



**CASE COMMENT: LGBTQIA+ CONSORTIUM V. UNION OF INDIA, (2025) 7  
SCC 118: CONSTITUTIONAL INCLUSION AND PARTICIPATORY  
DEMOCRACY IN THE UNIFORM CIVIL CODE DEBATE**

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**ABSTRACT**

*In LGBTQIA+ Consortium v Union of India (2025) 7 SCC 118<sup>1</sup>, the Supreme Court of India scrutinised the constitutional validity of excluding transgender and queer individuals from the Law Commission's consultative process on the Uniform Civil Code (UCC). The petitioners—a collective of LGBTQIA+ organisations—argued that this exclusion violated Articles 14 (equality), 15 (non-discrimination), and 21 (dignity and autonomy), especially when interpreted in light of the Court's prior rulings in NALSA v Union of India<sup>2</sup> and Navtej Singh Johar v Union of India.<sup>3</sup> Adopting a transformative constitutionalist framework, the Court held that participatory democracy is a constitutional obligation, not a discretionary political choice, particularly when law reforms directly affect marginalised identities. It recognised that procedural fairness and substantive inclusivity are prerequisites for the legitimacy of consultative exercises under Article 44. The judgment mandated the redesign of stakeholder frameworks to ensure the active inclusion of LGBTQIA+ voices in civil law reform, thereby reinforcing the idea that all individuals must have the right to influence laws that govern their personal lives. This case comment critically assesses the judgment from doctrinal, structural, and policy standpoints, situating it within comparative constitutional traditions—notably South Africa's emphasis on participatory rights and the EU's commitment to inclusive lawmaking. While the decision strengthens the constitutional promise of equal citizenship, it also exposes lingering gaps in enforcement mechanisms. Ultimately, the ruling signals a progressive shift in Indian constitutional law, embedding intersectionality and participatory governance at the heart of legislative reform.*

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<sup>1</sup> LGBTQIA+ Consortium v Union of India (2025) 7 SCC 118

<sup>2</sup> National Legal Services Authority v Union of India (2014) 5 SCC 438

<sup>3</sup> Navtej Singh Johar v Union of India (2018) 10 SCC 1 [122]

**Keywords:** LGTBQIA Rights, Structural Reforms, Civil Rights, Comparative Constitutional Law.

## FACTS AND BACKGROUND

In 2023, the Law Commission of India initiated a public consultation for the proposed Uniform Civil Code (UCC), aiming to reform personal laws across religious and community lines under Article 44 of the Constitution.<sup>4</sup> The Commission invited inputs from various stakeholders; however, notably absent from this framework were transgender, queer, and non-binary individuals, as well as representative LGBTQIA+ organisations. Their systemic exclusion from a process directly affecting their civil rights triggered significant constitutional concerns. In response, a coalition of trans and queer rights groups collectively termed the LGBTQIA+ Consortium filed a petition under Article 32 of the Constitution, alleging that their exclusion amounted to a violation of the following Rights.<sup>5</sup>

**Article 14:** The right to equality and equal protection of laws,

**Article 15:** The right against discrimination based on sex and gender identity,

**Article 21:** It deals with the Right to dignity, autonomy, and personal liberty.

They contended that the consultative process lacked procedural fairness, transparency, and inclusion, undermining the core values of participatory democracy. The petitioners emphasised that the exclusion contradicted binding precedent laid down in landmark judgments such as *NALSA v Union of India* (2014) and *Navtej Singh Johar v Union of India* (2018), which affirmed the constitutional rights of queer persons. The Union of India defended the process as still being “open to public comment,” stating that submissions could be made via email. However, it failed to guarantee institutional representation of LGBTQIA+ communities in formal decision-making channels.<sup>6</sup> Recognising the constitutional gravity of the exclusion, the Supreme Court agreed to examine whether marginalised groups have an enforceable right to participate in lawmaking processes that

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<sup>4</sup> Law Commission of India, *279th Report on Uniform Civil Code* (2023) <https://lawcommissionofindia.nic.in/reports> accessed 10 June 2025

<sup>5</sup> *LGBTQIA+ Consortium v Union of India*

<sup>6</sup> *UCC excludes LGBTQ+ community, not inclusive* Times of India (Dehradun, 7 February 2024) <https://timesofindia.indiatimes.com/city/dehradun/no-mention-of-lgbtq-community/articleshow/107472644.cms> accessed 10 June 2025

impact their lives, particularly when the outcome could redefine their status under civil law.<sup>7</sup>

## ISSUES RAISED

The Supreme Court framed the following core constitutional issues for adjudication:

1. Whether the exclusion of transgender and queer persons from the consultative framework on the Uniform Civil Code violates Articles 14, 15, and 21 of the Constitution of India.
2. This issue interrogates whether procedural exclusion amounts to substantive discrimination and undermines the guarantee of equality, non-discrimination, and dignity.
3. Whether participatory democracy and inclusive consultation are constitutionally mandated in legislative or quasi-legislative processes that directly affect marginalised communities.
4. This issue explores the enforceability of participatory rights under constitutional morality and the democratic structure, particularly regarding policy-making under Article 44.
5. Whether the State's consultation process, by failing to adopt an intersectional and inclusive framework, violates the doctrine of procedural fairness<sup>8</sup> embedded within Article 21.
6. The issue addresses whether "due process" in lawmaking extends to representation and voice, especially for historically marginalised identities.

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<sup>7</sup> *LGBTQIA+ Consortium v Union of India* (2025) 7 SCC 118

*NALSA v. Union of India*, (2014) 5 SCC 438

<sup>8</sup> Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws: Procedural Fairness—the Duty and Its Content* (ALRC Report No 129, January 2016) ch 14 ('Procedural Fairness: The Duty and Its Content') <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/14-procedural-fairness-2/procedural-fairness-the-duty-and-its-content/> accessed 10 June 2025

7. Whether the constitutional principles laid down in *NALSA v Union of India* and *Navtej Singh Johar v Union of India* impose a positive obligation on the State to ensure structural inclusion of LGBTQIA+ individuals in legal reform processes.
8. This raises the question of whether precedents on gender identity and sexual orientation translate into procedural rights in governance.

## ARGUMENTS BY PARTIES

### **Petitioners (LGBTQIA+ Consortium) –**

The petitioners, representing a coalition of transgender, queer, and non-binary individuals, advanced the following key arguments:

**Violation of Fundamental Rights:** The exclusion of LGBTQIA+ individuals from the UCC consultation process amounted to a direct infringement of Articles 14, 15, and 21 of the Constitution. The process was neither equal nor inclusive, particularly when it dealt with civil rights issues such as marriage, inheritance, and adoption, which directly affect the queer community.

**Denial of Participatory Democracy:** The petitioners argued that the exclusion undermined the constitutional value of participatory democracy, a core component of the basic structure doctrine. Legal reforms impacting personal liberty and identity must necessarily include those most affected, failing which the process becomes constitutionally defective.

**Violation of Procedural Fairness:** The petitioners invoked the principle of procedural due process under Article 21, contending that public consultations must be inclusive, representative, and transparent, especially when concerning historically marginalised groups.

**Precedential Binding Force:** Relying on *NALSA v Union of India* (2014) and *Navtej Singh Johar v Union of India* (2018), the petitioners contended that the State had a positive constitutional obligation to ensure the inclusion of queer persons in all matters affecting their rights, including policymaking and law reform.

**Intersectionality in Lawmaking:** The petitioners emphasised that intersectionality must guide the formulation of laws that cut across gender, caste, class, religion, and sexuality.

Exclusion from the UCC process ignored the multi-dimensional discrimination faced by LGBTQIA+ communities.<sup>9</sup>

### **Respondent (Union of India) –**

The Union of India, through the Law Commission and the Ministry of Law and Justice, made the following counter-arguments:

**Consultation Was Open to all:** The government argued that the consultation process was open to any individuals who wished to provide their input, including queer and trans persons. The Law Commission had invited emails and written submissions, and the process had not yet concluded.

**No Final Policy Decision Yet:** The State contended that no concrete draft of the UCC had been prepared or finalised, and hence, no cause of action had arisen. The petition was, therefore, premature.

**No Discrimination in Law:** The government maintained that there was no formal or institutional discrimination against the queer community in the consultation process. Since no category was officially “excluded,” the claim of marginalisation was speculative and unfounded.

**Administrative Discretion in Policy Formation:** The State argued that the composition and structure of consultations fall within the domain of executive policy discretion, and courts ought not to interfere unless there is manifest arbitrariness or illegality.

**Future Inclusion Possible:** Lastly, the State assured the Court that inclusive consultations could still take place, and feedback from queer and trans groups would be considered before finalising the UCC draft.

### **COURT’S REASONING AND HOLDING**

The Supreme Court ruled in favour of the petitioners, holding the exclusion of LGBTQIA+ individuals from the Uniform Civil Code (UCC) consultative process to be unconstitutional.

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<sup>9</sup> Mapping the Progression of LGBTQ+ Rights in India – Important Laws and Judicial Pronouncements’ *SCC Online Blog* (11 June 2025) <https://www.scconline.com/blog/post/2025/06/11/mapping-the-progression-of-lgbtq-rights-in-india-important-laws-and-judicial-pronouncements/amp/> accessed 10 June 2025

**Article 14:** Emphasised the principle of substantive equality and held that structural exclusion, even without deliberate intent, amounts to indirect discrimination.<sup>10</sup>

**Article 15:** Reaffirmed that the term “sex” includes gender identity and sexual orientation. And found that excluding queer and trans persons from a process that affects civil rights violates the anti-discrimination mandate.<sup>11</sup>

**Article 21:** Recognised that dignity and autonomy are linked to the right to participate in shaping laws affecting personal life, and denial of such participation was found to infringe the right to life and personal liberty.

The Court held that participatory democracy is a constitutional value, not merely a political aspiration.

- Declared to be part of the basic structure of the Constitution.
- Stated that marginalised communities must be consulted during legal reform processes, especially those relating to personal laws.

### **Final Directions (Holding)**

- Declared the exclusion of LGBTQIA+ stakeholders from the UCC consultative process as unconstitutional.
- Directed the Law Commission to issue a fresh consultative framework within 60 days, ensuring specific outreach to trans and queer groups.
- Mandated the publication of national guidelines to ensure inclusive participation in all future legal reform processes.

### **CRITICAL ANALYSIS**

**Doctrinal Soundness:** The Court’s decision aligns with the transformative constitutionalism approach. It affirms that equality is not merely about identical treatment but about correcting structural disadvantages. The Court rightly extended the doctrine of procedural fairness into

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<sup>10</sup> Art 14, Constitution of India

<sup>11</sup> Art 15, Constitution of India

the realm of legislative pre-enactment processes—a step long overdue in Indian jurisprudence.

**Policy Implications-** This case could become the cornerstone for inclusive governance and stakeholder-based legislation. It places a constitutional obligation on lawmaking bodies to include minorities, especially where legal reforms affect personal liberty and civil status. Future reforms on marriage equality, transgender rights, or adoption laws must now be preceded by inclusive consultation.<sup>12</sup>

## COMPARATIVE ANALYSIS

**The judgment resonates with global best practices as below:**

**South Africa:** In *Doctors for Life v. Speaker*, the Constitutional Court held that public participation is essential for legitimacy in lawmaking.

**United Kingdom:** The Equality Act 2010 mandates impact assessments for all legislative proposals.

**European Union:** The EU Fundamental Rights Charter calls for inclusive democratic participation, especially of marginalised communities.

India's move in this case reflects its shift towards inclusive constitutionalism.

## CONCLUSION

The decision marks a constitutional milestone in integrating participatory democracy and intersectional inclusion into the lawmaking process. It prevents tokenistic reforms by ensuring that legal change reflects the lived realities of those affected by it.

**Suggestions for Reform –**

**Codify Consultative Procedures:** Enact a Legal Reform Consultation Code that standardises participatory frameworks.

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<sup>12</sup> Important Supreme Court Verdicts on LGBTQ+ Rights' *Shankar IAS Parliament* (11 June 2024) <https://www.shankariasparliament.com/current-affairs/important-supreme-court-verdicts-on-lgbtq-rights> accessed 10 June 2025

**Institutionalise Inclusion:** Establish permanent LGBTQIA+ representation in the Law Commission and other statutory bodies.

**Wider Awareness and Education:** Build awareness within bureaucratic and legal institutions about inclusive lawmaking.

**Replicate in Other Domains:** Extend this standard to all legal and policy reforms involving vulnerable communities—tribals, Dalits, disabled persons, and religious minorities.

## REFERENCES

1. National Legal Services Authority v Union of India (2014) 5 SCC 438.
2. Navtej Singh Johar v Union of India (2018) 10 SCC 1.
3. Doctors for Life International v Speaker of the National Assembly 2006 (6) SA 416 (CC).
4. Indian Young Lawyers Association v State of Kerala (2018) 10 SCC 1.
5. Law Commission of India, 279th Report on Uniform Civil Code (2023).
6. Bar Council of India, Model Rules on Equality and Inclusion (2024).