



# Mobilizing Queer-Friendly Legal Resources towards Greater Access to Social Justice

→ Case Study from West Bengal, India by **Varta Trust**  
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# Queer Friendly Lawyers Network - Genesis

- Supreme Court Judgments:
  1. NALSA
  2. Justice K. S. Puttaswamy (Retd.)
  3. Navtej Singh Johar
- Gateway to actualisation of self for 'miniscule minority'.
- State slow to act ... civil society → creating pressure groups to ensure the State action.
- Queer Friendly Lawyers Network is a similar effort to ensure the protection of rights of queer citizens as well as to push the State to implement the dictums of the Apex Court towards protection of their rights and to be treated equally in the eye of law.



# QFLN Members, Partners and Allies

QFLN core team : 5 lawyers, 2 queer activists, 1 legal researcher and academic, and 1 HIV activist.  
The queer support groups that have partnered with the QFLN in different capacities so far include:

- Amitie' Trust
- Baruipur Asrai
- Dinajpur Natun Aalo Society
- Dum Dum Swikriti Society
- Cooch Behar Moitrisanjog
- Koshish
- Madhya Banglar Sangram
- Nadia Ranaghat Sampriti Society
- Prantik Bongaon
- Sappho for Equality



# QFLN Members, Partners and Allies

Among other civil society partners are:

- CREA
- RAHI Kolkata (an agency working on incest and child sexual abuse issues)
- SAATHII
- Sruti Disability Rights Centre and Vidhi Centre for Legal Policy

Student bodies of the WBNUJS and the CU Law College (Hazra Campus) have also partnered with QFLN. Individual allies from the mental health and media spheres have also participated and contributed to the network's activities.



# QFLN – The Support We Provide

- Typically, each case is handled by at least two of the QFLN lawyers, a representative of the referring queer support group or any other community representative associated with the network, and the Coordinator, Project Varta.
- Most of the expenses for the cases, particularly legal consultation charges, are met through Project Varta for clients not in a position to pay for them. The clients are asked to contribute as per their ability.
- In addition to legal aid for individuals, the QFLN has also ventured into the sphere of public interest litigation (PIL).
  - In November 2017, QFLN lawyer Kaushik Gupta facilitated the filing of a Public Interest Litigation in the Calcutta High Court seeking a 'third gender' option in all state public examination forms in light of the NALSA directive to the State to "extend all kinds of reservation in cases of admission in educational institutions and for public appointments" to trans persons.
  - The PIL was planned as a means of scaling up the legal battle for trans inclusion in West Bengal.
  - The petition still awaits a conclusive hearing from the court.
  - However, after notice was served upon the West Bengal Public Services Commission along with a copy of the writ, they have already made necessary changes in their website and included 'transgender' as an option along with the binary gender identity. Hence, the purpose of filing the writ is already served.



# Snapshots of the Work of Queer Friendly Lawyers Network – West Bengal

## Case Study 1



# Case Study 1

**Referred by:**

Sappho for Equality, in November 2018.

**The Issue:**

SSG's 22-year-old partner MSB facing family violence and confinement at an unknown location, and SSG asked for urgent help to protect MSB.

**Client's Profiles:**

- Both individuals were assigned female at birth.
- They were employed in service-sector jobs and belonged to lower middle income group families.
- The couple had been in a close relationship since November 2017.
- No initial objections from MSB's widowed mother but when MSB's brother and mother realized the nature of the couple's relationship, they beat SSG up brutally more than once.



# Case Study 1

## **April 2018:**

- SSG, who stayed overnight, had to leave MSB's home in a hurry to pacify their brother, who had turned violent and was also abusing SSG.
- From then on, MSB's family tried to stop her from seeing SSG, but she continued to do so.

## **August 2018:**

- MSB was again beaten up for meeting SSG and was badly injured.
- On SSG's behest, MSB filed a general diary against her family members at Entally Police Station but no action was taken by police.
- The couple then decided that MSB should leave home. They took shelter for a month at a common friend's place and later managed to rent a flat in suburbs of Kolkata.



# Case Study 1

## **November 15, 2018:**

- During a visit to SSG's mother, SSG was tricked by MSB's family to inadvertently reveal their whereabouts over phone.
- Within a short while, MSB's mother, brother and a cousin arrived and dragged her away in full public view.
- SSG went into a fear-induced trauma.
- SSG mustered enough courage to step out of home and approached the local Police Station for help only to be turned away. A panic-stricken SSG also found out from common friends in MSB's locality that she had been taken away to an unknown location by her family. At this stage, a friend who was aware about Sappho's work, guided SSG to call them.

## **November 17, 2018:**

- Sappho for Equality (henceforth Sappho), referred SSG, to Varta for legal advice.



# Case Study 1

## **The Support Provided:**

- Varta and Sappho members provided peer counselling support to SSG.
- QFLN lawyers Kaushik Gupta and Debayan Sen drafted a Writ of Habeas Corpus, which was filed before the Calcutta High Court on November 19, 2018.
  - The petition sought an urgent enquiry into MSB's whereabouts, the conduct of her family and the police's neglect of the previous complaint against the family.
  - It also argued that as an adult individual, MSB should be free to make her own life choices and that her confinement was illegal.
- The first hearing of the case was held a week later, and MSB's family submitted that she had been admitted into a rehabilitation clinic because she was mentally unwell.
- The court ordered that a medical board be set up to examine her mental well-being.
- The medical board submitted a positive report testifying to MSB's health and her ability to make independent decisions on January 15, 2019.



# Case Study 1

## **The Judicial Response:**

In a final hearing on January 29, 2019, the Division Bench of the Calcutta High Court consisting of Justices Joymalya Bagchi and Ravi Krishan Kapur disposed of SSG's petition noting that MSB was in a "fit mental state" and had decided to go back to her family on her own volition. But the court also made positive observations on conjugal rights in relation to the Supreme Court's verdict on Section 377, IPC:

→ *"... Fundamental right to life under Article 21 of the Constitution of India inheres within its wide amplitude an inherent right of self-determination with regard to one's identity and freedom of choice with regard to sexual orientation or choice of partner. We are of the view that such self-determination in the matter of sexual preference or consensual intercourse, even if not procreative, is inherent for the enjoyment of life and liberty of every individual and is protected under our scheme of constitutional morality and cannot be whittled down on the concept of morality or religion of others."* [W.P. No. 23120(W) of 2018]

→ **The court's order, in essence, meant that there was no legal bar on SSG and MSB living together again in future, if they ever wanted to. The judgment of the High Court created a precedence which is being successfully used thereafter.**



# Snapshots of the Work of Queer Friendly Lawyers Network – West Bengal

## Case Study 2



# Case Study 2

**Referred by:**

Sappho for Equality, in February 21, 2019.

**The Issue:**

PNK was in a 10-month-old relationship with TSH, 36, who identified as a trans man and lived and worked in Batanagar (also in South 24 Parganas district). But PNK's family was dead set against their relationship, and attempted to get her married to a person unknown to her.

**Client's Profiles:**

- PNK, a young woman of 24, was pursuing a BA course in Baruipur (her hometown in South 24 Parganas district) and a nursing course in Bardhaman town, nearly four hours by road or train.
- PNK was in a 10-month-old relationship with TSH, 36, who identified as a trans man and lived and worked in Batanagar (also in South 24 Parganas district).
- PNK's family was dead set against their relationship.
- PNK was already living with TSH at his home, where his mother was supportive of the couple.



# Case Study 2

## **February 17, 2019:**

- PNK's family members first convinced her to return home on the ruse of her nursing examinations, and then told her that she would be married off a week later to a man she did not even know.
- When she refused, her mother tried emotional blackmail with threats of suicide.
- Her brother and brother-in-law took her mobile phone away and she was not allowed to leave home.

## **February 20, 2019:**

- PNK contacted TSH over phone.
- TSH, through a social network of trans masculine persons, was aware about Sappho. He advised her to record an audio and video on her mobile phone about her situation and send them to Sappho.
- On the same day, PNK managed to appear for the first of her nursing exams, albeit with her brother accompanying her and keeping a strict watch on her.



# Case Study 2

## **February 21, 2019:**

- On their way to the examination centre, PNK managed to slip away from her brother.
- She had to suffer the loss of missing her examination but she safely reached TSH's home.
- The couple then approached Varta via Sappho.



# Case Study 2

## **The Support Provided:**

- PNK's audio and video files were shared with Varta, in which she said: *"I'm in a relationship with TSH. We're both adults and want to live together. But my family members are forcing me into a marriage with a man not known to me. I've been confined at home and am also fearful of being sexually assaulted. I'm planning to somehow escape tomorrow (February 21) and go over to TSH, but if I fail to do so, I request the organization to report the matter and take action against my family members."*
- A police complaint was then filed against PNK's family through a lawyer referring to the earlier case order.
- After some time had lapsed, PNK's family again made attempts to get her to return home, ironically through phone calls made by police officials. But she visited her home only to collect her key belongings and returned to TSH's home, which the couple consider a safe place to live in – at least for the immediate future.



# QFLN Legal Aid Case Profile

- Since the start of Project Varta in October 2018, at least 17 adult queer individuals have been provided support.
- The youngest individual was 18 while the oldest was in his 40s.
- The individuals were students, salaried, self-employed or engaged in sex work.
- Eleven were residents of Kolkata district, while the rest were from North 24 Parganas, Purba Medinipur, Purulia, South 24 Parganas and Uttar Dinajpur districts.
- 3 cases went up to any form of legal work or litigation, another 6 till the level of complaints filed with the police or other statutory bodies, while the rest did not move beyond legal advice and consultations or involved working out strategies that would help resolve the crisis without the need for litigation.
- Of the 6 cases that involved filing of complaints, cooperation from the authorities concerned was received promptly in only 2 cases.
- About 6 of the 17 cases are still ongoing.



# QFLN Legal Aid Case Profile

- Three of these 17 cases involved queer couples (all cis women with trans masculine partners) who were facing family violence and forced separation. Among these three couples, the marital status of all the individuals involved was single.
- In three other cases, the clients were married cis women seeking divorce from their husbands in order to live together with their queer partners (cis women or trans masculine persons). In one case, the client's parents were not aware about her sexual orientation or her partner but were against her getting divorced. The other two cases involved a degree of intimate partner violence, though no direct family violence.
- Four of the cases involved family violence against trans persons or lesbians where their gender identity or sexual orientation was the grounds of violence. All individuals were single, and both trans persons (one trans woman and one trans man) also faced eviction from home or property denial.
- One of the cases involved an unmarried gay man being blackmailed by his former partner. In another case involving a single gay man who was in a relationship with a married gay man, there were accusations from both sides of having been 'outed' against consent to their respective families and the use of cyber-crime in the process.
- One case involved a trans woman activist facing threats of violence from her landlady who was in cahoots with a politico-religious outfit based in her neighbourhood.



# QFLN Legal Aid Case Profile

- Three of the cases involved trans persons (two trans men and one trans woman) seeking legal gender identity change and facing varying degrees of barriers in the process.
- One of the cases involved a trans man seeking gender affirmative care being defrauded by another trans man who failed to provide access to necessary medical procedures and legal gender identity change services promised against a payment received in full.



# Expanding the Network

- On the legal aid 'supply side', the QFLN focusses on expanding its pool of queer-sensitive lawyers.
- This may be through linkages with law colleges (future lawyers), professional networks of the lawyers already within the QFLN, or through sensitization of lawyers attached to the State and District Legal Services Authorities.
- This aspect also provides one of the strongest and most layered challenges to the QFLN.
- On one level, it is about enough lawyers willing to consider queer people's concerns as issues of human rights.
- On another, it is about the geographical spread of queer-friendly lawyers.
- All lawyers in the QFLN team are based in Kolkata, which makes it difficult for our reach to be wide.



# Other Activities of QFLN

- Organizing of multi-stakeholder meetings and workshops.
- Legal literacy material development.
- An online blackmailer alert for gay and bisexual men and trans women.
- Short films in Bengali on the highlights of the NALSA and Johar verdicts.
- FAQs in Bengali on gender and sexuality issues.
- The blackmailer alert, developed in January 2017, is hosted on the Varta website and has been shared through the Grindr dating app to all their subscribers in India.
- A complementary activity is the development of a repository of legal and policy documents related to queer community concerns categorized into sections like criminalization, socioeconomic inclusion, transgender identities and rights, and the wellbeing of intersex persons.



# QFLN's Future Plans

- Legal research, especially through the use of the Right to Information (RTI) Act.
  - In one attempt so far to use this legal tool, the QFLN has had limited success in gaining access to data on the actual application of Section 377 for prosecution in West Bengal in the period 1996-2014.
- The network also hopes to utilize the West Bengal Victim Compensation Scheme 2017 for its legal aid clients.
  - For instance, so far there seems to be no record in West Bengal of a queer person victimized by sexual assault having received support under this scheme.
- It would be pertinent to see if this scheme can also serve as a form of an effective 'apology' from the State for not being able to provide a secure environment to its queer citizens.
- In UK, the Policing and Crime Bill (also known as the Turing law) was introduced in 2017 through which 50,000 people having same sex orientation were posthumously pardoned and so were the living. The queer community in India must demand a similar proactive State action.
- Further, the concept of compensatory justice is evolving in India with the incorporation of Section 357A in the Code of Criminal Procedure, 1973 by way of the 2009 amendment. It speaks of the responsibility of the State to compensate a victim of crime for its failure to protect its citizens. The information of one's right to claim such compensation has not been publicized widely as a result of which very few are aware of their entitlement.



# Historical Background & Significance of QFLN's Work

- It has been argued that the apex court's 'apology' to the queer communities in Johar (and to some extent also NALSA) was a recognition of the sensibility that social justice is bigger than law and legal correctness.
  - "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognize that homosexuality is a completely natural condition, part of a range of human sexuality."
- It was also this sensibility that was the biggest victim of a 'betrayal', as Koushal was often critiqued.
- To a certain extent, the formation of the QFLN was in response to this letdown and to protect queer people from an anticipated entrenchment of persecution under Section 377 IPC, something which had reduced, even if not entirely disappeared after the Delhi High Court read down the law on July 2, 2009.
- But the QFLN should also be seen as an initiative in a long line of collaborative attempts by queer community groups in West Bengal to access legal aid and justice.



# Other Attempts

- Attempts similar to the QFLN date back at least to the 1990s when queer support forums in the state like Counsel Club, Integration Society and Praajak struggled to identify queer-friendly lawyers and develop referral linkages with them.
- Later, in the 2000s and 2010s, networks of queer community groups like MANAS Bangla and NGOs like SAATHII had access to greater resources though not necessarily a far greater number of lawyers willing to work with queer support forums.
- But they did build up on the early experiences to run crisis support centres, legal aid units and legal literacy campaigns as part of their programmes focussed on HIV or sexual and reproductive health and rights.
- Support forums like Sappho for Equality also developed legal aid referrals through their linkages with feminist groups and networks. The QFLN is a contemporary version of these earlier attempts.



# Archives of Historic Indifferences

- Fortunately, at least some of these attempts also generated documentations through the years that illustrate the “wrongs of history” and “historic indifference” that the Supreme Court referred to in Johar and underscore the significance of the apex court’s ‘apology’.
- Many of these are queer people’s own stories of human rights violations and survival, which never received the attention they deserved.
- Varta maintains and researches some of these materials, primarily the archives of Counsel Club, one of India’s earliest groups of its kind (functional from 1993 to 2002).
- The archives include nearly 3,000 letters, greeting cards and emails received by Counsel Club from queer individuals and other queer support forums from across India and abroad.
- They also include copies of *Pravartak*, a journal published by the group, other queer-themed journals, media clippings, and records of the group’s awareness generation, networking, training and advocacy activities.



# The Questions Around “Apology”

- There remains the larger question of what exactly is the import of the ‘apology’ expressed by the Supreme Court.
- Are words on paper enough?
- Are favorable court orders as in the case of SSG or Atri Kar enough?
- Beyond the ‘coldly legal’ environment, how do we account for the phone and in-person counselling efforts that the QFLN team had to put in to assure an inconsolable SSG when they felt that justice was too slow to materialize and wanted to approach the police on their own to hasten the investigation?
- The fact that even after NALSA and Johar, the courts have had to time and again step in to protect the rights of people like SSG and Atri Kar seems to liken the court’s ‘apology’ to physical mitigation of an injury while the emotional trauma continues.
- Does the apex court’s apology in Johar fix accountability for all the indignity, violence, trauma and death experienced by queer communities in India? If not, what kind of closure can queer people be expected to realize if they have to move on and aspire for a better tomorrow?



# QFLN's Plan of Action

- The idea of apology has two dimensions – (1) the admittance of having committed a wrong, and (2) willingness to atone for the wrong committed.
- We seek to amplify the Johar judgment by implementing and testing how might the forward-looking connotation of apology play out in our legal systems.
- We also seek to document our experiences with such implementations to ensure the celebration of sexual and gender diversity in the judgment are realized to their fullest potential.
- QFLN is working on filing RTI applications to both the central and state governments regarding the steps taken for giving wide publicity to the judgment and the budgetary allocation for the same thereby trying to force the government to act in terms of the 'apology' extended to the queer community through one of its branches, namely the judiciary.
- Another immediate task will be to challenge the constitutional validity of the just enacted Transgender Persons (Protection of Rights) Bill, 2019.

**→ In essence, in a post-decriminalization era, the QFLN would need to target its resources and energies towards a campaign that ensures protection from discrimination in the day-to-day spheres of education, livelihood, health, social security and living out relationships of one's choosing. Such a pathway may lead to a more concrete realization of the apex court's intended 'social atonement' than in the relative 'abstraction' of decriminalization.**



# Thank You!

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