\) The absence of the ‘victim’s’ discretion to exit a protection or rehabilitation home is against the mandate of the Supreme Court’s holding in 2011, which reinforced the futility of pushing women into institutions against their will.\(^\text{21}\)

---

17 Supra 14 at 21
18 See Immoral Traffic (Prevention) Act 1956, the Juvenile Justice Act 2015, the Indian Penal Code 1860.
19 Budhadev Karnaskar v. Union of India Criminal Appeal No. 135 of 2010 (2010).
20 Sangram’s research refers to a sample of adult cis women only.
21 Supra n 19.
The Act and the Bill both reflect the state’s positionality in the surveillance and criminalisation of the livelihood and agency of queer and sexually subversive lives, dependent on non-heteronormative cohabitation. The legislative actions seek to define familial bonds as solely ordained by biology or law, granting them primary custody of the queer body, and alternatively, imposing forcible rehabilitation to state shelters as a diagnostic intervention of the legislation.

**Constitutional Cases for Queer Domesticities**

In this part, I will critically evaluate constitutional jurisprudence discussing the familial home, first as a marital, procreative, and heteronormative space, and second, potentially paving the way for a queer domesticity, through the values of autonomy, dignity, liberty and privacy. I will explore whether judicial precedent may be substantively construed to protect the bonds of non-monogamy, friendship, non-normative intimacies, and caregiving as values present in queer lives. Several scholars have engaged with the transformative, emancipatory, and resistive scope of the Indian Constitution. By foregoing traditional judicial categories of *obiter dicta* and *ratio decidendi* in case law, in which the former is considered to be unimportant, Kalpana Kannabiran has argued that utterances of the judiciary from hard-won gains of movements of sexual and gender minorities are disruptions against the violent, misogynistic, and nationalist Indian state (Kannabiran 2019). Similarly, Grietje Baars has shown that judgments can perform a “queering function”, by challenging the form, function, and even the existence of gender and the gender binary in the law (Baars 2019, 17).

Scholars have conversely argued that the very pursuit towards recognition and legibility by the neoliberal state has placed queer subjects within the ambit of heteronormative and mono-normative ideations (Kapur 2018). Ashley Tellis found that the Indian “queer movement” had been co-opted by an entrepreneurial elite pushing for a neoliberal rights-based agenda, and the term ‘queer’ has not travelled to the Indian context with the insurgation of its origins in the United States (Tellis 2012). The ambit of the postcolonial critique then, must realise the mutations of power in domains of nationalism, class, and caste to “critique the progressive triumphalist temporalities of queer liberalism” (Rao 2020, 10). In this part then, first, I will discuss the court’s historical orientation to confine kinship, domesticity, and relationalities within the conjugal home. The immutability of this space, resistant to radical constitutionalism reifies the limitations of judicial pronouncements, as vacuous, universalist iterations of gender and sexual identity recognition rather than vehicles of substantive, affirmative action for protecting queer kinships. I argue that the contemporary focus of the legal discourse on queer marriage begs the demand for a radical re-evaluation of the priorities and praxis of the queer movement in India (Rao 2020), currently focused on seeking legal protections.
The Couple’s Home

In this section, I will show that the judicial imagination of a ‘home’ and the relationships legitimised and protected within it are centred around the values of heterosexual monogamy of a marital couple, whose intimacies serve procreative, societal, and economic goals. In Harvinder Kaur v. Harmander Singh Choudhry upholding the “restitution of conjugal rights”, the Court has held that the provision is crucial in the preservation of the institution of marriage, and “in the privacy of the home and married life neither Article 21 [right to life and personal liberty] nor Article 14 [right to equality] have any place”. This concept of ‘gaining back’ a departing spouse replicates the rescue/rehabilitation framework of queer lives by the Act and the Bill. The home is thus rendered an intimate, delicate, and sensitive space, where the “cold principles of constitutional law” are redundant. Interestingly, the definitions of ‘cohabitation’ and ‘consortium’ by Justice A.B. Rohatgi uphold preconceived gender roles of the ‘husband’ and the ‘wife’ as the pallbearers of a home. This judgment reiterates the legislative control of both the Act and the Bill through which the family restricts the constitutional freedom of movement of an individual to depart from heteronormative and legalist controls.

The Kaur precedent overruled a case from the High Court of Andhra Pradesh, which has been discussed by Gautam Bhatia as a redemption for decisional privacy against a restrictive familial home, space, or institution (Bhatia 2019). Bhatia indicates that the family, i.e., the heteropatriarchal marital institution, bears no normative priority under the Fundamental Rights chapter of the Constitution. He argues that laws create artificial binaries of public and private; however, reading Sareetha in conjunction with the right to privacy judgment of K.S. Puttaswamy v. Union of India can be illuminating to bring the Constitution into the four walls of the home, to even extend recalibrations around gender roles (Bhatia 2019). The overruling of Sareetha indicates state anxieties to regulate the relational modes that ensue within homes, where queer freedoms find no sympathies. Further, protections against intimate violence and abuse extend only to relations emanating from, or like, a marital bond. Although the right of maintenance extends to co-dependent women, i.e., mothers, sisters, female relatives other than the wife, the recognition of their

22 Harvinder Kaur v. Harmander Singh Choudhry AIR (1984) Delhi 66, s9. The Hindu Marriage Act, 1955. This concept of ‘gaining back’ a departing spouse replicates the rescue/rehabilitation framework of queer lives by the Act and the Bill.
23 Supra n 14 and Supra n 22 at 34.
24 Supra n 22 at 34.
25 Supra n 22 at 10,11, 27, 36, 42, and 66.
26 Supra n 22.
27 T. Sareetha v. T. Venkatasubbaiah AIR (1983) AP 356
28 K.S. Puttaswamy v. (2017) 10 SCC 1.
29 The Protection of Women Against Domestic Violence Act 2005.
30 Heterosexual partners in a live-in relationship are eligible for recourse if the coupledom is discernible by the law to be “in the nature of marriage”, which “grants a presumption of legal weddedness”. D. Velusamy v. D. Patchiammal (2010) 10 SCC 469, and Supra n 30 at s 2(4).
compensatory domestic labour is dependent on the disintegration of a marital tie (Vidhi 2019, 29). It is thus evident that in India, conjugality is the only legitimate way to distribute emotional and financial dependency, from where the consequent rights and privileges of maintenance, as well as familial formation of adoption, guardianship, and custody, arise (Vidhi 2019, 29).

**The Supreme Court and Queer Kinships**

Although coupledom appears to be the normative bedrock of the home, where constitutional values find no reverberations, in the subsequent sections, I will discuss the Supreme Court’s deliberations on constitutional freedoms of queer freedoms and kinship. I argue that these pronouncements offer the potential to examine the ‘queer home’ as an insurgent space infused with notions of caregiving, companionship, and economic and emotional interdependencies, however, the queer home lacks material protections.

**The NALSA judgment**

The Supreme Court in the two-judge bench of NALSA v. Union of India upheld the right of transgender persons to self-identify their gender as male, female, or “third gender” under the Act, comprehended a psychological and emotional analysis of gender under Article 15, removed the necessity of gender confirmation surgery under Article 19(1)(a), and declared trans persons as SEBCs, eligible for affirmative action. The case cited Article 17 of the ICCPR32 and Principle 6 of the Yogyakarta Principles (2007) which prohibit arbitrary and unlawful interference with one’s privacy, family, home, or correspondence and unlawful attacks on one’s honour/reputation. This citation holds the potential to be a valuable tenet protecting queer kinships. However, in the seven years since its pronouncement, NALSA has been almost entirely ineffectual for the upliftment of the trans community, as state governments have failed to implement the Court’s directives (CHLET 2019, 37). Further, the ridicule, violence, and incarceration of trans persons has been exacerbated by police mistreatment, intrusions, and the advent of the Act (Anasuya 2016).

Danish Sheikh has argued that affidavits have been used to problematise the way ‘home’ is often normatively deployed by the courts (Sheikh 2021 xv); Tripathi’s story is indicative of this trend. Tripathi is a prominent Hijra public figure, who recalls the repeated sexual harassment and abuse within and outside her biological home. Tripathi felt most at home when she met, identified with, and eventually joined the Hijra community in Mumbai. Similarly, in another affidavit, Siddarth Narrain

---

31 Supra n 6 at 22.
32 International Covenant on Civil and Political Rights (1966), UNGA, December 1966.
33 Supra n 6 at 10.
34 Tripathi has now evolved as the recognisable guru of the ‘Kinnar battalion’, committed to attacking the Pakistan border, while supporting the construction of the Ayodhya ram mandir. The issue surrounds a land title dispute following the demolition of the Babri Masjid mosque in 1992 to build a temporary Ram Mandir (temple). The premise of the demolition of the mosque was that the mosque had been built
recounted an incident wherein their mother and brother severely beat them with a cricket bat upon discovering their affinity for the Hijra community. Narrain escaped, and a relative gave them a sum of money to ‘go home’, which was utilised by Narrain to instead live with a group of Hijras in Erode, Tamil Nadu. Narrain’s account of using the sum as a bridge between themself and the trans community acknowledges the brutal violence in natal homes and invokes the feeling of a ‘homecoming’ in the judgment. Vanja Hamzić discusses the dera in Pakistan’s khwajasera community to be a similar sanctuary from the horrors of natal family members for queer lives (Hamzić 2019). The inclusion of these narratives in the judgment, without a parallel need to preserve trans networks as a safe abode for queer persons from familial trauma, only furthers the rehabilitative reach of the Act and the Bill.

The right to privacy

The notion of ‘sexual privacy’ in queer relationships is not confined to the spatial limitations of a domestic space or residential property. The homocapitalist takeover of the queer imaginary (Rao 2020) assumes private property to be a presupposition in queer lives, wherein the conferral of rights would accumulate entitlements, rather than demand socio-economic necessities from the state. The surveillance measures discussed in part 1 extend to covert queer interactions, which are routinely subject to police allegations of obscenity (s294) and public nuisance (s268) under the Indian Penal Code (IPC) by the police, especially in the case of working-class queer persons who lack access to an indoor space (Shukla 2020). In this backdrop, scholarship has suggested that the public/private bifurcation is false and inapplicable in queer lives, for their surveillance occurs in an equally pervasive manner in both domains (Cook 2014).

Two recent constitutional judgments have centred privacy as the foundation of queer rights. In K.S. Puttaswamy v. Union of India35, privacy was held as a constitutional and fundamental right, as per Articles 14, 15, 19 and 21 of the Constitution of India, 1950. Second, in Navtej Singh Johar v. Union of India36, the colonial provision of s377 of the IPC was read down to decriminalise consensual sodomy among adults. The five-judge bench of the Court unanimously acknowledged s377

Footnote 34 (continued)
by the Mughal emperor Babur above the Ramjanmabhoomi (the birthplace of the Hindu God, Lord Ram) at Ayodhya, Uttar Pradesh. The parties in the case involved in the dispute were the Sunni Waqf Board, Nirmohi Akhara and Ram Lalla. Although she continues to be a prominent face of the Indian trans community, offering refuge to several fledgling chelas, there are limitations to citing her ‘homecoming’ story. Her political agenda reveals a greater affinity to the Hindu state, ridden with Brahmanical, Hindu-nationalist, and Islamophobic motivations. The kinship offered by Tripathi’s devotion to the Indian state protects her and the battalion from the violence against queer communities under Modi’s regime, especially since her rhetoric of ‘homosexuality’ is rooted in purist homo-nationalist sentiments echoed by Rashtriya Swayamsevak Sangh–Bharatiya Janata Party (RSS-BJP) groups (Upadhyay 2020). See the judgment of M Siddiq v. Mahant Suresh Das (2020) 5 SCC 1, and for a commentary on the Hindu state project of the Ram Mandir in Ayodhya see Jaffrelot (2019).

35 Supra n 28.
36 Navtej Johar v. Union of India (2018) (10) SCALE 386
as a historical repository legitimising the surveillance, harassment, and discrimination towards the queer community in India. Justice D.Y. Chandrachud’s opinion in *Puttaswamy* has been regarded as a predecessor to *Navtej*, for its recognition of personal intimacies as a component of the right to privacy (Sheikh 2017). In *Navtej*, Chandrachud included an individual’s sexuality as an autonomous exercise of personhood within the purview of self-determination. Further, he opined that sexuality is a fulfilling experience of fluid meaning-making, culturally unique and plural ways of life, love, and longing.37

Danish Sheikh discusses the potential of *Navtej* to involve privacy as a route to transform the public sphere, by extending the ambit of queer self-identification, expression, and personal intimacy beyond the four walls of the home (Sheikh 2019). He indicates that the need for a “right to sexual privacy” in the judgment acknowledged a sheer lack of privacy among the dispossessed queer person currently trapped in violent and heteronormative ‘homes’ and ‘families’.38 Justice Chandrachud in this context urged the need for queer freedom in expressing their identity in the challenging “ambient heterosexism” of public places without state clampdowns.39 *Navtej* also acknowledged that s377 impeded the ability of queer persons to realise the constitutionally guaranteed “right to shelter” and the need for “immediate care and protection of the state”.40 The petitioners referenced the support framework of online resources for queer persons to access safe habitation, like the Facebook page GHAR, or Gay Housing Assistance Resources.41 Scholars have argued, however, that a mere discouragement of the state to persecute both the public and private intimate life of queer persons in the judgment obscures the need for proactive steps, mandates, or directives towards the actualisation of ‘safe spaces’ for the germination of queer homeliness (Shukla 2020). Such proactive intervention has long been a trend in the Court’s public interest litigation history, where an absence of legislative action encouraged judicial activism and intervention in myriad issues towards marginalised communities (Baxi 1985; Bhuwania 2014).

**Post-Navtej narratives**

The axis of Indian queer politics in the past few decades has overemphasised the court struggle against s377 of the IPC (Boyce and Dasgupta 2017) through the trifecta of *Naz-Koshal-Johar*.42 This has fed into the meta-narrative of the Supreme Court as a dispenser of justice for the queer ‘individual’, despite the persistence of structural inequalities among queer communities. After the decriminalisation of consensual sodomy in 2018, the priorities have shifted towards the legalisation of

---

37 *Supra* n 36.
38 *Supra* n 36 at 413.
39 *Supra* n 36 at 136.
40 *Supra* n 36 at 32.
41 *Supra* n 36 at para 32.
42 *Naz Foundation v. Govt of NCT of Delhi*, 160 DLT 277, *Suresh Kumar Koushal v. Naz Foundation Civil Appeal No. 10972 of 2013* and *Supra* n 37.
queer marriage. The neoliberal, globalised ‘gay icon’ in India has become the protagonist, refusing to pass the microphone, by usurping the stories, struggles, and decades of labour borne by the queer community against s377. I argue that in seeking the law’s normalising effect of legally regulated cohabitation through coupledom, the concerns surrounding the incarceration of pre-existing queer socialities have been stifled.

This moment echoes Nancy Fraser’s argument that cultural recognition displaces socio-economic redistribution as the remedy for injustice and the goal of political struggle (2013, 383). ‘Affirmative’ rather than ‘transformative’ strategies are sought to remedy inequitable outcomes, such as the inclusion of queer couples within marriage, without disturbing its generative norm, i.e., the heteronormativity of the institution (Fraser 1995). The Act and the Bill, with its definitional scope of the family, as legible only through biological, marital, or adoptive routes ‘in accordance with the law’, reiterate the convention around aspirational companionship. In the pursuit of marriage rights, the state is the facilitator of the queer fantasy, to affirm durable coupledom, and multiply property relations. Butler argues that the demand for marriage in the queer community is a foreclosure of the radical potential of pre-existing queer allyship, by shifting the question to “who may desire the state, and who may desire the state’s desire” (Butler 2002, 237).

This is evident through a commentary by academics Vikramaditya Sahai and Akhil Kang, who discussed the indulgence of two Supreme Court lawyers, Arundhati Katju and Menaka Guruswamy, in steamrolling the multitude of queer activisms, by centring the decriminalisation story around themselves (Sahai and Kang 2020). Among the Times 100 list of 2019, and as speakers at the Oxford Union, the human rights lawyers, and partners, have globally branded themselves as “being the only queer persons in the court room” (Oxford Union YouTube 2020) during the battle against s377. Guruswamy classified her oral arguments in court, built around the affective “right to love”, as the court’s first encounter with a queer person. This refrain only reproduces the court’s violent invisibilisation of the grievances and hurt of queer lawyers and activists who spent decades fighting for justice and legibility in the legal and socio-political struggle. Katju and Guruswamy hail from upper-class Brahmanical backgrounds, with Ivy League education and have coined their appeal for queer marital unions the Marriage Project. They state that India is, first, a “kin-based, family-based society” and that the bundle of rights of life, e.g., health insurance, joint bank accounts, co-signage of lease deeds, were all dependent on the foundation of marriage (Oxford Union YouTube 2020).

This proclamation is, first, an erasure of queer kinships and trans marriage that have been historically tolerated in the Indian subcontinent (Vanita and Kidwai 2001). Second, it reflects their desire for civil law ‘privileges’ of property ownership and inheritance deeply embedded in patriarchal and state-sanctioned economic benefits (Robson 2009) which predetermine what a family structure looks like. Third, Kang indicates that in their categorisation of India as a marriage society, its caste endogamy and statist political economy is deliberately obfuscated (Sahai and Kang 2020). Lastly, the nostalgia, romance, and longing of Guruswamy and Katju’s union echoes the familial and affectively charged rhetoric preceding the Navtej verdict. It has been argued that these normative emotive pulls were a crucial ingredient in
the Court’s unanimous acceptance of queer love in Navtej. The advocacy of parents displaying kin approval of their children’s queerness and using the framework of marriage to gain legitimacy before the law were frequent narratives anticipating the decriminalisation of s377 in Navtej (Fig. 2) (Boyce and Dasgupta 2017). This rhetoric reified cultural archetypes by making the projected imaginary of outing, self-identifying queer coupledom as the only queer future, stifling non-normative relational modes (Boyce and Dasgupta 2017).

Currently, the first petition concerns a pair of couples: whereas the first were denied a registration certificate by the Indian consulate in the United States under the Foreign Marriage Act 1892, the second were prohibited entry into the sub-district magistrate’s building in pursuit of a confirmation of their union under the Special Marriage Act 1954. On 30 November 2021, the High Court sought the Centre for Public Interest Litigation’s reply on two further petitions, one of a married lesbian couple and the other of an Indian trans woman in a civil union with a South African partner, both seeking legal recognition. The final hearing of the matter is pending, and in the interim the Court has urged in the Centre to construe personal laws in a gender-neutral manner (Tripathi 2020). The second petition is a Public Interest Litigation (PIL), which seeks marriage rights for the queer community under the Hindu Marriage Act 1955 (Mandhani 2020).

It has been argued that the pleas are collapsible for their aspirational pursuit of assimilative heteronormativity seeking the caste endogamy of marriage (Sahai and Kang 2020). The desire for marriage is distinguished from the Court’s affirmation of the right to autonomous partnership, recognised by the Supreme Court in 2017 as a choice within the exclusive domain of the individual, “whether within or outside marriage”. Further, in 2019, the marriage between two petitioners under the Hindu Marriage Act 1955, among whom was a trans woman, was pronounced constitutionally valid. The conception of a “bride” under s5 of the Act was construed to include trans women and intersex persons identifying as women. Whereas explorations of civil unions, domestic partnerships, reciprocal/designated beneficiary are divergent explorations in queer coupledom (Goldfarb 2020), the claim for marriage only solidifies elite privilege and hierarchises pre-existing alliances as inferior forms of being, thus making the neoliberal demand for privatised, nuclear families, in a compliant rather than defiant mode.

The mixed jurisprudence considered above has led to the contemporary moment, i.e., the plea for marriage rights by an elite queer coterie. Hence, the redemption of constitutional pronouncements touching upon queer decisional privacy and autonomy is subsumed by the conversation around marriage. Notably, the threats of control, persecution, and detention to queer kinship by the Act and Bill find little substantive protection or advocacy in the judgments or mainstream narrative.

43 For updates on the same-sex marriage petition, See: https://www.baranbench.com/topic/same-sex-marriage
44 Shafin Jahan v. Ashokan K.M. and Others (2018) 16 SCC 368.
45 Arun Kumar and another v. The Inspector General of Registration and others 2019 3 CTC 576.
In this part, I will argue that the state’s invasive, punitive, and suspicious gaze towards queer kinships, and limited percolation of constitutional jurisprudence for queer communitarian survival, has rendered the law a receding ally. By placing s377 as the locus and epicentre of queer social movements, the “peri-urban, non-cosmopolitan queer subject is located outside of the Indian project of queer modernities” (Boyce and Dasgupta 2017). The rights framework, as argued by Ratna Kapur, is heavily coded with the question of access, and entitlements are only bestowed if certain gender, sexual, and cultural norms are adopted (Kapur 2018). I will illustrate that the reverence of legal channels to seek justice and welfare is diminishing due to the wide wedge between the quotidian queer experience and the state’s duty of care. The interplay of queer care, affect, desire, and socio-economic freedoms, then, transmutes as communitarian ideations of endurance, survival, and resistance against the apathy and cruelty of the state.

The breadth of the ‘human rights’ discourse fails to highlight the historical micro-narratives of queer existence and freedoms in “non-liberal epistemologies” (Kapur 2018, 180). Instead of reading queer life in India as sweeping accounts of cultural, medicolegal ‘progress’, in this part, I wish to highlight local and biographical efforts of camaraderie within the community, termed “alternative registers of freedom” by Kapur (Kapur 2018, 216). These moments might appear to be fragmented social practices, difficult to synthesise into one apparent milestone; however, by refraining from the violence of homogeneous cohesion, I wish to foreground these creative moments as an archive of queer interpersonal life. In a moment where the current political regime in India is an oppressive, colonising, surveillant power, I endeavour to celebrate, recall, and clutch onto redemptive “hidden transcripts” (Scott 1990, 27) of queer life. This is not to suggest that queer entities are wary of engaging with the state entirely, but to shift the gaze to the healing of queer kinship with the challenge of their limited legibility granted by the neoliberal state.
In this part, I evaluate, first, the online space as a platform for the queer community’s needs by fundamentally changing their solidarities through online support groups and crowdfunding. I will discuss how the projection of a vulnerable queer subject towards a predominant cisgender audience receives financial and affective sustenance alongside a simultaneous susceptibility to violence and queerphobia. The disclosure and visibility of personal details are essential for queer livelihood and survival, while being the very reasons behind violence. Second, I evaluate creative projects and art installations, engaging with and responding to the complexity of the queer home and of queer kinships, as attempts to heal queer abandonment. In the economy of stories of queer lives, these micro-narratives are not fungible or universally representative, but bear restorative potential from legal critique, exploits of the colonial state, and liberal narratives of queer courtroom success.

COVID-19 and the Rise of Online Queer Kinship

Online spaces provide an opportunity for the queer community to share vulnerable, personal stories, especially in the exacerbated isolation post-COVID-19. Crowdfunding for financial survival and gender-affirming procedures in the queer community have been a surprising space for affirming self-expression, despite limited monetary support (Fritz and Gonzales 2018). Due to pressing concerns surrounding privacy, abuse, and hostility in cyberspace, courage and resilience are crucial while embarking upon a decision to impart intimate information (Fritz and Gonzales 2018). The intention and purpose behind such initiatives, however, negotiate parameters of moral worthiness and normative pride narratives which are arguably limitations in the exercise (Fulton 2020). With a paucity of anti-discrimination laws, and rampant poverty among queer persons, crowdfunding has grown as a crucial source of finances among members of the community.

The research and advocacy organisation Centre for Law and Policy Research (CLPR) highlighted that the pandemic created bureaucratic speed bumps for the trans community in accessing ration kits and LPG cylinders under governmental schemes. LPG cylinders are currently distributed only to cis women of the household and were denied to trans persons, who were categorised as “ambiguous” by state authorities (Sahai et al. 2020). Ration is unavailable to those who do not possess ration cards, and the public distribution facility currently does not consider the food security concerns of queer individuals and migrants, who should ideally be eligible with any government identity cards (Sahai et al. 2020). Further, in-person relief work was undertaken predominantly in metropolitan cities. Against this backdrop, NGOs and members of civil society were quick to establish an online relief network. The transferral of monetary funds has been taking place through social media accounts of queer activists and organisations, who share the bank details of afflicted members online. Funds are sought for gender affirmation surgeries, hormone supplements, ration kits, education fees, and rent payments.

In India, several online resource repositories have emerged, such as a list of queer-affirmative mental health practitioners providing affordable counselling by Pink List India (Pink List India 2020), but also forums for donors to contribute,
e.g. towards ration kits for sex workers suffering from a staggering dearth of clients, which was started by the National Sex Workers Trade Union (NNSW India 2020), the NGO Sangama’s endeavour to establish homes for displaced sex workers and trans persons in Karnataka (Milaap 2020), and the NGO Sampoorna’s Rudra Fund specifically for trans men and trans masculine and intersex persons (Sampoorna 2020). These support systems operate without the limits of institutionalisation, and journalists have observed that queer people have been at the forefront of the pandemic in relief work, asserting the longevity of the community in the face of the crisis (Bakshi 2020). However, illiteracy in English, disabilities, distance from an ATM, and interference by members of one’s natal home create issues in accessing these funds. Further, the mere possession of a smartphone and proficiency with operating on the internet are prerequisites for seeking such funds (Sahai et al 2020, 8). Trans women engaging in sex work have tried to shift their clientele online; however, activist and respondent to the study, Grace Banu, shared that the failure of payment by some clients was a recurring financial hindrance (Sahai et al 2020, 9).

The flipside of gaining widespread online visibility and financial support is the vulnerability trans persons expose themselves to. In the case of Sajana Shaji, a trans woman who sells biryani for a living in Kochi, Kerala, she expanded her business by employing four trans women and two cis women who had lost their jobs in the aftermath of the pandemic. Local vendors began to harass her and spread misinformation about the quality of her food, which led to a massive dip in her sales. She sought financial support from her Instagram account after the police refused to help her. Shaji managed to gain the attention of prominent celebrities and politicians in the region and raised several lakhs from sympathetic contributors. On 20 October 2020, however, she was admitted to a hospital after a suicide attempt following cyber attacks accusing her of seeking funds under a false premise (TNM Staff 2020). In the second case, a trans woman and president of the Coimbatore District Transgender Association, Sangeetha, established the Covai Trans Kitchen, a 32-seater restaurant in Coimbatore, Tamil Nadu. She raised online funds and set up the diner a few months into the pandemic to support her employees, who are also trans women, who had lost their sources of livelihood after the pandemic. Sangeetha’s murdered corpse was discovered decomposing in a drum full of water in her home on 21 October 2020, and police arrested her employee who murdered Sangeetha for rejecting his persistent sexual advances (Thirumurthy 2020).

The common thread between the violence targeted towards both Sangeetha and Sajana is that although their initiatives sought to establish a self-sustaining livelihood for local trans women in catering food, away from the precarity of begging and sex work in the pandemic, they faced acute transphobia and jealousy when sharing their stories online. The indispensability of touch and visibility for the survival of trans persons through begging, sex work, or badhai implies that the distance and social privilege of online worlds are not always available to trans persons (Banerji 2020). Commenting on the distance and phobias attached to the trans community in Kashmir, where internet access is a rarity, Waqar Amin stated that the social and physical distances between cis society and the community only widened after the pandemic (Azmat 2020).
Joshua Muwiya noted the rise in online queer support groups after the pandemic. Good as You (GAY), one of the longest-operating online support groups for the queer community, observed that the recent attendees of online meetings, interacting virtually for the first time ever, preferred to socialise, converse, and offer cathartic affirmations as opposed to merely seeking transactional hook-ups. The pandemic has made geographical locations and distance into flexible factors for seeking support, thus stabilising GAY’s participants who are routinely encouraged to attend sessions. The meetings invite multilingual dialogue, in which language barriers are broken down by volunteers contemporaneously translating interventions through the messaging window. Gee Imaan Semmalar noted the increase in WhatsApp groups of trans men to share resources, arrange crowdfunding, and connect with each other through the ‘voice message’ feature (Muwiya 2020). However, the interactions within queer spaces are not exempt from misogynist, trans-exclusionary, casteist, ableist, homo-nationalist, and cisgender-heteronormative negotiations, rendering the nature of support conditional (Nadkarni and Swarnim 2021).

The pandemic has compelled queer persons to move back into their natal homes, which are sites of oppression, harassment, and disapproval. Interestingly, Muwiya’s research has shown that the isolating effect of those living alone has encouraged cohabitation with other queer kinfolk—the support group hence being a facilitator in finding housemates. As mentioned above, the Facebook page GHAR has been a path-breaking online forum for seeking housemates for 19,000 members of the queer community since 1998 (Ladha 2020; GHAR Facebook 2022). The page offers a bridge of companionship based on queer allyship to facilitate communal residence, due to the harassment faced by queer persons seeking housing, among realtors, brokers, landlords, and neighbours. The negotiations of power and territory do not dissipate, but the creation of queer households offer the scope of collectivisation against coercion, eviction, surveillance, rescue, and rehabilitation of queer networks.

Creativity as Ethnographies of Queer Kinship and Domesticity

Hinchy emphasises the importance of the domestic space as a site where Hijras contested the colonial regulation of their gender and cultural practices, such as feminine dressing and performances (Hinchy 2019, 219). Creative projects around queer homeliness in the recent past have embraced the complex effect of forming kinships through vulnerable and radically honest artistic expression. Cook discusses the myths and narratives of homeliness to be a combination of the stories of belongingness in cultures, but also the ever-evolving potentiality of critical engagements (Cook 2014). José Muñoz’s evocation of “utopian longing” furthers queer politics and imaginaries when historical struggles of recognition emerge out of aesthetic actions of the present, and the affective imagination of a better life (Muñoz 2009, 120).

The queer home as a physical space of both violence and healing was illustrated by the visual artist Aryakrishnan R’s work ‘Sweet Maria Monument’ at the Kochi Muziris Biennale in December 2018. The murder of trans-activist Sweet Maria inside her own home in Kolam, Kerala in 2012 was the subject of the work,
which took the form of the late activist’s bed, near an oversized draped red skirt, resembling her attire (Platform Magazine 2020, Fig. 3). This recreation of Maria’s compact home contained several books and literature on queer theory, making the space an abode for viewers of the installation to sit, rest, ideate, and conglomerate (Fig. 4). R’s work is a memoir of the flexible boundaries of Maria’s home where lovers, friends, activists, and academics alike gathered. The very architecture of queer homes is premised on visibility and openness, as “antidotes to a closet” (Cook 2014, 230). The permeable boundaries of her abode were a result of her labour and trust, which exposed her to harm. This reiterates the queer home as a site of surveillance and precarity by insidious and violent forces threatened by articulations of the freedom, fluidity, and permeability of the queer home (Fig. 5, 6).

Another project, #mummykisaree by Vikramaditya Sahai sources and redistributes saris from contributing mothers to queer persons. The essence of this project is to fill the gaps between trans children and their biological mothers, arising from strained relationships, rejection, contempt, and judgment (Ladha 2020). The sari embodies a matrilineal inheritance or streedhan, i.e., a woman’s estate among cisgender women, while conversely, queer persons face mockery, harassment, and punishment on its adornment on their bodies. By establishing a subversive kinship between empathetic mothers and queer recipients, the violence of the natal home is bridged by fulfilling an intergenerational succession of material possessions outside the imagination of law and the patriarchy. The garment becomes a covering for the aggrieved, abandoned queer body, offered an opportunity to recalibrate the trauma of emotional and material dispossession.

Finally, two public art collectives engage trans persons in challenging the occupational moulds of begging and sex work attached to the community. The Aravani Art Project—a street art project by trans women working through commissions and collaborations at public spaces and corporate venues—politically reclaims the street inscribed as a site of trans violence, visibility, and livelihood to project nuanced commentaries on trans experiences (Aravani Art Project 2017). For instance, Chapter 009, titled Drishtikon Badla or ‘change your perspective’, is a mural at the redlight area of Budhwar Pet in Pune, Maharashtra. The sex workers tabled an objection to the sudden appearance of the mural, which pushed the artists to change their approach to first paint in their domestic spaces to gain the trust of residents before completing the mural. In the intimate interaction between these groups of sexual subalterns lies a collaboration, once the fear of interventionist or reformative intrusions are alleviated. The second, Truth Dream, was a photo exhibition conceptualised by the Payana and Maraa Collective featuring a group of 12 GNC friends above the age of 50, embodying their fantasy as cabaret or classical performers, goddesses, actresses, or role models. The collective ideation of these trans, kothi friends, ideating and co-curating their imagined fantasy, offers a moment for humour, confidence, and performance in their joyful creation.

Kothi are a heterogenous group of gender non-conforming persons displaying effeminate roles. Although some hijras may be categorised as kothi, not all kothis identify as hijra or trans and they do not live in separate communities.
These counter-narratives offered by online support groups and crowdfunding ventures, as well as creative collaborative projects, appear to carry queer kinship and domesticity in the current moment. Although these spaces are not without challenges, i.e., precarity in public visibility, exhaustion, and labour, the self-sustenance without state intervention appears to be rewarding.
The multitude of queer kinships have been systematically endangered by an overlapping trend of the Transgender Persons (Protection of Rights) Act 2019, and the Draft Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021. The colonial agenda of the ‘state’s family’ criminalises and polices iterations of queer domesticity and relationalities, with the corrective resolve to rescue and rehabilitate them into the violence of biological kin networks or state institutions. The systemic erasure of decisional autonomy, privacy, and self-determination, upheld by celebrated constitutional pronouncements, fundamentally contradicts the state’s campaign of the heteronormative and conjugal home. The liberal epistemology of the court has enabled the bourgeois queer co-option of the contemporary moment, whose petition for queer marriage seeks the law’s normalisation of queer coupledom. The pursuit of assimilative queer recognition argues on a heteropatriarchal mode that renders queer relationalities of dependency illegible. It is in this precarity of the queer community that the disaggregated non-liberal, non-judicial iterations of queer resilience, and modes of dependency, are illustrated. Ethnographic enquiries in the online space following the pandemic, through virtual support groups and crowdfunding programmes, offer sustenance and affirmation, despite the risks of visibility, privacy, and cyber violence. Artistic expression establishing the insurrectionary potential of the queer home, queer material inheritance, and queer creative collaboration seeks to repair the abandonment, hurt, grief, and systemic oppression of the Indian state.

Fig. 5 Artists paint the interior walls of Budhwar Pet, Pune, 2017. Photo Courtesy—The Aravani Art Project 2017

Conclusion
Acknowledgements

I extend my gratitude to my supervisor, Dr. Vanja Hamzić, for encouraging me to find the confidence to submit this dissertation during my LLM at SOAS. Dr. Hamzic’s empathetic scholarship weaves together subjective selfhoods, which opened a window to me of an archive of love that I hope to contribute to. I am thankful for my cocoon of people, near and far, who fiercely hold me together during the many upheavals of the pandemic—reinforcing my faith in the love and healing of communities. I am grateful to the reviewers at Feminist Legal Studies for their incisive feedback, which was crucial in finessing my piece. Finally, I extend my admiration and adoration to the queer community in the Indian subcontinent, who continue to live a life of resistance, celebration, and courage despite the torrid times of today. All mistakes and errors remain my own.

References

Action India, Jagori and Nazariya. 2019. Rights, Justice and Dignity An action-research study on women survivors of violence and shelter homes in Delhi. Delhi: Jagori
Arasu, Ponni & Thangarajah, Priya. 2012. Queer women and habeas corpus in India: The Women Habeas Corpus Love Binds blinds the law. Indian Journal of Gender Studies. https://doi.org/10.1177/09712151201900304
Baars, Grietje. 2019. Queer Cases Unmake Gendered Law, or, Fucking Law’s Gendering Function. *Australian Feminist Law Journal* 45: 15–62.

Banerjee, Ajita. 2019. Beyond Decriminalisation: Understanding Queer Citizenship through Access to Public Spaces in India. *National University of Juridical Sciences* 12: 1.

Baxi, Upendra. 1985. Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. *Third World Legal Studies* 4: 107.

Bhatia, Gautam. 2019. *The Transformative Constitution—A Radical Biography in Nine Acts*. New York: HarperCollins.

Bhuwania, Anuj. 2014. Courting the People: The rise of public interest litigation in post-emergency India. *Comparative Studies of South Asia, Africa and the Middle East* 34 (2): 314–335.

Boyce, Paul, and Rohit K. Dasgupta. 2017. Utopias or Elsewhere: Queer Modernities in Small Town West Bengal. In *Urban Utopias: Excess and Expulsion in Neoliberal South Asia*, ed. Tereza Kuldova, Mathew A. Varghese, 209–226. Cham, Switzerland: Palgrave Macmillan.

Butler, Judith. 2002. Is Kinship Always Heterosexual? In *Left Legalism/Left Critique*, ed. Wendy Janet Brown and J. Halley. Durham: Duke University Press.

Centre for Health Law, Ethics and Technology (CHLET). 2019. Recent Legal Reforms on Gender Recognition: A Global Review’ Kartik, Kavya ed. 1–73. Hariyana, India: CHLET Jindal Global Law School.

Cook, Matt. 2014. *Queer Domesticities—Homosexuality and Home Life in Twentieth Century London*. London: Palgrave MacMillan.

Dave, Naisargi. 2012. *Queer Activism in India: A Story in the Anthropology of Ethics*. Durham: Duke University Press.

Fritz, Niki, and Amy Gonzales. 2018. Privacy at the Marginsl not the Normal Trans Story: negotiating trans narratives while crowdfunding at the margins. *International Journal of Communication* 12: 1189–1208.

Fraser, Nancy. 2013. *Fortunes of Feminism—From State-Managed Capitalism to Neoliberal Crisis*. Brooklyn: Verso.

Fraser, Nancy 1995. From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age. *New Left Review* 1(212): 68–149.

Fulton, Hayden J. 2020. GoFundTransitions: Narratives of Transnormativity and the Limits of Crowdfunding Livable Futures. Graduate Theses and Dissertations.

Kapur, Ratna. 2007. India. In *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, ed. Global Alliance Against Traffic in Women (GAATW) 114–141. Bangkok: GAATW.

Kapur, Ratna. 2018. Precarious Desires and the Pursuit of Rights’. In *Gender, Alterity and Human Rights: Freedom in a Fishbowl*, ed. Ratna Kapur, 55–84. Chelthenham: Edward Elgar.

Kotiswaran, Prabha. 2021. The Sexual Politics of Anti-Trafficking Discourse. *Feminist Legal Studies* 29: 43–65.

Menon, Nivedita. 2009. South Asian Feminisms: Negotiating New Terrains. *Feminist Review* 91: 94–112.

Muñoz, Jose. E. 2019. *Cruising Utopia—The Then and There of Queer Futurity*, (10th Anniversary Edition). New York: New York University Press

Nadkarni, Samira. Swarnim. 2021. Queer Perspectives and COVID-19: Linking Queer Pasts to Queer Futures’ *Economic and Political Weekly* 56: 11

Nigam, Sanjay. 1990. Disciplining and Policing the “Criminals by Birth”, Part 1: The Making of a Colonial Stereotype—The Criminal Tribes and Castes of North India. *The Indian Economic and Social History Review* 27: 131–164.

PUL-C-K. 2003. A study of kothi and hijra sex workers in Bangalore, India. pp 1–116.

Rao, Rahul. 2020. *Out of Time: The Queer Politics of Postcoloniality*. Oxford: Oxford University Press.
Robson, Ruthann. 2009. Compulsory Matrimony. In Feminist and Queer Legal Theory Intimate Encounters, Uncomfortable Conversations, ed. Martha Albertson Fineman, Jack E. Jackson, Adam P. Romero, 313–328. London: Routledge.

Sahai, Vikramaditya, Agrawal, Aj and Shaikh, Almas. 2020. Exclusion Amplified: COVID-19 and the Transgender Community. Bangalore: Centre for Law and Policy Research.

Scott, James C. 1990. Domination and the Arts of Resistance. New Haven: Yale University Press.

Shah, Sviati P. 2014. Street Corner Secrets—Sex, Work, and Migration in the City of Mumbai. Durham: Duke University Press.

Sheikh, Danish. 2021. Love and Reparation—A Theatrical Response to the Section 377 Litigation in India. London and Calcutta: Seagull Books.

Sheikh, Danish. 2019. Privacy in Public Spaces—The Transformative Potential of Navtej Johar v Union of India. In Criminal Legalities in the Global South Cultural Dynamics, Political Tensions, and Institutional Practices, ed. Pablo and George Ciccioni and G. Radics, 53–68. London: Routledge.

Sheikh, Danish. 2017. Queer Rights and the Puttaswamy Judgment—Privacy After Puttaswamy. 52 Economic and Political Weekly 51.

Shukla, Surabhi. 2020. The L World: Legal Discourses on Queer Women. National University of Juridical Sciences Law Review 13: 1.

Tellis, Ashley. 2012. Disrupting the Dinner Table: Re-thinking the ‘Queer Moment’ in Contemporary India, Jindal Global Law Review 4 (1): 142–156.

Upadhyay, Nishant. 2020. Hindu Nation and its Queers: Caste, Islamophobia, and De/coloniality in India. Interventions 22 (4): 464–480.

Vanita, Ruth, and Saleem Kidwai, eds. 2001. Same-Sex Love in India: Readings from Literature and History. Basingstoke: Palgrave.

Agarwal, Kabir. 2020. Bharat Bandh Against Farm Bills’ The Wire, 25 September 2020. https://thewire.in/agriculture/explainer-agriculture-ordinances-farm-bills-farmers-protest-narendra-modi. Accessed 30 September 2020.

Agents of Ishq. 2019. Remembering the Life of Sweet Maria Through Art. http://agentsofishq.com/remem-bering-the-life-of-sweet-maria-through-art/. Accessed 20 October 2020.

Anasuya, Shreya I. 2016. Over Two Years After Landmark Judgment, Transgender People Are Still Struggling’ (The Wire, 15 May 2016). https://thewire.in/gender/over-two-years-after-landmark-judgment-transgender-people-are-still-struggling. Accessed 20 June 2020.

Aravani Art Project. 2022. https://aravaniartproject.com/budhwar-peth_09. Accessed 20 January 2022.

Azmat, Hirra. 2020. Kashmiri Trans Community faces Abject Poverty under Double Lockdown’ (The Swaddle, 12 June). https://theswaddle.com/kashmiri-trans-community-faces-abject-poverty-under-double-lockdown/. Accessed 20 October 2020.

Bakshi, Asmita. 2020. (Livemint, 6 September 2020). How the LGBTQ+ community fuelled COVID-19 relief for all’. https://www.livemint.com/mint-lounge/features/how-the-lgbtq-community-fuelled-covid-19-relief-for-all-11599273560390.html. Accessed 20 September 2020.

Banerji, Annie. 2020. (Scroll, 26 March) As India enters 21-day lockdown, the transgender community will be pushed further to the margins .https://scroll.in/article/957204/as-india-enters-21-day-lockdown-the-transgender-community-will-be-pushed-further-to-the-margins. Accessed 20 October 2020.

Banerjee, Ajita. 2019. (Scroll 26 November 2019b). https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights. Accessed 30 September 2020.

GHR Facebook. 2020. https://tinyurl.com/yyyp2p5pl. Accessed 20 September 2020.

Guruswamy, Menaka., and Arundhati. Katju. 2020. Full Address and Q&A | Oxford Union. (YouTube, 25 April 2020). https://www.youtube.com/watch?v=Lp6H4YYN-k. Accessed 20 July 2020.

Human Rights Watch. 2020. India: End Biased in Prosecuting Delhi Violence. https://www.hrw.org/news/2020/06/15/india-end-bias-prosecuting-delhi-violence. Accessed 20 September 2020.

Jaffrelot, Christophe. Modi’s India - Hindu Nationalism and the Rise of Ethnic Democracy, Princeton University Press, 2019.

Jain, Dipika. 2020. Law-Making by and for the People: A Case for Pre-legislative Processes in India. Statue Law Review 10 (10), 1–18

Kang, Akhil., and Vikramaditya. Sahai. 2020. Guruswamy and Katju, Your Rainbow doesn’t hide your Casteism. (Akademi Mag, 24 September 2020). https://www.akademimag.com/guruswamy-katju-rainbow-casteism. Accessed 30 September 2020.

Kapur, Ratna. 2020. Triple Talaq Verdict: Wherein Lies the Much-Hailed Victory?. The Wire (28 August 2017. https://thewire.in/gender/triple-talaq-verdict-wherein-lies-the-much-hailed-victory. Accessed 4 May 2020.
Ladha, Shubham. 2020. Making sure everyone gets a Homecoming. (Mint, 15 February 2020). https://www.livemint.com/mint-lounge/features/making-sure-everyone-gets-a-homecoming-11581670433874.html. Accessed 20 September 2020.

Mandhani, Apoorva. 2020. Same-sex Marriage not a part of our culture’, says top govt lawyer, opposes plea in Delhi HC (The Print, 14 September 2020). https://theprint.in/judiciary/same-sex-marriage-not-a-part-of-our-culture-says-central-govt-opposes-plea-in-delhi-hc/502232/. Accessed 20 September 2020.

Mara Collective Instagram Page https://www.instagram.com/maraacollective/?hl=en. Accessed 22 January 2022.

Milaap. Help Sex Workers and Transpersons fight COVID-19. https://milaap.org/fundraisers/support-sangama. Accessed 20 October 2020.

Muwiya, Joseph. 2020. How COVID-19 is changing Queer Spaces: Opening Doors to Some, while Shutting out the more Vulnerable (Firstpost 8 August 2020). https://www.firstpost.com/india/how-covid-19-is-changing-queer-spaces-opening-doors-to-some-while-shutting-out-the-more-vulnerable-8672711.html. Accessed 13 August 2020.

Pinklist India, COVID-19 Queer Relief: Queer-Inclusive Mental Health. https://www.pinklistindia.com/mentalhealth. Accessed 20 October 2020.

Platform Magazine, Sweet Maria Monument. 2020. https://www.platform-mag.com/art/sweet-maria-monument.html. Accessed 20 October 2020.

Rahman, Zamira. 2020. India Builds Detention Camps for up to 1.9m People ‘Stripped of Citizenship’ in Assam, (The Independent, 10 September 2019). https://www.independent.co.uk/news/world/asia/assam-india-detention-camps-bangladesh-nrc-list-a9099251.html. Accessed 20 July 2020.

Ray, Kanmani. 2020. (Medium, 14 July). https://medium.com/@kanmaniwrites/look-up-at-us-not-just-down-7f2bd9b546be. Accessed 14 October 2020.

Roy, Esha. 2022. Human Trafficking Survivors Identify Gaps in Draft Bill, Seek Community-Based Rehab’ (The Indian Express, 3 December 2021). https://indianexpress.com/article/india/human-trafficking-survivors-gaps-draft-bill-community-based-rehab-7652974/. Accessed 14 January 2022.

Sampoorna. Sampoorna Launches the Rudra Fund. https://sampoornaindiablog.wordpress.com/2020/07/14/848/. Accessed 20 October 2020.

Sangram. 2018. Raided. How Anti-Trafficking Strategies Increase Sex Worker’s Vulnerability to Exploitative Practices. https://www.sangram.org/resources/RAIDED-E-Book.pdf. Accessed 12 October 2020.

Thirumurthy, Priyanka. 2020. 23-year-old Employee of Trans Kitchen arrested for Sangeetha’s Murder. The News Minute (23 October 2020). https://www.thenewsmint.com/article/23-year-old-employee-trans-kitchen-arrested-sangeethas-murder-135987. Accessed 25 October 2020.

The News Minute. 2020. Kerala Trans woman Sajana, who sold biryani, attempts suicide after cyber attack. https://www.thenewsmint.com/article/kerala-trans-woman-sajana-who-sold-biryani-attempts-suicide-after-cyber-attack-135734. Accessed 20 October 2020.

NNSWIndia. 2020. #FightCOVID19 Sex workers who depend on sex work for their daily living have lost their source of livelihood with no clients, no income hence no food. We are preparing a food kit that shall last for a month for each sex worker. Your minimum contribution can save someone. Twitter 1 April. https://twitter.com/NNSWIndia/status/1245304640532340848. Accessed 5 August 2022.

Tandon, Tripti. 2018. We don’t need the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. (Lawyers Collective, 2018). https://www.lawyerscollective.org/wp-content/uploads/2017/07/Critique-of-the-Anti-Trafficking-Bill-2018.pdf. Accessed 5 May 2020.

Tripathi, Karan. 2020. Marriage Equality for Same-Sex Couples: The Delhi HC Says This is Not an Adversarial Petition, (Live Law; 14 October 2020). https://www.livelaw.in/news-updates/marriage-equality-for-same-sex-couples-the-delhi-hc-says-this-is-not-an-adversarial-petition-164444?infinitescroll=1. Accessed 15 October 2020.

The Wire. 2020. Rajya Sabha Passes Controversial Transgender Rights Bill’. https://thewire.in/india/raja-sabha-passes-criticised-transgender-rights-bill. Accessed 2 May 2020.

Vidhi Centre for Legal Policy. 2019. Queering the Law: Making Indian Laws LGBT+ Inclusive – Family. https://vidhicipolicy.in/wp-content/uploads/2020/06/Manual_queer_family-compressed.pdf. Accessed 20 September 2020.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.