

Discrimination—Access to Goods and Services



Queering the Law: Beyond Supriyo



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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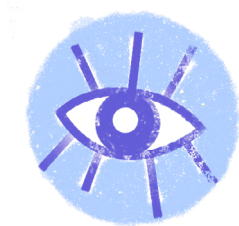
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Queering the Law: Beyond Supriyo

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

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.

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.

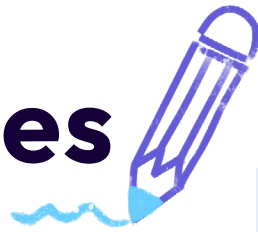
3. Queer-Affirmative Healthcare:

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.

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:

Ensure equal access to public and private goods and services regardless of gender identity or sexual orientation.

Examples:

- * Proposes a comprehensive anti-discrimination law which prohibits public and private discrimination covering sectors such as housing, education, employment, and financial services.
- * Suggests reforms to the Transgender Persons (Protection of Rights) Act, 2019 to strengthen enforcement.

2. Affirmative Action and Positive Obligations:

States must actively dismantle structural barriers and create pathways for inclusion.

Examples:

- * Recommends horizontal reservations for transgender persons in public employment and education.
- * Calls for targeted financial inclusion schemes, including credit support and priority sector lending for transgender persons.

3. Recognition of Diverse Family Structures:

Public benefit schemes and services must accommodate self-defined and queer families.

Examples:

- * Urges banks, insurers, and pension authorities to allow self-declared nominations from non-marital partners.
- * Recommends eligibility changes in housing schemes to include queer and atypical households.

4. Gender-Inclusive and Queer-Inclusive Language:

Statutory and policy frameworks must move beyond binary gender categorisation of only male and female.

Examples:

- * Suggests removal of gendered terms in tenancy and cooperative housing laws.
- * Proposes gender-inclusivity in financial service forms and beneficiary designations.

5. Participation and Voice of Queer Communities:

Community-led consultations must guide sector-specific legal and policy change.

Examples:

- * Community input shaped reforms in education infrastructure, such as inclusive uniforms and washrooms.
- * Experiences of denial in banking and credit access grounded the call for circulars from financial regulators.

Discrimination: Access to Goods & Services

• INTRODUCTION •

Discrimination against queer persons has been widely documented by civil society and recognised by Constitutional Courts in several landmark judgments. Queer individuals continue to face systemic barriers in sectors such as employment, housing, healthcare, and access to public spaces. Despite the existence of the Transgender Persons (Protection of Rights) Act, 2019 ('2019 Act'), the transgender community has consistently highlighted its shortcomings, particularly in protecting against private discrimination. Even where State action exists, its implementation is often undermined by social prejudice and lack of sensitisation. Alongside awareness-building, robust legal protections are critical to ensuring discrimination-free access to goods and services for queer persons. This must be achieved through a comprehensive anti-discrimination framework that spans all sectors and marginalised groups.

In *Supriyo*, the Supreme Court acknowledged the widespread discrimination faced by queer persons on the basis of both identity and the non-recognition of their relationships. Justice Kaul, in his opinion, underscored the need for anti-discrimination legislation that explicitly prohibits such treatment, emphasising a law that imposes horizontal obligations on both State and private actors, grounded in the spirit of Article 15. Following rulings in *NALSA* and *Supriyo*, it is clear that “sex” under Article 15 includes gender identity and sexual orientation, creating a constitutional duty to prohibit such discrimination.

India’s current anti-discrimination framework is fragmented, with various laws —such as the 2019 Act, the Rights of Persons with Disabilities Act, 2016, the HIV/AIDS Act, 2017, the Mental Healthcare Act, 2017, and the SC/ST (Prevention of Atrocities) Act, 1989—adopting sector-specific approaches. These laws often lack strong enforcement mechanisms, accessible redressal systems, and remedies for private discrimination. A comprehensive anti-discrimination law, informed by global best practices and grounded in constitutional values, is urgently required.

• ISSUE •

Measures to address discrimination against persons based on gender identity and sexual orientation, and persons in queer relationships are inadequate. India does not have a comprehensive legislation protecting queer persons and other marginalised groups against both public and private discrimination. The anti-discrimination measures in the 2019 Act also fall short in protecting transgender persons. Further, laws and policies in sectors such as labour and employment, housing and education also exclude queer persons. This is because they understand gender as only in the binary of male and female, and recognise only heterosexual marital relationships as family units deserving of legal recognition.

• APPROACH •

In this brief, two broad approaches to addressing discrimination are outlined.

First, under Part A, general recommendations which cover comprehensive anti-discrimination and its essential components, and measures for better enforcement of the Transgender Persons (Protection of Rights) Act, 2019 are prescribed.

Second, under Part B, sector specific recommendations covering financial services, labour and employment, education, and housing are provided. Measures provide for both prohibition of discrimination and affirmative measures to address exclusion.

Part A:

General Recommendations



• POLICY • RECOMMENDATIONS



“(T)he proliferation of remedies through an anti-discrimination statute can be a fitting solution. Such legislation would also be in furtherance of the positive duty of the State to secure social order and to promote justice and social welfare under Article 38 of the Constitution”
— Kaul J., *Supriyo vs. Union of India*, Supreme Court of India

I. A comprehensive Anti-Discrimination legislation

India must enact a horizontally applicable anti-discrimination law—one that applies not just to State action but also to private actors. Models include the India’s Equality Bill, 2019, Kerala Anti-Discrimination and Equality Bill, 2021, and global templates like the UK Equality Act, 2010 and South Africa’s PEPUA, 2000.



**Nodal Authority: Ministry
of Law and Justice,
Government of India**

A) Key Features

- * **Protected grounds:**
Constitutionally recognised grounds (such as religion, caste, sex, etc.), judicially affirmed grounds (such as gender identity, sexual orientation, marital status, pregnancy), and evolving grounds (such as disability status, HIV status, and mental health status).
- * **Definition of discrimination:**
Must cover direct, indirect, intersectional, stereotype-based, and association-based discrimination.
- * **Future-proofing:**
Allow expansion to other dignity-based, immutable or fundamental characteristics.

B) Enforcement and Oversight

- * **Effective Authority:**
Independent enforcement authority with powers to: take complaints, investigate, issue directions, impose penalties.
- * **Mandate for policy and awareness:**
Advisory functions, public sensitisation, and monitoring mechanisms to promote equality.

II. Reform of the Transgender Persons (Protection of Rights) Act, 2019

The need for reforming and better enforcement of the 2019 Act has been written upon extensively and was voiced during the consultations by several transgender persons and transgender rights activists. At present a petition is pending in the Supreme Court where the constitutionality of this Act has been challenged.

Below outlined are measures recommended for reform and better enforcement of the 2019 Act.



Nodal Authority: Ministry of Social Justice and Empowerment, Government of India

A) Identity Documents

1. **Clarity of Purpose for a Transgender Card:**
The TG card issued under the 2019 Act is not mandatory in all cases, yet transgender persons are often denied protections without it. The State must reassess the purpose of the TG card and consider recognising Aadhaar or voter ID with updated gender as valid proof.
2. **Access to Identity Cards:**
Transgender persons should be allowed to apply for identity cards recognising them as transgender, men, or women, in line with NALSA, which affirms the right to self-identify one's gender.
3. **Removal of Medical Prerequisites:**
The 2019 Act wrongly mandates surgery or medical intervention for identification as male or female. This violates NALSA and must be removed to uphold the right to self-determined gender identity.



“Transgender persons’ right to decide their self identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.”

— NALSA vs. Union of India, Supreme Court of India



During the course of consultations, transgender persons pointed out that changing one's gender and name across identity documents is a very arduous process. This impacts their ability to access goods and services such as financial inclusion, and welfare benefits earmarked for transgender persons.

B) Affirmative Action

Reservations in Public Education and Employment:

The NALSA judgment directed that transgender persons must be provided reservations in matters of public employment and education. However, the 2019 Act is silent on this issue. Horizontal reservations can be provided in the 2019 Act, similar to how it is provided for in the Rights of Persons with Disabilities Act, 2016.



“...(O)nce gender identity is given horizontal reservation, it follows that the transgender community, being a socially and educationally backward community discriminated on the basis of gender identity, should also be entitled to similar reservation”

—Rakshita Raj vs. State of Tamil Nadu, High Court of Madras

C) Efficient Process for Access to Identity Cards

1. Adherence to Timelines:

Despite statutory timelines under the 2019 Act, issuance of TG cards is frequently delayed. The Union and State Social Justice Ministries must issue circulars mandating strict adherence to these timelines by designated authorities.

2. Physical Portals for Application:

Online-only applications exclude many transgender persons lacking digital access or support. The State must designate physical centres (e.g., post offices, Aadhaar centres) with trained, sensitised officials to enable in-person TG card applications.

D) Grievance Redressal Mechanism

Efficiently addressing Discrimination:

The 2019 Act mandates complaint officers and the National Council to address grievances, but neither has decision making powers. These mechanisms are ineffective, particularly for private discrimination. The Act must be amended to establish special courts or tribunals empowered to hear violations and ensure enforcement.



“... (T)he Transgender Persons Act does not expressly provide for a remedy for the infringement of Section 3 ('Prohibition of Discrimination').”

—Chandrachud J., Supriyo vs. Union of India, Supreme Court of India

Part B:

Sector Specific Recommendations



Under this part, recommendations are provided for addressing discrimination in these sectors: **financial services**, **education**, **employment** and **housing**.



“(M)asures need to be taken with expedition because inaction will result in injustice and unfairness with regard to the enjoyment of such benefits, available to all citizens who are entitled and covered by such laws, regulations or schemes (for instance, those relating to employment benefits: provident fund, gratuity, family pension, employee state insurance; medical insurance; material entitlements unconnected with matrimonial matters, but resulting in adverse impact upon queer couples).”

—Bhat J., *Supriyo vs. Union of India*, Supreme Court of India



I. Financial Services

Financial services broadly include banking facilities, credit facilities, and insurance. For the purpose of this part, we are also including benefits in relation to pension and taxation.

A. GENERAL MEASURE

Financial benefits can only be extended to persons in queer relationships if such relationship is recognised by the State. As discussed in the Policy Brief on [Recognition of Queer Relationships and Families](#), the necessary steps to achieve this is either through recognition of queer marriage, or recognition of civil unions. In their absence, it is critical for the State to issue a standard, binding protocol that would form the basis of joint access to financial services.

A direction that a declaration of intent to access financial services jointly would be the ideal policy measure, along with concomitant safeguards where needed. Such a measure will not only benefit persons in queer relationships but will permit any persons (irrespective of the nature of their relationship) to jointly access financial services.



Nodal Authority: Ministry of Finance, Government of India, and the Reserve Bank of India

B. BANKING FACILITIES

Measures of two kinds are recommended. First, adaptation of inclusive processes. Second, affirmative measures to correct for discrimination on grounds of systemic exclusion.



Nodal Authority: Ministry of Finance, Government of India, and the Reserve Bank of India

Inclusive Processes

- 1. Clear Procedure for Joint Bank Accounts and Nomination:**
RBI must direct banks to allow joint accounts and mutual nominations for any two persons, regardless of marital or familial ties. A standardised protocol and sensitisation for bank officials must accompany this.
- 2. Aadhaar as Relevant Identity Document:**
Transgender persons must be allowed to use Aadhaar as valid gender identity proof. RBI should mandate banks to accept Aadhaar for accessing financial services earmarked for transgender persons.
- 3. Prohibition of Discrimination:**
RBI must prohibit discrimination in banking on the basis of sexual orientation or gender identity. Banks must comply with the 2019 Act by appointing a complaints officer.
- 4. Accessible Grievance Redressal:**
RBI should clarify that denial of service to queer persons constitutes a 'Deficiency in Service' under the RBI 2021 Ombudsman Scheme and is subject to penalty.

Affirmative Measures

- 1. Financial Inclusion:**
Financial regulators must explicitly recognise transgender persons as a gender category when framing financial inclusion policies.
- 2. Targeted Financial Benefits:**
RBI should direct banks to treat transgender persons as a priority group for Jan Dhan accounts. Benefits like direct transfers, low-interest loans, and insurance should be made available for trans-held accounts.
- 3. Discrimination-Free Lending:**
RBI's Fair Practice Code must be amended to prohibit lending discrimination on the grounds of sexual orientation and gender identity, alongside sex, caste, and religion.

C. CREDIT

Access to credit, largely in the form of business and personal loans, is critical for financial inclusion. Affirmative measures aimed towards ensuring access to credit for transgender persons and communities, can play a key role towards the broader objective of financial inclusion.



Nodal Authority: Ministry of Finance, Government of India, and the Reserve Bank of India

1. Credit to Transgender Enterprises:

The Credit Guarantee Fund Trust for Micro and Small Enterprises Scheme must be amended to list transgender persons as a priority group. This will ensure easier credit access for trans-led enterprises on favourable terms.

2. Micro-Credit:

A study must be conducted on transgender collectives to tailor Self-Help Group (SHG)-based micro-credit schemes. Credit-linked welfare schemes for transgender persons should be framed under the 2019 Act.

3. Joint Loans to Queer Persons:

The Reserve Bank of India (RBI) must direct banks not to impose marital or familial ties as mandatory for joint loans. Creditworthiness should be assessed using standard financial criteria only.

4. Priority Lending:

RBI's Master Directions on Priority Sector Lending must include transgender persons as a target group. This will facilitate access to credit under targeted lending quotas.

5. Public Sector Bank Measures:

RBI should advise Public Sector Banks (PSBs) to earmark a fixed percentage of lending for transgender persons, akin to the 5% credit earmarked for women under the RBI 2000 Action Plan.

D. INSURANCE

Insurance schemes allow a person to pre-empt and protect themselves from future financial crises. In today's times, investing in medical and life insurance schemes has become imperative for even a remote chance at a financially comfortable life in a person's adult years.



Nodal Authority: Ministry of Finance, Government of India, and Insurance Regulatory and Development Authority

1. Joint Insurance:

Health and life insurance providers must extend joint policies to queer partners in civil unions (if legally recognised) or via a nomination-based system where such recognition is absent.

2. Nomination in Life Insurance:

The Insurance Act, 1938 must be amended to recognise queer partners as 'beneficial nominees'—either through civil unions or a nomination process, with safeguards against conflicting marital claims.

E. PENSION

The Court in *Supriyo* recognised that queer couples are excluded from family pension benefits due to lack of legal recognition. Inclusive measures must be taken to extend pension rights to queer partners.



Nodal Authority: Ministry of Personnel, Public Grievances and Pensions, Government of India

Recognition of Queer Relationships for Pension:

Pension rules currently prioritise marital and natal family ties, excluding queer partners from nomination rights. To ensure inclusion, individuals must be allowed to nominate any person, regardless of legal or familial status.

F. TAXATION

The Income Tax Act, 1961 offers exemptions and deductions only to heterosexual married couples. Queer partners are excluded from these tax benefits despite similar economic responsibilities.



Nodal Authority: Ministry of Finance, Government of India

Amendments to the Income Tax Act:

Income tax laws extend benefits to heterosexual families for the purpose of exemptions and deductions. In the event that queer civil unions are recognised by law, it is critical to extend these benefits to the same.

G. AFFIRMATIVE MEASURES

In addition to the above measures, certain general policy measures are recommended below:

1. Evidence-Based Policies:

The RBI must collect gender-disaggregated data that includes transgender persons, beyond the male-female binary, to enable inclusive financial policymaking.

2. Schemes for Financial Inclusion:

The Central and State Governments should frame targeted financial inclusion schemes for transgender persons under the 2019 Act.



II. Employment

Introduction

The Supreme Court in *Supriyo* and *NALSA* has affirmed the need for inclusive labour laws that recognise queer and transgender persons as workers, caregivers, and parents. This section outlines four key areas where legislative and executive action is required to ensure equality in the workplace.



Nodal Authority: Ministry of Labour and Employment

A. PARENTAL BENEFITS



“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

Labour laws must evolve to acknowledge that parenthood and pregnancy are not confined to cisgender heterosexual women. In *Supriyo*, the Court recognised the exclusion faced by queer parents under current adoption and maternity frameworks.

In light of this, the Maternity Benefit Act, 1961 and Chapter VI of the Code on Social Security, 2020 must be reframed as gender-inclusive parental benefit laws. This includes:

- * Replacing gendered references with inclusive language (“pregnant person” instead of “woman”),
- * Ensuring equal parental leave for adoptive and commissioning parents (in case of surrogacy) regardless of gender identity,
- * Rationalising leave periods across childbirth, adoption, and surrogacy, and
- * Re-evaluating the arbitrary three-month age cut-off for adopted children to be eligible for leave using an evidence-based approach.

B. EXTENDING LABOUR BENEFITS TO QUEER FAMILIES

The three core labour codes—the Code on Wages, 2019, the Code on Social Security, 2020, and the Code on Occupational Safety, Health and Working Conditions, 2020 (‘labour codes’)—are premised on a gender-binary and heteronormative definition of family.

These exclude queer couples, civil union partners, and chosen families from accessing labour benefits. To remedy this, the legal framework must shift towards recognising caregiving structures beyond marriage and the binary.

The following measures may be taken to address this:

- * Amend definitions such as Section 2(33)(a) of the Social Security Code, 2020 to expand “spouse” to include:
(a) partner in a civil union (if recognised by law), or
(b) nominated person, if the employee is unmarried.
- * Define “family” in all three labour codes to include nominated individuals, not just marital or blood relations.

- * Amend terms like “commissioning mother” to “commissioning parent” to ensure gender inclusivity.
- * Ensure nomination systems are put in place so that benefits (e.g., pensions, leave, gratuity) can be accessed by partners outside traditional family definitions.
- * Include civil union partners in pension, dependents, and survivor benefit schemes under social security law.
- * Guarantee equal access to leave, death benefits, and medical reimbursements for queer and transgender employees’ chosen families.

C. PROHIBITION OF DISCRIMINATION IN PUBLIC EMPLOYMENT

- * Amend the Central Civil Services (Conduct) Rules, 1964 to prohibit harassment or discrimination based on sexual orientation or gender identity.
- * Define “workplace harassment” to include hostile environments or targeted acts due to an employee’s gender identity, sexual orientation, or queer relationship.
- * Adopt the Equal Opportunity Policy for Transgender Persons across all government services and Public Sector Undertakings, not just within the Ministry of Social Justice and Empowerment.
- * Align grievance redressal mechanisms with Central Civil Services (Classification, Control and Appeal) Rules, 1965 to ensure enforceability and accountability.
- * Conduct mandatory sensitisation and training for all public sector employees, in partnership with queer-led civil society organisations.
- * Monitor implementation through periodic reports and audits at departmental levels.

D. INFORMAL SECTOR REFORMS



“(Sex workers) are also entitled to a life of dignity in view of Article 21 of the Constitution.”
—Budhadev Karmaskar vs State Of West Bengal, Supreme Court of India



“Criminalizing begging is a wrong approach to deal with the underlying causes of the problem. It ignores the reality that people who beg are the poorest of the poor and marginalized in society. Criminalizing begging violates the most fundamental rights of some of the most vulnerable people in our society.”
—Harsh Mander vs. Union of India, High Court of Delhi

- * Repeal anti-vagrancy laws that criminalise transgender persons’ livelihoods.
- * Address the misuse of the Immoral Traffic (Prevention) Act, 1956 to prevent harassment of sex workers, including transgender sex workers.
- * Frame welfare schemes for informal transgender workers under the Code on Social Security, 2020 and the 2019 Act.
- * Mandate inclusion, training, and independent accountability for law enforcement interacting with transgender persons.



III. Education

Introduction

Despite constitutional recognition of the rights to equality, dignity, and non-discrimination for queer and transgender persons, India’s education laws and policies remain exclusionary. The Right to Education Act, 2009 (‘RTE Act’) and the 2019 Act fail to adequately protect students of diverse sexual orientations and gender identities (‘SOGI’) from discrimination, violence, and structural barriers in access to schooling, health, and participation. A rights-based framework rooted in inclusive infrastructure, affirmative policies, and queer-affirmative pedagogy is urgently required.



“Amendment of necessary policies and resources to include students belonging to LGBTQIA+ community in all spheres are Schools and Universities. E.g.

1. Ensure availability of gender-neutral restrooms for the gender-nonconforming student.
2. Change of name and gender on academic records for transgender persons.
3. Inclusion of ‘transgender’ in addition to M and F gender columns in application forms for admission, competitive entrance exams, etc.....”

—Directions to Governments, S Sushma vs. Commissioner of Police, High Court of Madras



Nodal Authority: Ministry of Education; Department of Education of State Governments

1. RIGHT TO BE FREE FROM DISCRIMINATION

- * Amend Section 2(d) of the RTE Act to include transgender children as “disadvantaged groups” across all states.
- * Provide horizontal reservations for transgender students in public education through amendments to the 2019 Act and state-level orders.
- * Mandate inclusive application forms for schools and universities, including gender-diverse options.
- * Issue national directives ensuring that hostel and school infrastructure, including washrooms, are inclusive and accessible to all gender identities.
- * Reform curriculum to remove bias and include queer narratives using the NCERT 2021 roadmap as a model; portray queer individuals as role models and affirm diversity from early childhood education onward.

2. PROTECTION FROM VIOLENCE

- * Amend University Grant Commissions’s (‘UGC’) 2009 Anti-Ragging Regulations to cover SOGI-based bullying explicitly, remove terms like “homosexual assault,” and include virtual harassment.
- * Require SOGI representation in Student Grievance Redressal Committees under the 2023 UGC regulations to ensure fair and inclusive redress.
- * Enact rules under Section 17 of the RTE Act to prohibit corporal punishment and mental harassment of queer students, and introduce standalone legislation defining and banning corporal punishment across all types of schools.
- * Institutionalise queer-affirmative pedagogy through teacher training programmes, and revise the National Curriculum Framework for Teacher Education under the National Council for Teacher Education Act, 1993.
- * Amend Section 21 of the RTE Act to mandate representation of queer parents in School Management Committees ensuring inclusive school governance.

3. RIGHT TO HEALTH

- * Operationalise Section 29 of the Mental Healthcare Act, 2017 by creating queer-affirmative mental health guidelines and training protocols for professionals.
- * Deliver SOGI-sensitive services through Adolescent Friendly Health Clinics and ensure consultations are led by queer mental health professionals.
- * Promote peer-led support groups in schools and colleges to reduce isolation and improve mental health outcomes; mandate participation of government-linked youth bodies (National Service Scheme, Nehru Yuva Kendra Sangathan (‘NYKS’), Scouts & Guides) in these initiatives.
- * Conduct structured parent sensitisation workshops via Parent Teacher Associations to equip families with tools to support their queer children, following the judgment in *S. Sushma vs Commissioner of Police*.

4. RIGHT TO IDENTITY AND PARTICIPATION



“The fact that the provisions of the (National Cadet Corps) Act do not recognize the third gender or that detailed guidelines are required to be drawn up for the integration of persons of the third gender into the Armed Forces or the National Cadet Corps cannot... be a justification for denying admission to the petitioner to the NCC unit on the basis of the Identity Card obtained by her.”

—*Hina Haneefa vs. State of Kerala, High Court of Kerala*



“It is my considered opinion that a transgender person is having equal right to participate in competitions. Here, in the absence of any category for participating transgender persons, the petitioner is seeking to participate in her identity as woman. If the organisers have not made arrangements for participating transgenders, then the petitioner will have to be permitted to participate in her chosen category.”

—*Anamika vs. State of Kerala, High Court of Kerala*

- * Ensure that students are allowed to register and participate in all academic and extracurricular activities—including sports—on the basis of self-identified gender, following judgments such as *Hina Haneefa vs. State of Kerala* and *Anamika vs. State of Kerala*.
- * Issue UGC and Ministry of Education directives to allow use of preferred names and pronouns across all official records and forms.
- * Encourage adoption of university-level SOGI-inclusive policies (e.g., University of Calicut’s Transgender Policy) that establish rights-based grievance redressal, inclusive language norms, and safe campus spaces.
- * Implement NCERT’s ‘Integrating Transgender Concerns in Schooling’ manual, including policies on gender-inclusive uniforms, inclusive curriculum, and provision of safe sanitation facilities for all students.
- * Direct schools to provide safe and non-discriminatory access to restrooms and changing facilities, in line with Ministry of Drinking Water and Sanitation 2017 guidelines and the judgment in *S Sushma vs. Commissioner of Police*.



IV. Housing

Introduction

Queer persons and persons in queer relationships face wide-ranging issues in accessing housing and shelter. Such discrimination is prominent especially towards transgender persons and those in openly non-normative relationships or family structures and worsens when they belong to marginalised caste and class sections.

Apart from issues of access, even shelter homes, which are supposed to be safe spaces, are queer-exclusionary in many ways. Infrastructure and training

at shelter homes is often not queer-affirmative, and those who manage shelter homes are not aware of issues faced by queer persons.

This section prescribes measures towards affirmative and anti-discriminatory action to enhance queer persons’ access to housing and shelter.



“...(T)he (transgender) community also faces discrimination in the housing sector. Studies have shown that it is very difficult for members of the queer community to rent a house. Some members of the queer community recounted that they have shifted houses twice in four years because of neighbours who assumed that they had parties and caused disturbances”.

—Chandrachud J., *Supriyo vs. Union of India*, Supreme Court of India



Nodal Authority: Ministry of Housing and Urban Affairs, and Ministry of Social Justice and Empowerment, Government of India and corresponding departments at the State Government level

1. Renting:

State tenancy laws, including the Model Tenancy Act, 2021, should amend the definition of “tenant” to reflect non-heteronormative relationships. Tenancy succession should be based on shared residence and financial interdependence—not marital or familial ties—enabling recognition of atypical families.

2. Discrimination in Access to Housing:

Anti-discrimination clauses must be incorporated into tenancy and rent laws to prevent housing discrimination against queer persons. These laws should also include dedicated grievance redressal mechanisms for private discrimination.

3. Cooperative Housing:

Cooperative society laws must broaden the definition of “family” to include queer partners, civil unions, and chosen families. Provisions like expulsion for “immoral conduct” must be removed, as they are vague and open to misuse against queer residents.

4. Inclusive Housing Schemes:

State housing schemes must explicitly recognise queer and non-normative family structures as eligible beneficiaries. Transgender persons should be listed as a distinct category under schemes like the Pradhan Mantri Awas Yojana and given horizontal reservations in state schemes.

5. Affordable Housing Schemes:

Affordable housing schemes for transgender persons should be introduced under the 2019 Act. State governments must prohibit discrimination in housing access through binding directives, in line with their obligations under the Act.

6. Shelter Homes:

Shelter homes must be made queer-inclusive by reforming documentation requirements, ensuring gender-neutral facilities, and training staff to sensitively address the trauma that leads queer persons to seek shelter. This includes conflict resolution and crisis-specific support.



“The Union Government, State Governments, and Governments of Union Territories are directed to:

.....

v. Establish and publicise the availability of ‘safe houses’ or Garima Grehs in all districts to provide shelter to members of the queer community who are facing violence or discrimination;”
—Chandrachud J., *Supriyo vs. Union of India*, Supreme Court of India

7. Garima Grehs:

To improve access and safety in *garima grehs*, the following reforms are essential:

- (a) Establish more garima grehs nationwide;
- (b) Remove or extend the one-year stay limit;
- (c) Ensure timely funding;

- (d) Provide adequate security and privacy;
- (e) Remove mandatory TG card requirements;
- (f) Ensure compliance with accessibility standards for the elderly and residents with disabilities.

8. Assisted Living Facilities:

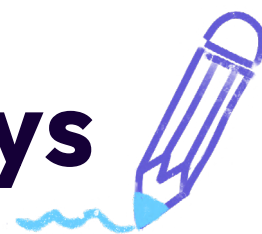
Existing facilities must be made inclusive and queer-friendly. The State should also create dedicated assisted living spaces for elderly or queer persons with disabilities who cannot afford independent housing. Staff must be trained to ensure safe, gender-sensitive infrastructure.

9. Other Legal Measures under the 2019 Act:

The 2019 Act should:

- (a) Affirm housing rights for transgender persons, including access to shelters and government housing;
- b) Recognise the right of transgender adults to live in non-traditional care structures beyond rehabilitation centres;
- (c) Ensure courts consider scenarios of domestic violence—not just “inability to care”—when deciding on removal from family homes, and distinguish the rights of adults and minors.

Key Takeaways



Part A: General Recommendations

- * A comprehensive anti-discrimination legislation which prohibits discrimination by both State actors and private actors must be passed. Such a law must prohibit discrimination based on gender identity and sexual orientation.
- * The Transgender Persons (Protection) of Rights Act, 2019 must be reformed to ensure easy and time bound access to identity cards, remove requirements for medical procedures, and provision of horizontal reservations in public employment and education.

Part B: Sector Specific Recommendations



Financial Services

- * Persons must be able to access financial services jointly based on a declaration of intent for joint access.
- * Banks must follow inclusive processes for access to banking services for queer persons and persons in queer relationships.
- * Effective grievance redressal mechanisms must be put in place in case of discrimination against queer persons or persons in queer relationships by providers of financial services.
- * Affirmative measures such as earmarking of credit, recognition of transgender persons as a gender category for financial inclusion policy and collection of data, affirmative lending must be put in place for transgender persons and entrepreneurs.
- * Insurance benefits must be extended to persons based on a nomination mechanism with adequate safeguards.

- * Pension benefits must be extended to persons based on a nomination mechanism with adequate safeguards.
- * Tax laws must be amended to extend taxation benefits to partners in a civil union.



Employment

- * Parental benefits must be extended to all persons regardless of gender identity, sexual orientation or marital status. Towards this end, the Maternity Benefit Act, 1961 must be reconceptualised.
- * Labour Codes must be made queer inclusive through use of gender inclusive language, the definition of 'spouse' must be amended to include partners in a civil union. Nomination regime for labour benefits must be provided with adequate safeguards.
- * Public employment laws must be amended to prohibit discrimination based on gender identity and sexual orientation.
- * Equal Opportunity policies for transgender persons and sexual minorities must be enforced in the public sector.
- * Horizontal reservations must be provided to transgender persons in public employment.
- * Anti-vagrancy laws must be repealed, misuse of laws on sex trafficking against sex workers must be addressed, and informal sector social security benefits must be provided for transgender persons.



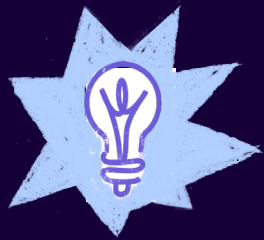
Education

- * Amend the RTE Act to include transgender children as a “disadvantaged group” and mandate horizontal reservations for transgender students across all states.
- * Mandate inclusive infrastructure—such as gender-neutral restrooms, inclusive hostels, and safe changing facilities—in line with national directives and S. Sushma.
- * Revise school and university application forms to include non-binary gender options and enable change of name and gender in academic records.
- * Incorporate queer-affirmative pedagogy in teacher training and curriculum design, using the NCERT 2021 roadmap as a foundational model.
- * Strengthen protections against violence by amending UGC regulations to cover SOGI-based bullying, remove pathologising language, and include digital harassment.
- * Ensure mental health access by operationalising Section 29 of the Mental Healthcare Act, establishing queer-led counselling, and peer support structures in educational institutions.
- * Recognise students’ gender identity for participation in all academic and extracurricular activities, following rulings in Hina Haneefa and Anamika.
- * Adopt institutional SOGI policies—such as the University of Calicut’s Transgender Policy—and implement NCERT’s manual for inclusive schooling practices.



Housing

- * State tenancy laws and the Model Tenancy Act, 2021 must be amended to expand the definition of ‘tenant’ to include non-heteronormative relationships.
- * Anti-discrimination clauses must be incorporated in tenancy laws. An effective grievance redressal mechanism must be introduced to tackle private discrimination.
- * Cooperative housing society laws must define family broadly to include queer partners, civil unions and chosen families. Provision on ‘immoral conduct’ must be removed.
- * State housing schemes must recognise queer and non-normative families as eligible beneficiaries.
- * Affordable housing schemes must be introduced for transgender persons under the 2019 Act.
- * Queer friendly shelter homes must be established.
- * *Garima Grehs* must be established and policies governing them must be reformed.
- * Assisted living facilities must be made inclusive of queer elders and queer persons with disabilities.
- * The 2019 Act must be reformed to recognise housing rights for transgender persons and respect their autonomy to live with chosen families.



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

HETERONORMATIVE	The idea that everyone is heterosexual.
HORIZONTAL RESERVATION	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.
INTERSEX PERSONS	Persons who have innate sex characteristics that do not fit medical and social norms for female or male bodies.
LESBIAN	A person who experiences same-sex emotional, romantic or sexual attraction to non cis-male people.
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other allies that are not heterosexual or cis-gender.
QUEER	An umbrella term that includes persons who are not cis-gender or heterosexual. Queer & LGBTQIA+ have been used interchangeably in this series.
SEX	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.
SEXUAL ORIENTATION	A person's enduring physical, romantic and/or emotional attraction to members of particular sexes or genders.
SEX REASSIGNMENT SURGERY	A surgical procedure to align a person's physical characteristics with their identified gender.
TRANSGENDER PERSON	A person whose gender identity does not correspond with the sex assigned to them at birth

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