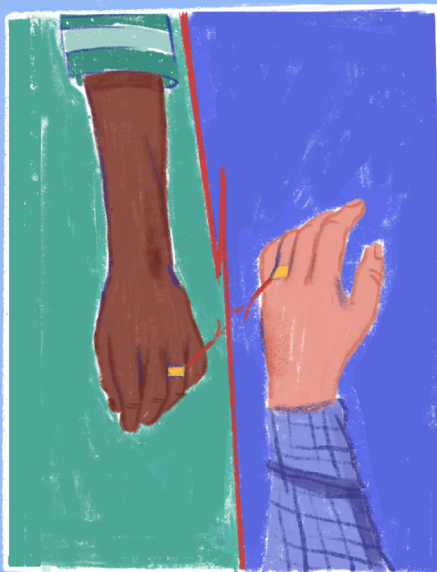


# Recognition of Queer Relationships and Families



## Queering the Law: Beyond Supriyo



VIDHI Centre for  
Legal Policy

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This is an independent, non-commissioned piece of work by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws.

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A-232, Ratan Lal Sahdev Marg, Defence Colony,  
New Delhi 110024

**Points of Contact for this brief:**

Rakshita Goyal (rakshita.goyal@vidhilegalpolicy.in), Kartavi Satyarthi (kartavi.satyrathi@vidhilegalpolicy.in) & Namrata Mukherjee (namrata.mukherjee@vidhilegalpolicy.in)

**Designed by:** Sanjoli C

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# Authors

In Alphabetical Order:

**Aashna Mansata** (Research Fellow)

**Jwalika Balaji** (Research Fellow)

**Kartavi Satyarthi** (Senior Resident Fellow)

**Namrata Mukherjee** (Senior Resident Fellow)

**Rakshita Goyal** (Senior Resident Fellow)

**Shireen Yachu** (Research Fellow)

**Shreyashi Ray** (Senior Resident Fellow)

**Sunetra Ravindran** (Lead)



## Acknowledgements for High Powered Committee Submission

**Co-Submitters:** Vidhi Centre for Legal Policy, Keshav Suri Foundation, Marsha Against Discrimination, Saurabh Kirpal (Senior Advocate); Arundhati Katju (Senior Advocate), Menaka Guruswamy (Senior Advocate).

**Contributors:** Housing and Land Rights Network, Kahaan Mehta (Research Fellow, Vidhi Centre for Legal Policy), and Lalit Panda.

**Consultation Participants:** Sappho for Equality, NAZ Foundation, New Delhi LGBTQ Centre, Khushi Pahuja (SAATHI), Darshan Gupta, Dr. Praroop Garg, Ajita Banerjee, Shiluti Walling, Rani Rudra, Manan Katyal (Quantum Hub), Akhileshwari Reddy, Meera Kale, Kanav N Sahgal (Nyaaya), Rituparna Padhy (Vidhi Centre for Legal Policy, New Delhi), Gulab Yadav, Shreya Reddy, Rajeev Khushwa, Devush, Harsheel Patel, Heet Patil, Harsha Ture, Deepak Patil, Sandhya Borude, Swapnil Satav, Siddhesh Bhatla, Vagda Galhotra (CIVIS), Ankit Bhuptani (Queer Hindu Alliance), Esha Kulkarni, Deepak Kushwl, Aniket Krishnas, Dhiraj Gohil, Jinaly Dani (Vidhi Maharashtra), Isha Prakash (Vidhi Maharashtra), Color Positive Foundation, Praful Baweja (Equonomix), Antara Vasudev (CIVIS), Compassionate Curiosity India, Gujarat National Law University Gender and Sexuality Forum, Urmi Jadha, Ishani Shukla, Shailesh Bhutka, Rahul Niken, Pratik Pali, Mritunjay Mishra, Pallari Gajaria (Pakhru Counselling), Niyati Trivedi (Pakhru Counselling), Yash Matthu, Saloni Saini, Harshit Jangig, Jay Jivani, Mukesh Bishnoi, Rahul Sabhar, Amit Mina, Prakhar Sharma, Meena Priyanshu, Prakash Kumar, Lakshay Tailor, Ronak, Nikhil Bawa, R K Gurjar, Pushpa Macai, Jaipur Queer Women, Nandita (Mango Souffle Production), Thakur Shivam, Aparna Menon, Ayushi Jajoria, Shabnam, Manoj Benjwal, Zara Baghel, Geet Sahu, Aakritee Kapoor, Suraj Tomar, Kabir Maan, Ananya Garg, Anusha, Mohit Raj Verma, Sachin Kumar Singh, Soham Bhattacharya, Tanurag, Bharadwaj, Imran Khan, Soham Basu, Krupaliba Gohil, Subhagya Singh, Shubhika Saluja (Broadband India Forum), Suyash Labh, Sriharsha, Parth Sarathi Patnaik, Sanrika Rana (Karma Care), Saroj Thapa, Naman Arora, and others.

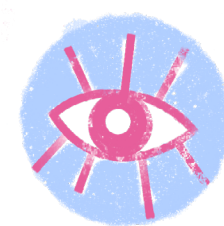
**Peer Reviewers:** Shreya Garg (Principal Associate, Cyril Amarchand Mangaldas), Shehnaz Ahmed (Senior Resident Fellow and Lead, ALTR, Vidhi Centre for Legal Policy), Advocate Urvi Mohan (Labour, Employment and Matrimonial Laws), Dr. Dhvani Mehta (Co-Founder and Lead, Health, Vidhi Centre for Legal Policy), Dr. Arghya Sengupta (Founder and Research Director, Vidhi Centre for Legal Policy), and Dr. Roop Gursahani (Neurologist and Founding Member, End-of-Life-Care in India Taskforce)

**Research Assistance:** Vineeth Penmetsa, Aarushi Agarwal, Swapnil Singh, Arunima Swaroop, Haridev Varma, Abhishek Rath, Kudrat Bains, Astha Samal, Aman Anand, Sumayya S, Mandar Prakhar, Teesha Deb, Aarushi Agarwal, Ira Kamat, Aparna Bhatnagar, Aryan Raj, Shlok Shah.

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# Queering the Law: Beyond Supriyo

## ABOUT THE SERIES

### Introduction

On October 17, 2023, the Supreme Court of India ('Court') delivered its judgment in the landmark case of *Supriyo alias Supriya Chakraborty vs. Union of India* ('Supriyo'). While the Court recognised that it was the legislature's prerogative to enable marriage equality, it also noted the discrimination faced by queer persons in various realms of life. Consequently, it directed the Union Government to set up a High-Powered Committee ('Committee') to set out the scope of benefits that will accrue to queer couples and outline key areas that require State intervention to realise the constitutional rights of the queer community, including the right against discrimination.

In September 2024, the Committee issued a press release outlining the steps taken by the Union Government to address the discrimination queer persons face, such as inclusion for the purposes of opening a joint bank account or a ration card. The Committee also invited comments from the public in relation to measures that may be taken to ensure queer inclusion. In pursuance of this, the Vidhi Centre for Legal Policy ('Vidhi') and the Keshav Suri Foundation ('KSF') collaborated to make joint submissions to the Committee.

This set of four policy briefs, namely, 'Queering the Law: Beyond Supriyo' ('Beyond Supriyo') follows Vidhi's 2019 project, 'Queering the Law: Making Indian Laws LGBT+ Inclusive' ('2019 Project'). The 2019 Project, which was the outcome of several rounds of consultations held at the Vidhi office, identified how laws excluded queer persons across four areas: identity, violence, family, and employment. Beyond Supriyo is a continuation of this initiative and prescribes how laws and policies may be modified to be made queer inclusive. It provides for measures that may be pursued by the Union and State governments to address and redress the discrimination queer persons and persons in queer relations are subject to on account of a legal system that does not recognise them at par with cis-gendered and heterosexual persons.

In light of the Court's judgment in *Supriyo*, the onus of queer inclusion in laws now largely lies with the legislature. We hope this work will inform and assist queer civil society in carrying out advocacy towards more queer inclusive law reform.

### Pan-India Consultations

The recommendations put forth in this series of policy briefs, and those presented before the Committee, have been informed by three public hybrid consultations conducted by Vidhi and the KSF in New Delhi, Bombay and Jaipur. These consultations were attended by around 150 stakeholders including members of the queer community, lawyers, civil society organisations, activists, and other interested stakeholders. The consultations were aimed at understanding the lived experiences and demands of the queer community in relation to law and policy reform. They were organised around five broad themes: (a) recognition of queer relationships, (b) queer parenthood, (c) access to goods and services, (d) violence, and (e) healthcare.

The plurality of views expressed across the consultations guided our approach to various policy questions and enabled us to make holistic recommendations. The detailed minutes of each consultation are annexed to the comprehensive recommendations submitted by KSF and Vidhi to the Committee.

## About the Series

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Beyond Supriyo comprises four policy briefs covering the following themes: queer relationships, discrimination, healthcare, and violence. These themes are informed by the observations and directions issued by the judges in Supriyo and the inputs received at the consultations. The Court in Supriyo broadly identified family law, access to goods and services, welfare benefits, financial benefits, labour benefits, healthcare and involuntary treatments, transgender rights and violence as areas that require State intervention.

While the policy briefs follow an accessible and actionable format to aid queer civil society and other interested stakeholders in their law reform advocacy, for a holistic view of the nature and form of measures that may be pursued by the State, one can refer to the comprehensive recommendations submitted by Vidhi and KSF to the Committee.

The series comprises of the following briefs:

### 1. Recognition of Queer Relationships and Family:

This policy brief addresses the need for legal recognition of queer families and relationships. Part A focuses on relationships between parties and recognition of a variety of family structures in law. Part B on parent-child relations, recommends amendments to the secular law on adoption to make them queer inclusive and suggests targeted measures for reform of laws governing parenthood to make them modern and inclusive of atypical families.

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### 2. Discrimination in Access to Goods and Services:

This policy brief makes recommendations to address the discrimination queer persons face. Part A recommends general measures such as a comprehensive anti-discrimination law and reforms to the Transgender Persons (Protection of Rights) Act, 2019. Part B recommends sector specific recommendations across four sectors: financial services, employment, education, and housing. Recommendations are directed towards both prohibition of discrimination as well as affirmative measures to address systemic exclusion.

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### 3. Queer-Affirmative Healthcare:

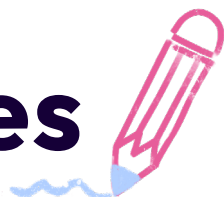
This policy brief captures wide-ranging recommendations spanning combatting existing discriminatory practices in healthcare, introducing affirmative healthcare, and affecting systemic measures. The removal of existing discrimination includes banning conversion therapy and medically unnecessary intersex surgeries, and ensuring compliance with the law on anti-discrimination against persons living with HIV-AIDS. Recommended affirmative measures include the provision of gender-affirming treatment, affordable mental health support, queer-inclusive health research, and provision for nomination of healthcare representatives of choice. Systemic measures include making health laws queer-inclusive, and increasing the presence of queer-affirmative healthcare workers through improved training and modified curricula, as well as horizontal reservations in public healthcare.

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### 4. Prohibition of and Rehabilitation from Violence:

This policy brief addresses violence propagated by the State and society at large, by the natal family, and domestic and sexual violence. It recommends reforms in law enforcement including police sensitisation, amended police rules and binding directions. Proposed affirmative measures for rehabilitation from violence include shelter homes and emergency helplines. Legislative changes have been suggested to protect queer persons and persons in queer relationships from sexual, domestic and intimate partner violence as well as workplace harassment.

# Principles



## 1. Non-Discrimination:

The law must not discriminate based on gender identity, sexual orientation, or the form of intimate or parental relationships

**Examples:**

- \* Recommends amending the Special Marriage Act, 1954 and Indian Succession Act, 1925 to holistically reform marriage and succession laws and eliminate exclusionary and gendered provisions.
- \* Recommends amendments to secular adoption laws to make them queer inclusive and inclusive of atypical families.

## 2. Affirmative Action and Positive Obligations:

The State must proactively support extension of legal and welfare benefits for queer relationships and non-normative families.

**Examples:**

- \* Proposes a comprehensive civil union law to grant relationship recognition outside the marital framework.
- \* Suggests nomination frameworks to enable queer individuals to designate chosen family in labour, financial, social welfare, and healthcare contexts.

## 3. Recognition of Diverse Family Structures:

Family laws must encompass queer, non-marital, and caregiving relationships beyond biological or marital ties

**Examples:**

- \* Advocates for the removal of heteronormative assumptions in laws on marriage, civil unions, adoption and guardianship.

## 4. Gender-Inclusive and Queer-Inclusive Language:

Laws must shed binary constructs of only male and female, and adopt inclusive, accurate terminology.

**Examples:**

- \* Calls for gender-inclusive definitions of “spouse” and “parent” across family law frameworks.
- \* Recommends replacing outdated language on grounds for divorce (e.g., venereal disease, consummation).

## 5. Participation and Voice of Queer Communities:

Reform must be informed by lived experiences and community consultation.

**Examples:**

- \* Relationship recognition proposals shaped by inputs and deliberations at consultations.
- \* Community feedback emphasised safeguarding chosen families, queer families, and nomination rights.

# PART A: Queer Relationships





## • INTRODUCTION •

Queer relationships are a lived reality, with many LGBTQIA+ individuals across India having long formed lasting bonds of care, commitment, and partnership. Despite the absence of legal recognition, queer couples have sought to affirm their relationships through traditional marriage ceremonies or alternative arrangements such as *maitri karars*. These relationships embody the elements of mutual dependence and shared life that characterise legally recognised marriages. Yet the law continues to deny them recognition. This gap is not just symbolic. It prevents queer persons from accessing a wide range of rights and entitlements linked to marriage, from inheritance and joint adoption to healthcare decisions and social security.



*Maitri karars* (friendship contracts) developed as a practice in Gujarat, where two consenting adults entered into a contractual agreement or a friendship agreement. They did this to secure their rights as partners in intimate or platonic relationships. They became popular in the State as a way for men to maintain relationships with other women apart from their wives. With time, this practice has been used by queer couples to formalise their relationships and communicate their commitment towards a shared life. However, these are not recognised as legally binding contracts by the law.

In October 2023, in *Supriyo v Union of India* (“Supriyo”), commonly known as the ‘marriage equality case’, the Supreme Court did not uphold a fundamental right to marry. However, it recognised the right of LGBTQIA+ persons to enter into relationships and also said that the recognition of queer marriages is the prerogative of the legislature.

In the *Supriyo* hearings, one of the petitions (the Rituparna Borah petition) presented a non-traditional but highly prevalent reality: the significance of chosen families for queer individuals. The petitioners argued that queer persons often face harassment and violence at the hands of their natal (birth) families as well as marital families. In such scenarios, they often form alternate family structures with chosen partners and families, making legal recognition imperative.

The recent attempt at reform by the Uttarakhand government falls severely short on many counts. The Uttarakhand Uniform Civil Code recognises live-in relationships (again only for heterosexual couples) but at the same time criminalises live-in relationships that are not notified to the government. Criminalisation of this nature undermines the autonomy of grown-up individuals in consensual relationships and places an undue burden on couples choosing not to marry, or in the case of queer persons, couples who cannot marry. This points towards a grave need for a rights-based, informed and comprehensive reform of Indian family laws.

## • ISSUES •

### Gendered and Binary Nature of Family Laws

Indian family law continues to centre around a binary, heteronormative model of relationships. Across secular and religious personal laws, marriage is understood to be a union between a man and a woman, with gendered conditions for validity and entitlements. For instance, the Special Marriage Act, 1954, prescribes different age thresholds for brides and bridegrooms. These laws reinforce heteronormative assumptions about family and kinship and prevent LGBTQIA+ persons from entering into marriages and don’t grant legal recognition to their relationships.

Succession laws, like the Indian Succession Act, 1925, also use gendered terminology like ‘husband’, ‘wife’, ‘father’

and ‘mother’ and prescribe gender-differential rules for how these categories of relations inherit property. It is also unclear how transgender persons inherit under these laws.

This prevents queer persons from accessing basic socio-economic rights and benefits including the simple right to access the dead body of your loved one — rights that should be available to everyone but that accrue exclusively to heterosexual couples in legally sanctioned marriages. Lack of legal recognition also prevents the State from fulfilling the goal of protecting vulnerable parties and addressing power imbalances in any relationship.

## Lack of Recognition of Atypical Family Structures

Existing laws fail to account for the multiplicity of intimacies that characterise modern relationships, beyond conjugal and procreative ties. These include non-dyadic relationships, non-conjugal families, chosen families forged through care, caregiving arrangements between friends, or persons who co-parent outside of romantic relationships. Such relationships may not follow traditional marital or reproductive patterns but involve deep financial and emotional interdependence that requires legal recognition and protection.

Efforts like permitting joint bank accounts or including queer partners on ration cards represent important steps, but remain piecemeal and lack a clear legal framework for recognising such relationships systematically. Instruments like *maitri karars* have been used to express commitment and cohabitation in the absence of marriage, but they carry no formal legal weight. The law has simply not caught up with the lived realities of queer persons, leaving their relationships vulnerable and unprotected.

## Lack of Clarity for Transgender Persons

Existing laws offer little clarity for transgender persons whose gender identity may not align with their sex or gender identity at the time of marriage. There is no guidance on the legal status of such marriages, where one or both partners transition.

## Broader Structural Issues

Several features of the marriage law regime, in its current form, impose significant burdens. The notice and objection process under the Special Marriage Act, for instance, has been widely documented as a tool for harassment and surveillance of inter-caste and interfaith couples and would be so for queer couples as well. Provisions such as restitution of conjugal rights, which allow courts to compel cohabitation, also undermine individual autonomy and bodily integrity.

## Lack of Protection for Queer Persons

Anecdotal evidence indicates that even where queer persons have inheritance rights, they may be disinherited through wills and cut off from family property because of their gender identity or sexual orientation. The law does not currently provide mechanisms to combat this.

# • APPROACH •

We propose three frameworks for the recognition of queer relationships and families: a) comprehensive amendments to existing family laws to accommodate queer relationships; b) a separate framework recognising civil unions; and c) an additional framework for nominating any person as one's chosen partner or kin. This three-pronged approach allows for recognition of a diversity of family structures, including natal families, marital families as well as chosen families. The recommendations are based on the basic principles of dignity and the autonomy to enter into a union of your choice without unwarranted State interference.

These rights should be made available to everyone regardless of their gender or sexual orientation. Policy recommendations must, however, be informed by the socio-political realities of the environment in which they are being conceptualised. Accordingly, the

three frameworks being proposed are also implementable as stand-alone solutions for an incremental approach to recognition of various diverse forms of relationships.

While proposing amendments to existing family laws, a strategic choice has been made to specifically limit recommendations to civil laws, that is the Special Marriage Act, 1954 ("SMA") and the Indian Succession Act, 1925 ("ISA"). This is because these laws are malleable and lend themselves more easily to accommodate modern conceptions of marriage and relationships, and are based within the idea of aligning legislative reform with societal reform. The exercise of re-looking at and reforming all family laws, including religious personal laws, must continue such that queer individuals are able to find space for their relationship choices in their religious identities as well.

# • POLICY • RECOMMENDATIONS

## A) Amendments to Family Laws



**Nodal Authority: Ministry of Law and Justice**

Why we need to re-look at family laws:

**Anyone should be able to marry regardless of gender or sexuality — SMA is built for inclusion**

Even though the Supreme Court has refused to recognise a fundamental right to marry, marriage is a socio-legal benefit available as a natural consequence of living in society, but exclusively for heterosexual unions. The SMA, passed in 1954, was brought in with the intent of accommodating marriages, such as inter-faith and inter-caste marriages, that did not come within the traditional folds of marriage legally recognised at the time. The idea behind the SMA is to provide an inclusive framework for marriages. Extending its scope to recognise queer marriages by decoupling marriage from the gender and sexuality of the individuals involved is consistent with the Act's original intent.

### Need to Comprehensively Reform Existing Family Laws

All classes of family laws recognise a prominently gendered idea of marriage with the binaries of 'man' and 'woman'. The SMA, in most of its provisions, addresses the 'husband' and the 'wife' (for example, section 27 of SMA). Maintenance and alimony is exclusively available to women based on a gendered idea of vulnerability.

These laws also continue to carry forward the legacy of a number of outdated and problematic concepts such as restitution of conjugal rights (RCR), and requirement of a notice and invitation of objections for registration of marriage. In addition to this, inheritance laws are also discriminatory and disadvantage women, for example, through linking a woman's domicile to her marital status.

## De-Link Marriage from Gender and Sexual Orientation

The language under the SMA recognises marriage between any two 'persons', but provides different ages of marriage, at 18 for women and 21 for men, which makes it difficult to interpret its applicability to queer marriages. Accordingly, the language under section 4 of SMA should be appropriately changed to expressly state that "a marriage

between any two persons may be solemnised under this Act, **regardless of their gender or sexual orientation**". Other provisions in the Act may be changed accordingly to recognise "parties to a marriage" divorced from gender identity. For instance, a uniform age of marriage may be prescribed for all parties, irrespective of their sex.



The Supreme Court in *Supriyo* held that "same-sex marriage" cannot be read into SMA as such an interpretation might tip the balance against vulnerable parties, such as women.

—Bhat J., *Supriyo alias Supriya Chakraborty v Union of India*, Supreme Court

For this reason, it becomes even more important to undertake a comprehensive amendment of the SMA to make it queer-inclusive while being cognizant of power imbalances in a heterosexual marriage.

## Use Gender-Inclusive Language in Family Laws

Language across the SMA refers to 'husband' and 'wife' or 'man' and 'woman' as the target audience. Such provisions must be changed to "parties to marriage" or "spouse" depending on the context.

## Re-Visit Provisions on Void and Voidable Marriages

Under section 25 of the SMA, marriages are voidable at the instance of one party, because of non-consummation. This stems from a heteronormative understanding where consummation is one of the central tenets of marriage. Considering modern conceptions of marriage centered on shared partnership, especially for queer individuals, this ground for voidability must be removed.



".....transgender persons in heterosexual relations have the right to marry under existing laws, including in personal laws regulating marriage."

—Bhat J., *Supriyo alias Supriya Chakraborty v Union of India*, Supreme Court

The courts have said that heterosexual marriages involving transgender persons are valid under the SMA. Thus, a transgender man can marry a cis-gender or transgender woman under the SMA. Similarly, a transgender woman can marry a cis-gender or transgender man.



There is no clarity on the status of a marriage if one of the parties to a marriage transitions to a gender that is different from the gender assigned to them at birth or the gender that they identify with at the time of marriage.

Let's take an example. X, a man, marries B, a woman, under the SMA. Two years later, B undergoes a gender affirming surgery and changes their gender to "man" in various legal documents. What would the status of such a marriage be under the SMA? Will it continue to be valid or will it be void?

To address this, a clarificatory provision may be added, saying that such

marriages will continue to be valid. At the same time, either of the parties may be allowed to apply for a decree of nullity of the marriage on the following ground —

**“either of the parties is undergoing transition or has undergone transition into a gender that is different from the gender assigned to them at birth or the gender they identified with at the time of marriage, with their consent and free will”**

Such a provision would preserve the autonomy of the parties to de-recognise their marriage on their own or their partners' transition.

### **Abolish Problematic Provisions Such as the Restitution of Conjugal Rights (RCR) and the Need for a Notice to Marry**

All family laws continue to recognise the matrimonial remedy of RCR. Such a provision undermines bodily autonomy and forces a party to a marriage to forcibly cohabit with the other without their consent. RCR provisions should accordingly be omitted.

There are also a number of problems faced by couples in the process for registration of marriages. The SMA requires the marrying parties to give a 30-day notice before their marriage can be registered, during which period any interested party may raise an objection to the marriage. This creates scope

for harassment of parties intending to marry in cases of inter-caste, inter-faith or queer marriages where families or certain members of the public may not agree with the choice of partners. Accordingly, the SMA must be amended to remove the 'notice and objection regime'. A significant amount of discrimination is faced at the hands of the bureaucratic machinery for registration. The Act must incorporate a provision that prevents the Registrar from refusing registration for any reason other than technical errors, which may be rectified with appropriate notice.



A number of participants at the consultations expressed fears about harassment at the hands of bureaucracy in registering queer marriages, even if such marriages are recognised in law.

Problematic fault-based grounds for divorce such as “venereal disease in a communicable form” that promote stigma must also be abolished.

### **Redefine Vulnerability between Parties in a Marriage**

Family laws approach vulnerability within marriage from a gendered lens. Drawing on years of research and activism from women's movements, these laws rightly recognise that women in heterosexual marriages often face greater vulnerability due to systemic power imbalances and economic dependence. However, gender here also serves as a proxy for vulnerability. In queer relationships, gender roles and power dynamics may not align with traditional binaries. Protective provisions should thus move beyond gender-based presumptions and adopt context-specific tests of vulnerability that also continue to account for structural gender inequality. Maintenance provisions, for example, can take into consideration factors such

as contributions made to the relationship by the applying party which have led to a sustained benefit for the relationship or an economic disadvantage for the applying party. For instance, if a partner has given up higher education or employment to look after the family and the home after getting married, it could be seen as economic loss sustained by the party due to the relationship.

Other factors may also be considered, such as the income of the parties, liabilities and responsibilities of the parties, age, and employment status, including continued employment. These factors ensure that maintenance may be made available regardless of gender while continuing to support vulnerable parties.

### **Re-Visit the HSA Exemption for Inter-Faith Marriages Under the SMA**

Any Hindu (or Buddhist/Sikh/Jain person to whom the Hindu Marriage Act is applicable) who marries a non-Hindu under the SMA is severed from their Hindu Undivided Family (HUF) under section 19 and 21-A of the SMA. Under section 21-A, an exemption is created to the severance provision for individuals marrying another Hindu. This provision disadvantages individuals in inter-faith relationships and effectively severs ties from their family for the purpose of succession to the HUF property. The provision, along with the separate exemption for Hindus, needs to be reconsidered along with a comprehensive re-look at the Hindu Succession Act, 1956.

## Recognise Queer Family Structures for Inheritance and Provide Fixed Shares for all Children in Property

While it is broadly gender-inclusive, the ISA contains some provisions that lay down different succession shares for similar relations, based on gender. For example, under sections 42 and 43 of the Act, the mother of a deceased person inherits property only if the father is not alive, along with the siblings. The father, on the other hand, inherits property when the mother is alive, and in fact completely excludes her from inheriting it. Inheritance provisions should be made equal for both parents so that both parents may inherit property to the exclusion of other successors, including siblings.

Gendered language across the Act, where terms such as ‘father’, ‘mother’, ‘husband’ and ‘wife’, are used, should be changed to gender-inclusive terms such as ‘parent’ and ‘spouse’, in turn providing for equal succession rights, regardless of gender. For example, section 22 of the Act allows settlement of a minor’s property in contemplation of marriage only by the father. Changing the term ‘father’ to a gender-neutral alternative, i.e. ‘parent’ allows equal rights to be given to every parent in respect of their child.



*“My parents should have the responsibility to take care of my education. I have been disowned and evicted from my parental home without any financial support or support to develop the capability to earn my own finances through education.” —A participant at the Jaipur consultation*

Several participants at the consultations shared experiences of being disinherited from their parents’ property for being queer.

Parents often take the route of a will to disinherit women and queer children from their property. To prevent this, limitation must be placed on the extent of the property of a person that can be given away through a will. This would disallow individuals from disowning their children for reasons of queerness or being in queer relationships. The ISA must provide a fixed quantum of

the property of the deceased as fixed shares reserved for all the children of the deceased. Such fixed shares cannot be affected by a contradictory will. A provision of this nature ensures that a certain portion of the property of the deceased is received by the children of the deceased regardless of their gender or sexual orientation, preventing legally validated disinheritance.

## B) Enacting a Law for Civil Unions



**Nodal Authority: Ministry of Law and Justice**

A dedicated statute should be enacted on civil unions that provides for registration, legal recognition, and associated rights and responsibilities.

### Expanding Legal Recognition for Queer Relationships Beyond Marriage

Marriage should not be the sole avenue for accessing legal recognition and related rights. Many individuals, queer or otherwise, may choose not to enter into marriages as a way of validating their relationships, and the state should respect such autonomy while also laying down the requisite regulatory framework.

Many people may also form relationships that do not fit the mould of a marital union. This includes romantic partnerships, non-romantic partnerships, caregiving arrangements, and chosen families. Legal recognition of civil unions can help move away from a conjugal and dyadic model of the family, making space for diverse forms of intimacy and interdependence.

Civil unions can serve as a critical safeguard in these cases, especially for vulnerable partners, for example in relationships marked by financial dependence. Legal mechanisms around maintenance, shared property, and decision-making can offer protection against abandonment and exploitation.

Participants in our consultations echoed this view as well, also focussing on how a civil union framework presents persons with autonomy and choice, providing an avenue of legal recognition for people who may not want to opt in to marriage.



*“Many may desire marriage as understood in the ‘traditional’ sense to escape their societal realities – a form of financial and social emancipation from opposing natal families, or diametrically opposite—to assimilate and gain more social acceptance in their natal families. Yet, others may, as a result of their experience, reject altogether the institution of marriage and all the social obligation and associations that come with it, but still want legal protection of their rights. Certainly, what the former group may*



want, does not hamper or hinder the latter, in any manner—for it is a choice that they seek. That the state should facilitate this choice for those who wish to exercise it, is an outcome that the community may agree upon. Yet, the modalities of how it should play out, what it will entail, etc. are facets that the State—here the legislature, and executive – needs to exercise its power in furtherance of.”

—Bhat J., *Supriyo alias Supriya Chakraborty v Union of India*,  
Supreme Court

While piecemeal amendments to various beneficial laws may extend benefits to same-sex partners in non-marital relationships, a comprehensive law recognising civil unions and defining the associated rights would ensure smoother implementation, greater clarity, and protection against exploitation.

A dedicated legislation can more comprehensively define the nature of a relationship and the factors required for its legal recognition. These elements cannot be effectively incorporated through piecemeal amendments to existing laws, especially in the absence of a clear legal framework for civil unions.

### Learning from International and Subnational Precedents

Globally, civil unions have served as a transitional legal institution in jurisdictions that later recognised marriage equality. In India, In Tamil Nadu has proposed a “Deed of Familial Association” for queer partners. However, this is yet to be implemented. This model, though limited, demonstrates political and administrative willingness to legally recognise queer relationships.

The introduction of civil unions can thus be seen as both a corrective measure and an incremental step towards full marriage equality. It signals the state’s commitment to constitutional values, while also responding to the lived realities of queer individuals.

### How is this different from existing marital and live-in relationship frameworks?

Marriage is traditionally rooted in conjugality, sexual exclusivity, and dyadic romantic partnerships, often carrying religious, cultural, and symbolic significance. The civil union framework we propose, in contrast, is function-oriented. It recognises a relationship based on care, interdependence, and mutual support; not necessarily sexual relations, romance, or exclusivity. It deliberately shifts from a status-based model to a relationship of function and choice, embracing non-traditional forms of intimacy.

## Components of a civil union framework:

### Inclusive Definition of Civil Union

It should define civil unions as a formal relationship between any two adults, regardless of sex, gender identity, or sexual orientation. The law must be gender-inclusive and avoid terms like “husband” and “wife” and should instead employ gender-inclusive language such as “civil union partners.”

The defining characteristics of civil unions should be mutual interdependence and care.

### Clear Procedural Framework

Partners should be able to intimate their civil unions through a simple, accessible, and non-invasive process. They should be able to register the civil union by signing an affidavit and intimating it to the designated official. The Marriage Registrar can serve as the officer who registers civil unions as well.

### Recognising Relationship Diversity

The law should accommodate a variety of family structures, that may be conjugal or non-conjugal or chosen families formed based on economic or emotional interdependence.

This reflects the reality of queer relationships in India, as showcased in a body of literature as well as in the *Rituparna Borah* petition before the Supreme Court, which asked for recognition of “relational equality.”

### Who Can Enter Into a Civil Union?

The law should clearly state the eligibility criteria for being in a civil partnership. Minors under the age of 18 years or individuals who are in an existing marriage or civil union, for example, might not be eligible for being in a civil partnership under a legislation.



We recognise that polyamorous and multi-person family structures challenge the dyadic forms of intimacy and care, and several submissions called for their inclusion. However, given the current lack of doctrinal clarity, procedural tools, and jurisprudence to address complex questions like property division, maintenance, and next-of-kin status, our framework limits civil unions to dyadic partnerships at this stage. We recognise that this position may not reflect the lived realities of some families.





That said, we acknowledge the importance of continued dialogue and legal innovation to eventually evolve a framework that can address non-dyadic forms of relationships. Our aim is not to close the door to these possibilities, but to lay a legally workable foundation that balances inclusivity with clarity and enforceability.

### Substantive Rights for Civil Unions Partners

Any such law would be incomplete without clear identification of such rights and benefits flowing from a civil partnership. It should provide partners with the following rights and entitlements, among others:

- \* Maintenance rights (during and after dissolution)
- \* Succession and inheritance rights
- \* Joint guardianship and adoption rights
- \* Tenancy and housing rights, including eligibility for government housing
- \* Access to Assisted Reproductive Technology (ART) and surrogacy, through corresponding amendments
- \* Health-related legal authority, including consent, emergency decisions, and visitation

A civil union should count as family and a civil union partner should qualify as next of kin for the purpose of availing various benefits, wherever relevant. In the absence of a will, inheritance rights should devolve in the same way in civil unions as in marriages. Civil union partners should have the same share in inheritance as a spouse as per the relevant scheme of succession.

### Recognising Civil Unions that are Not Registered

There may also be cases where a civil union is not registered, but a relationship exists between two people which has the characteristics of a civil union. In such cases too, it becomes important to safeguard the rights of the two parties involved, especially if one party is in a more vulnerable position.

For example, courts have had to step in when it comes to “live-in” relationships to decide whether such a relationship exists and what kind of rights may be available to the partners in such cases, such as maintenance and inheritance rights. The Protection of Women Against Domestic

Violence Act, 2005, by recognising relationships in the nature of marriage, lays down the groundwork for this.

When courts are called upon to determine the existence of a civil union, they must rely on indicators that reflect the real substance of the relationship. The factors we have

listed offer a holistic and flexible framework to enable this. For example, including intermittent cohabitation recognises that many partners may not reside together permanently but still maintain a committed, shared life.



### Some factors that courts can consider while determining the existence of a civil union are:

- (i) Duration of the relationship;
- (ii) Intermittent or continuous cohabitation in a shared household;
- (iii) Degree of financial dependence or interdependence;
- (iv) Degree of mutual support and personal care; or,
- (v) Any child that the parties are responsible for as parents.

## C) Developing a Regime for Nominations across Sectors

Civil unions and marriage provide legal recognition to dyadic relationships but do not capture the full diversity of family and care networks that LGBTQIA+ persons live within. For those alienated from natal families or uninterested in traditional partnership models, nominations offer a flexible legal tool to assign rights and responsibilities to members of their chosen family, without requiring a formal marital or partnership status.

Unlike civil unions, nominations are not limited to two people or bound by exclusivity. They allow individuals to designate different people for different kinds of support or benefits—a friend for medical decision-making, a sibling for pension benefits, a housemate for welfare entitlements. This flexibility reflects the fragmented and plural nature of care and dependency in real life and enables legal systems to accommodate non-conjugal, non-cohabiting, and non-dyadic relationships that are otherwise left out of family law.

Moreover, nominations can function in a sector-specific way—enabling access to labour benefits, welfare schemes, and healthcare rights—even in the absence of legal recognition of marriage or civil unions.

### On the Limits of Nominations: Inheritance

While the nomination regime enables recognition and protection of chosen families, it is designed to work alongside, and not override, existing legal structures. Specifically, we have not recommended that nominations override inheritance laws, such as in the case of bank accounts.



Currently, nominees in a bank account serve as safekeepers of money. Let us take an example. Y has been listed as the nominee for X's bank account. If X dies, the bank will transfer the funds to Y for safekeeping. However, these funds will eventually go to beneficiaries as per the will that X may have written or through the inheritance regime if there is no will.

#### This is for several reasons:

- \* First, inheritance law already provides a robust instrument, a will, for individuals to allocate property and assets after death. Wills allow for discretion and clarity in identifying beneficiaries and can be tailored to reflect a person's relationships and preferences.
- \* Second, creating parallel nomination regimes that override succession rights could lead to conflicting claims and legal uncertainty, especially in the absence of harmonised rules across sectors.

- \* Third, we believe that empirical research is needed to assess how often such nominations are used in practice, how they interact with family disputes, and what the implications are for vulnerable groups.

Until such evidence is available, and a careful balance is struck between autonomy and predictability, we propose that nominations remain relevant for decision-making, benefits, and entitlements during life, while inheritance continues to be governed by wills and succession law.

## Principles of a Nomination Regime

**A well-designed nomination regime should follow these key principles:**

### Autonomy in Choice

Every person should have the legal right to nominate any individual of their choice to act on their behalf, receive benefits, or make decisions in contexts where next of kin rights traditionally apply.

### Default Validity in the Absence of Marital/Civil Union Status

To prevent conflict or misuse, nominations should be valid only where the nominating individual is not in a subsisting marriage or civil union. If they subsequently enter into such a union, the earlier nomination can be rescinded, unless otherwise affirmed.

### Uniform, Simple Procedures

Nomination should be operationalised through model rules and a standardised form, adopted uniformly across sectors and States. The process must be simple, accessible, and non-onerous.

### Sector-Specific Implementation

Nominations must be mainstreamed across key sectors—financial services, labour and employment, and welfare schemes—with the relevant Ministries and Departments empowered to issue enabling regulations or advisories.

For instance, for social security and welfare benefits, such as rations, housing, social pensions, and entitlements under schemes like Ayushman Bharat or PM-KISAN, are typically granted at the household level, with eligibility tied to family status.

- \* The Department of Food and Public Distribution advisory (post-Supriyo) recognising queer partners as a household for ration cards is a welcome precedent.
- \* Similar nominations-based recognition should be extended across all welfare schemes, especially those that distribute benefits at the household or next-of-kin level.
- \* Measures should be put in place to ensure that State-level authorities do not deny access to benefits based on non-marital or queer status when valid nominations exist.

## PART B:

# Parent-Child Relationships



## • INTRODUCTION •

In India, parent-child relations are governed by civil laws such as the Guardianship and Wards Act, 1890, the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act') and Central Adoption Regulation Agency ('CARA') Adoption Regulations ('Adoption Regulations') issued under it, the Assisted Reproductive Technology (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021.

Other than these laws, personal laws such as the Hindu Minority and Guardianship Act, 1956 and uncodified Muslim law on guardianship also play a role in regulation of parent child relations. Under each of these laws, parent-child relations are regulated by treating the married heterosexual unit as the only family unit entitled to access parenthood and parental rights. This brief, however, largely makes recommendations in relation to civil laws.

Under laws on adoption, surrogacy and assisted reproductive technology ('ART'), single parents are also permitted to access parenthood but the same depends on eligibility criteria which are exclusionary and informed by heteronormative ideas of what a single parent family unit must look like. Similarly, unmarried partners are not permitted to adopt or become parents via ART or surrogacy.

It is critical for laws on parenthood to be reformed to be made queer inclusive.

## • ISSUES •

Laws on parent-child relations discriminate on the basis of sex, gender identity and against queer families and atypical family formations. Gender identity under these laws is informed by the binary understanding of sex as including only male and female, thus leaving out non-binary transgender persons. Laws on parent-child relations also suffer from sex discrimination. For instance, laws on guardianship treat the father as the guardian of the child who can take legal decisions in relation to the child and their property, and mothers are the custodians of the child, meaning they are treated as caregivers. The outdated concept of illegitimacy of the child also informs parenthood laws where children born out of wedlock do not enjoy the same rights as children born within wedlock.



## • APPROACH •

In this brief, law amendments are recommended to JJ Act and Adoption Regulations to make them queer inclusive and inclusive of atypical family formations. Further, to be made inclusive, laws on parent-child relations have to be reformed at scale along the following lines:

- (a) address sex discrimination,
- (b) ensure queer inclusion,
- (c) remove binary understanding of sex and gender identity,
- (d) address discrimination against single parents,
- (e) ensure equal rights for children born out of wedlock,
- (f) codify the principle of 'best interest of the child' to avoid discriminatory application against atypical parents, and
- (g) strengthen custody and maintenance regimes generally, and especially in cases where parents are not in a marital relationship and chose to separate.

## • POLICY • RECOMMENDATIONS

### A) Making Secular Adoption Laws Queer Inclusive

The secular adoption law in India is Chapter VII of the JJ Act and Adoption Regulations. These laws only allow married heterosexual couples to adopt children and prohibit live-in partners from jointly adopting children. Further, they understand gender only in the binary of male and female, and provide for sex-based restrictions by prohibiting men from adopting children of the opposite gender.

To address these issues, the below reforms are recommended.



**Nodal Authority: Ministry of Law and Justice**

- \* **Eligibility Criteria for Adoption:** The eligibility criteria for adoption under adoption laws must be expanded to include partners in a civil union (if civil unions are recognised by law), and persons who seek to adopt jointly irrespective of marital status, gender identity and sexual orientation.
- \* **Removal of sex based restrictions:** The prohibition on single male persons from adopting female children must be removed. The potential rationale, that a male adoptive parent may sexually abuse a female child, stands rebutted by the position of law in relation to child abuse wherein the perpetrator and survivor are gender-neutral. Further, post-adoption supervision under the JJ Act acts as a safeguard to mitigate the possibility of adopted children being abused by the adoptive parent(s).
- \* **Welfare of Child:** The primary criterion for adoption must be the welfare of the child. This should not be decided based on the form of the family. The core consideration must be the ability of the potential adoptive parent being able to offer a stable, secure and safe home. This can be regulated through criteria framed by the Central Adoption Resource Authority.



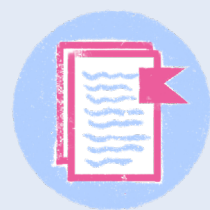
*“(G)iven the social reality that queer couples are having to adopt in law as individuals, but are residing together and for all purposes raising these children together – means that the State arguably has an even more urgent need to enable the full gamut of rights to such children, qua both parents.”*  
—Bhat J., *Supriyo vs. Union of India*, Supreme Court of India



*“We use the term ‘pregnant person’ and recognize that in addition to cisgender women, pregnancy can also be experienced by some non-binary people and transgender men among other gender identities.”*  
—Footnote 6, *A (Mother of X) vs. State of Maharashtra*, Supreme Court of India

## B) Other Parenthood Law Reforms

Under this section, policy measures required to modernise parent-child laws and make them inclusive are recommended.



During the course of consultations, the discrimination that queer parents, single parents, and parents marginalised on account of their status (such as being sex workers) was discussed by the stakeholders. It was pointed out that State officers implementing adoption laws are often prejudiced and discriminate in their assessment of who is a ‘fit parent’.



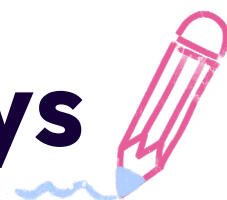
During the course of consultations it was pointed out that the appointment of a person as the guardian of a child is informed by patriarchal ideas. The Courts, while applying its discretion in such cases, allowed their prejudices to lead to bias. Thus, it is important to have certain overarching codified principles for the appointment of guardians.



**Nodal Authority: Ministry of Women and Child Development and the Ministry of Law and Justice, Government of India**

- \* Abolish the principle of illegitimacy of child: Existing laws discriminate against children born out of wedlock. Such children are deemed ‘illegitimate children’ and do not have the same rights as children born within wedlock. The concept of illegitimate children must be abolished.
- \* Abolish sex discrimination in laws on guardianship: Under present laws on guardianship, the father is the legal guardian of the child, and the mother is the caretaker of the child. Such a principle discriminates based on sex and assumes gender in the binary. This principle must be abolished across all laws, and both parents must have equal status as guardians.
- \* Codify the principle of ‘Best Interests of the Child’: At present, all authorities including Courts apply the principle of ‘Best Interests of the Child’ in cases involving children, including adoption and custody. However, this principle is not codified and permits authorities and officers to apply their subjective ideas concerning fitness when making decisions in relation to the child. Such discretion makes space for prejudices to inform decisions which may result in discrimination based on stereotypes about the ‘ideal family’. It is critical to codify this principle in law to place limits on exercise such discretion.
- \* Custody Regime for Unmarried Parents: At present, laws on marriage provide for provisions on custody in the event that the marriage dissolves. However, it is critical for the law on custody to also apply to unmarried persons who have children together to account for non-marital family formations that exist. Such a regime for custody must provide for both sole custody as well as joint custody.
- \* Inclusion in laws on Surrogacy and Assisted Reproductive Technology: The Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 permit access to parenthood only to heterosexual marital couples, and to single parents under restricted circumstances. It is critical to make appropriate amendments to these Acts to make them queer inclusive and inclusive of atypical families.

# Key Takeaways



## Part A: Queer Relationships

- \* Marriage must be de-linked from gender and sexual orientation.
- \* Language used in all family laws must be made gender-inclusive.
- \* Provisions on void and voidable marriages should be re-visited and status of marriages between transgender persons undergoing transition must be clarified.
- \* Vulnerability between parties in a marriage must be measured on the basis of gender-agnostic factors shifting from a gendered understanding of vulnerability.
- \* Re-visit the Hindu Succession Act exemption for Hindus under the Special Marriage Act in section 21-A.
- \* Recognise queer families for inheritance and provide for fixed shares for all children.
- \* A dedicated statute should be enacted on civil unions that provides for registration, legal recognition, and associated rights and responsibilities.
- \* A nomination framework should be developed to allow individuals to nominate a person of their choice for the purposes of decision-making in sectors such as healthcare and accessing benefits across sectors such as finance, labour and employment, and social security and welfare benefits.

## Part B: Parent-Child Relations

- \* Secular adoption laws must be reformed to include queer parents and parents who are in non-marital relationships to jointly adopt.
- \* Adoption laws must move beyond the binary understanding of gender as including only male and female sexes.
- \* Prohibitions on adoption based on sex-stereotyping must be removed from adoption laws (for example, the restriction on male persons from adopting female children).
- \* Laws on surrogacy and artificial reproductive technologies must be made inclusive of queer persons, queer parents, and persons who are not in a marital relationship.
- \* Custody regimes must also apply to non-marital parents, and must be codified and enforced strongly.
- \* Sex discrimination under guardianship laws must be removed. Binary ideas of gender must be removed from such laws as well.
- \* The 'best interest of the child' principle which informs rights of children must be codified to avoid discrimination against women, queer persons, and other parents who are marginalised based on their identity or status.
- \* Children born outside of wedlock must have the same rights as children born within wedlock.



# Glossary

## Term

## Definition

### ASEXUAL PERSONS

A person with a complete or partial lack of sexual attraction or interest in sexual activity with others. Asexuality exists on a spectrum.

### BINARY GENDER

The false concept that there are only two genders, namely man and woman.

### BISEXUAL

A person emotionally, romantically or sexually attracted to more than one gender, though not necessarily simultaneously, or in the same way or to the same degree.

### CIS-GENDER PERSON

A person whose gender identity corresponds with the sex assigned to them at birth.

### CIS-NORMATIVE

The idea that everyone is cis-gender.

### CIVIL UNION

A legally recognised union with rights similar to that of marriage.

### GAY

A person who is emotionally, romantically or sexually attracted to members of the same gender.

### GENDER

The socially constructed norms, behaviours and roles associated with being a woman, man, girl or boy, as well as relationships with each other. The law currently recognised three genders: man, woman, transgender.

### GENDER AFFIRMING CARE

A range of social, psychological, behavioural or medical (including hormonal treatment or surgery) interventions designed to support and affirm an individual's gender identity.

### GENDER IDENTITY

A person's subjective sense of their gender. This exists on a spectrum.



## Term

## Definition

<b>HETERONORMATIVE</b>	The idea that everyone is heterosexual.
<b>HORIZONTAL RESERVATION</b>	Derived from Article 15(3) of the Constitution, these are equal opportunities provided to other categories of beneficiaries, including women, transpersons, persons with disabilities, and cuts through vertical categories.
<b>INTERSEX PERSONS</b>	Persons who have innate sex characteristics that do not fit medical and social norms for female or male bodies.
<b>LESBIAN</b>	A person who experiences same-sex emotional, romantic or sexual attraction to non cis-male people.
<b>LGBTQIA+</b>	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other allies that are not heterosexual or cis-gender.
<b>QUEER</b>	An umbrella term that includes persons who are not cis-gender or heterosexual. Queer & LGBTQIA+ have been used interchangeably in this series.
<b>SEX</b>	This is the biological difference on the basis of genetics, hormones, and genitalia. Traditionally, it has been assumed to be male and female, but also includes intersex persons.
<b>SEXUAL ORIENTATION</b>	A person's enduring physical, romantic and/or emotional attraction to members of particular sexes or genders.
<b>SEX REASSIGNMENT SURGERY</b>	A surgical procedure to align a person's physical characteristics with their identified gender.
<b>TRANSGENDER PERSON</b>	A person whose gender identity does not correspond with the sex assigned to them at birth.

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