



Keshav Suri Foundation & Vidhi Centre for Legal Policy

*Submissions to the High-Powered Committee set up in
pursuance of the Supreme Court's judgment in Supriyo
@Supriya Chakraborty v Union of India*



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Acknowledgements

These submissions to the High-Powered Committee set up in pursuance of the Supreme Court's judgment in Supriyo @ Supriya Chakraborty v. Union of India are made jointly by the Keshav Suri Foundation ('KSF'), the Vidhi Centre for Legal Policy ('Vidhi'), Saurabh Kirpal, Senior Advocate, Arundhati Katju (Senior Advocate), Menaka Guruswamy (Senior Advocate) and Marsha Against Discrimination.

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Executive Summary

The submissions in this report are informed by the Supreme Court's ('Court') judgement in *Supriyo @ Supriya Chakraborty and Anr. vs. Union of India*. The Court in *Supriyo* recognised the **discriminatory impact** that queer persons face on account of their gender identity/sexual orientation, and for being in queer relationships. It observed that there is a **duty on the State to address this discriminatory impact** through appropriate measures. Broadly, the Court identified four areas requiring intervention: (a) recognition of queer relationships and families, (b) discrimination in access to goods and services, (c) queer affirmative healthcare, and (d) prevention and prohibition of violence. Accordingly, the submissions in this report are thematically divided across these four areas. The **Keshav Suri Foundation** and the **Vidhi Centre for Legal Policy** organised **three hybrid public consultations** across three cities: New Delhi, Bombay and Jaipur which were attended by around **150 participants** including the **queer community, civil society, lawyers, activists and other interested stakeholders**. The submissions in this report are informed by independent interdisciplinary legal research, and inputs and needs of the queer community as shared by the participants in the course of the consultations.

Chapter I on '**Recognition of Queer Relationships and Family**' outlines the various avenues for recognition of queer relationships and queer parenthood. It prescribes amendments to secular family laws such as the Special Marriage Act, 1954 and the Indian Succession Act, 1925 to make them queer inclusive, provides a template for a comprehensive legislation on civil unions, recommends measures for a nomination framework for legal recognition of atypical families prevalent in the queer community, and recommends amendments to secular adoption laws to recognise queer and non-marital parenthood in line with the Court's directions.

Chapter II on '**Discrimination: Access to Goods and Services**' comprises two parts. **Part One** provides for the components of a comprehensive anti-discrimination legislation that addresses discrimination on the grounds of sexual orientation and gender identity, and makes recommendations for improvement and better enforcement of the Transgender Persons (Protection of Rights) Act, 2019. **Part Two** provides for sector specific recommendations, largely in the form of executive orders, across the following sectors: financial services, labour and employment, education, and housing.

Chapter III on '**Queer Affirmative Healthcare**' outlines the various avenues for intervention in the healthcare sector, including non-discrimination in access to healthcare, affirmative healthcare, dignity and privacy in healthcare, systemic measures in healthcare, and queering the health laws in India. To ensure non-discrimination in access to healthcare, it recommends legislative and executive action to ban surgeries that are harmful or medically unnecessary such as conversion therapies or intersex surgeries, remove the blanket ban on blood donations, and providing gender-affirmative care, including affordable mental healthcare. For affirmative care, the



recommendations focus on the need for proper access to HIV/AIDS care, development of healthcare systems to account for surrogate decision-makers (including non-normative families) and to develop end-of-life care policies. In terms of dignity and privacy in healthcare provides for protecting HIV data via amendments to the Information Technology Rules, 2021, the Digital Personal Data Protection Act, 2023. Lastly, it focuses on developing queer-affirmative medical institutions, including the medical curricula and training the healthcare professionals, and queering health laws.

Chapter IV on “**Prevention and Prohibition of Violence**” prescribes legislative and executive measures, including affirmative measures that the State must take, to address and prevent violence against queer persons. It is thematically divided across the following broad areas: violence by the State and society, violence by natal family including domestic violence, harassment at the workplace, and finally sexual violence.

Action Points

S. No.	Proposed Action	Implementing Authority
LEGISLATIVE ACTION		
Chapter 1: Recognition of Queer Families and Relationships		
<i>Amendments to secular laws</i>		
1.	Provisions in the SMA and ISA must be made gender neutral as far as possible.	Ministry of Law and Justice. Relevant Department of the State Government
2.	Repeal Restitution of Conjugal Rights.	
3.	Void and Voidable marriages: <ul style="list-style-type: none"> ● Repeal provision on voidability on grounds of non-consummation of marriage. ● Recognise “either of the parties has transitioned into a different gender from the gender assigned at birth or identified with at the time of marriage”, as a ground for voidability of marriage. 	
4.	Repeal notice and objection regime for registration of marriage.	
5.	Remove obsolete and discriminatory grounds for divorce, such as, “either of the parties has been suffering from a venereal disease in a communicable form” and introduce a framework for statutory recognition of irretrievable breakdown of marriage.	
6.	Identify factors for grant of maintenance accounting for vulnerable parties in a relationship, moving away from a gendered approach for vulnerability, for e.g., “any contributions made by the applicant during the subsistence of the relationship, which may have given rise to a	

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S. No.	Proposed Action	Implementing Authority
	sustained benefit for the relationship and/or an economic disadvantage for the applicant.”	
7.	Remove provisions in the ISA linking a woman’s domicile to husband’s domicile.	
8.	Recognising compulsory shares for all children, preventing parents from disowning a child on grounds of their gender and gender identity or sexual orientation.	
New Comprehensive Civil Union legislation		
9.	Identify the components of a civil union and conditions for a valid civil union, such as, both parties attaining the age of majority.	Ministry of Law and Justice. Relevant Department of the State Government
10.	Provide for a process for entering a statutorily recognised civil union.	
11.	Provide for rights and obligations flowing from a civil union.	
12.	Provide for process for dissolution of civil union and the status of rights and obligations on dissolution.	
Framework for Nominations		
13.	<p>Provide for a nomination regime under labour and employment laws, as well as legislations providing social welfare benefits, to allow individuals to nominate any person of their choice for the purpose of benefits which accrue to married couples, based on the following principles:</p> <ul style="list-style-type: none">● a person should be able to nominate any person of their choice for benefits only if they are not in a subsisting marriage or civil union.● enactment of model rules along with a model form prescribing procedure of	Ministry of Labour & Employment; Ministry of Finance; Relevant Parent Ministry for Welfare Benefits, and Relevant Departments of the State Government

S. No.	Proposed Action	Implementing Authority
	nomination.	
<i>Parenthood</i>		
14.	Amendments to the Juvenile Justice (Care and Protection of Children) Act, 2015 to recognise queer parenthood and non-marital parenthood.	Ministry of Women and Child Development
Chapter 2: Discrimination in Access to Goods and Services		
<i>Comprehensive Measures</i>		
15.	Comprehensive Legislation on Anti-Discrimination.	Ministry of Law and Justice
16.	Reform of the Transgender Persons (Protection of Rights) Act, 2019.	Ministry of Social Justice and Empowerment
<i>Financial Services</i>		
17.	Measures for addressing discrimination in access to financial services, including affirmative measures for inclusion into the formal finance sector.	Ministry of Finance
<i>Labour and Employment</i>		
18.	Measures for addressing discrimination in labour laws and making them queer inclusive.	Ministry of Labour and Employment; Department of Labour of State Governments
19.	Implementation of horizontal reservations for transgender persons in matters of public employment.	Ministry of Social Justice and Empowerment; Department

S. No.	Proposed Action	Implementing Authority
		of Social Justice of State Governments
20.	Protection of rights of sex workers including transgender sex workers.	Ministry of Home Affairs
21.	Repeal of Anti-Vagrancy laws.	Relevant Department of the State Government
<i>Education</i>		
22.	Implementation of horizontal reservations for transgender persons in matters of public education.	Ministry of Social Justice and Empowerment, Department of Education of State Governments
23.	Prohibition of corporal punishment in schools.	Ministry of Education; Department of Education of State Governments
<i>Housing</i>		
24.	Amendments to tenancy laws to ensure queer inclusion and prohibition of discrimination based on gender identity and sexual orientation.	Ministry of Housing and Urban Affairs, Department of Housing of State Governments
25.	Amendments to Cooperative Society laws to make them queer inclusive.	Department of Cooperation of State Governments
26.	Amendment to the Transgender Persons (Protection of Rights) Act, 2019 to rehaul its approach towards residence rights of transgender persons.	Ministry of Social Justice and Empowerment

S. No.	Proposed Action	Implementing Authority
Chapter 3: Queer Affirmative Healthcare		
27.	Ban on different forms of conversion therapy through separate law or under.	Ministry of Social Justice and Empowerment; Ministry of Women and Child Development; Ministry of Health & Family Welfare; Department of Health of State Governments; and National Medical Commission
28.	Enable nomination of representative of choice for healthcare decisions.	Ministry of Health and Family Welfare; Department of Health of State Governments;
29.	Protection of HIV-AIDS data and healthcare data.	Ministry of Electronics and Information Technology
Chapter 4: Prevention of and protection from violence		
Protection from State Violence		
30.	Amendment to the Police Act, 1961 and the relevant State police laws which prohibit the police from harassing persons belonging to the queer community and persons or organisations working for the welfare of the queer community, along with punishment with fines and imprisonment.	Ministry of Home Affairs, and Department of Home for State Governments

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S. No.	Proposed Action	Implementing Authority
Prevention of Workplace Harassment		
31.	Amendments to the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 Act to ensure inclusion of persons from the LGBTQI+ community. Some changes could include: <ul style="list-style-type: none">● expand the category of aggrieved persons.● amend definition of “domestic worker” to include persons from all genders.● amend definition of sexual harassment to include “identity-based violence and harassment”.● using gender-neutral language.● requiring representation of members from queer community in the Internal Complaints Committee and the Local Committee.	Ministry of Women and Child Development
32.	Amendments to the Transgender Persons (Protection of Rights Act), 2019, to ensure recognition of workplace sexual harassment as a separate category of violence and specific mechanism for dealing with workplace sexual harassment.	Ministry of Social Justice and Empowerment
Domestic violence framework for persons from queer community		
33.	Identify who can file a complaint and who can be complained against.	Ministry of Women and Child Development and Ministry of Social Justice and Empowerment
34.	Define what constitutes violence and address violence specific to the queer community.	
35.	Provide for procedures for filing complaints and rehabilitative measures.	
Protection against sexual violence		

S. No.	Proposed Action	Implementing Authority
36.	Amendment to section 63, 68, 70, 75(1)(iii) of the Bharatiya Nyaya Sanhita, 2023 to make it gender neutral as regards only the victim, or, Re-introduction of section 377 (of the repealed Indian Penal Code, 1860): provision for criminalising non-consensual same-sex intercourse must be reintroduced, while retaining the decriminalisation of consensual same-sex intercourse.	Ministry of Home Affairs
37.	Expand definition of rape to account for other instances of sexual violation, such as those committed by a male on a male.	
38.	Making offences of voyeurism and stalking wholly gender neutral .	
39.	Amend Transgender Persons (Protection of Rights) Act, 2019 to rationalise the punishment in a manner congruent to offences against cisgender persons.	Ministry of Social Justice and Empowerment
<i>Issues specific to transgender persons</i>		
40.	Amendment of section 18 of Transgender Persons (Protection of Rights) Act, 2019 to specify the ingredients of offences, including violence perpetrated against transgender persons based on their perceived identity as a transgender person.	Ministry of Social Justice and Empowerment
EXECUTIVE ACTION		
Chapter 1: Recognition of Queer Families and Relationships		
<i>Framework for Nominations</i>		
41.	Extend nomination for financial benefits like banking and insurance to queer relationships and families.	Ministry of Finance, Reserve Bank of India, Insurance

S. No.	Proposed Action	Implementing Authority
		Regulatory and Development Authority of India
42.	Extend nomination benefits for granting pension to queer families and relationships.	Pension Fund Regulatory and Development Authority of India; Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension
Chapter 2: Discrimination in Access to Goods and Services		
<i>Comprehensive Measures</i>		
43.	Better enforcement of the Transgender Persons (Protection of Rights) Act, 2019.	Ministry of Social Justice and Empowerment; Department of Social Justice of State Government
<i>Financial Services</i>		
44.	Recognition of queer relationship for purpose of access to financial services.	Ministry of Finance
45.	Measures for addressing discrimination in access to financial services, including affirmative measures for inclusion into the formal finance sector.	Ministry of Finance; Reserve Bank of India; Insurance Regulatory and Development Authority of India; Pension Fund Regulatory and Development Authority of India; Ministry of Micro, Small

S. No.	Proposed Action	Implementing Authority
		and Medium Enterprises; Ministry of Social Justice and Empowerment; Ministry of Personnel, Public Grievances and Pensions; Insurance Regulatory and Development Authority
<i>Labour and Employment</i>		
46.	Clarifying that provisions of equal remuneration under the Code of Wages, 2019 applies to transgender persons.	Ministry of Labour and Employment
47.	Classifying discrimination based on gender identity and or/sexual orientation as a form of misconduct under service rules.	Ministry of Personnel, Public Grievances and Pensions
48.	Extend the Equal Opportunity Policy for Transgender Persons to all Government Services.	Ministry of Social Justice and Empowerment; Ministry of Personnel, Public Grievances and Pensions
49.	Direction for appointment of complaints officer under the Transgender Persons (Protection of Rights) Act, 2019.	Ministry of Social Justice and Empowerment
50.	Introduction of social security and employment schemes for transgender persons.	Ministry of Social Justice and Empowerment; Ministry of Labour and Employment; Department of Social Justice of State Governments; Department of Labour of State Governments

S. No.	Proposed Action	Implementing Authority
<i>Education</i>		
51.	Reservations in education in education under the Right of Children to Free and Compulsory Education, 2009.	Ministry of Education; Department of Education of State Governments
52.	Addressing discrimination based on gender identity/sexual orientation in hostels.	Ministry of Education; Department of Education of State Governments
53.	Inclusivity in application process to educational institutions.	Ministry of Education; Department of Education of State Governments
54.	Inclusion of transgender persons in gendered activities in accordance with their chosen gender identity.	University Grants Commission
55.	Inclusivity in school processes such in uniforms, curriculum, and gender-neutral washrooms.	Ministry of Education; Ministry of Women and Child Development; Department of Education and Department of Women and Child Development of State Governments
56.	Ensuring access to washrooms in a safe and inclusive manner.	Ministry of Education; Department of Education of State Governments
57.	Building an inclusive curriculum	Ministry of Education; Department of Education of

S. No.	Proposed Action	Implementing Authority
		State Governments
58.	Training teachers to be queer affirmative.	Ministry of Education; Department of Education of State Governments
59.	Clarifying the ambit of ragging to also include prohibited conduct against queer individuals.	University Grants Commission
60.	Including transgender persons in Student Grievance Redressal Committees.	University Grants Commission
61.	Prohibition of Corporal Punishment in Schools.	Ministry of Education; Department of Education of State Governments
62.	Ensuring that teachers and professionals at the school and university level are queer-affirmative.	National Council for Educational and Research and Training; All India Council for Teacher Education; Ministry of Education and University Grants Commission
63.	Creating diverse school management committees to integrate the unique challenges faced by members of the queer community.	Ministry of Education; Departments of Education of State Governments
64.	Providing accessible, inclusive, and affirmative mental health services to queer individuals. These will improve health-seeking behaviour, address mental health challenges, and even suicidal ideation.	Ministry of Health and Family Welfare
65.	Creation of safe spaces for queer students to express themselves and find support in a non-	Ministry of Youth Affairs and

S. No.	Proposed Action	Implementing Authority
	judgemental environment	Sports
66.	Ensuring parents are familiarised with queer-affirmative vocabulary	Ministry of Education; Departments of Education of State Government; National Council for Educational Research and Training, and State Council for Educational Research and Training
<i>Housing</i>		
67.	Ability to take joint loans for the purpose of purchasing a house.	Reserve Bank of India
68.	Include queer families and persons as beneficiaries in housing schemes.	Ministry of Housing and Urban Affairs; Department of Housing of State Governments
69.	Affordable housing schemes for transgender persons.	Ministry of Housing and Urban Affairs; Department of Housing of State Governments
70.	Queer-friendly shelter homes.	Ministry of Housing and Urban Affairs and Department of Housing of State Governments;

S. No.	Proposed Action	Implementing Authority
		<p>Ministry of Social Justice and Empowerment and social justice departments of the State Governments</p> <p>Local Level Governments such as municipalities and development authorities</p>
71.	Making Garima Grehs safe and more accessible.	Ministry of Social Justice and Empowerment and social justice departments of the State Governments
72.	Queer-friendly assisted living facilities.	Ministry of Social Justice and Empowerment and social justice departments of the State Governments
73.	Adequate residential arrangements for transgender persons.	Ministry of Social Justice and Empowerment
Chapter 3: Queer Affirmative Healthcare		
<i>Conversion therapy</i>		
74.	Executive orders banning medically unnecessary and non-consensual intersex surgery, along with guidelines on what constitutes “medically necessary or life-saving intersex surgeries”.	Ministry of Health and Family Welfare and Departments of

S. No.	Proposed Action	Implementing Authority
		State governments.
75.	Terming unnecessary intersex surgery as professional misconduct as per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.	National Medical Commission; National Council of Clinical Establishments, and professional medical associations,
<i>Non-discrimination for persons living with HIV-AIDS</i>		
76.	Directions for enforcing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.	Ministry of Health and Family Welfare. Department of Health of State Governments
77.	Directions to private insurance companies to amend their schemes and terms and conditions such that persons with HIV/AIDS are not automatically excluded from insurance benefits or made to pay higher premiums.	Insurance Regulatory and Development Authority of India
78.	Implementation of the Insurance Regulatory and Development Authority circular on HIV and AIDS (Prevention and Control) Act 2017.	Insurance Regulatory and Development Authority of India
<i>Affirmative healthcare</i>		
79.	Executive orders to all appropriate governments to comply with Section 15 of the Transgender Persons (Protection of Rights) Act, 2019.	Ministry of Social Justice and Empowerment; Department of Social Justice of State Governments
80.	Professional guidelines on diverse forms of gender-affirming care.	National Medical Commission

S. No.	Proposed Action	Implementing Authority
81.	Central and state-level health insurance schemes should expand their benefits packages to include forms of gender-affirming care.	Insurance Regulatory and Development Authority of India
82.	Modification of programmes under the National Mental Health Programme such as the Rashtriya Kishor Swasthya Karyakram ('RKSK') to have sex education and counselling services at Adolescent Friendly Health Clinics ('AFHCs') queer-inclusive and queer-affirmative	Ministry of Health & Family Welfare, and Department of Health of State Governments
83.	Directions to all healthcare establishments and medical practitioners to include non-normative families within their understanding of 'family' or 'kin', in case it is not possible to ask the patient or healthcare user directly about their choice of nominee, and put in place end-of-life care policies that are inclusive of non-normative partners and family/friends, in line with the 'Guidelines for End of Life Care, AIIMS, New Delhi.'	
84.	Queer-affirmative guidelines and sensitisation programs for mental health and queer rights.	Ministry of Health & Family Welfare and state health departments and National Medical Commission
85.	Healthcare power of attorney laws.	
<i>Queer-inclusive health research</i>		
86.	Research guidelines of organisations such as The Indian Council of Medical Research (ICMR) should incorporate further focus on the health of queer persons.	Ministry of Health & Family Welfare, Department of Health of State Governments, and Indian Council for Medical Research

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S. No.	Proposed Action	Implementing Authority
Dignity and privacy in healthcare		
87.	Training of grievance officers under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on LGBTQIA+ rights and sensitization to identify queer-phobic content, including coded and indirect hate speech, including specialised LGBTQIA+ liaisons or consultants in grievance mechanisms.	Ministry of Electronics and Information Technology
88.	Detailed investigation to explore the different harms which queer persons encounter/can encounter as a result of the Digital Personal Data Protection Act 2023's existing structure and explore the need for additional legislation that strengthens the privacy of queer persons.	
Systemic Measures in Healthcare		
89.	Building queer-inclusive healthcare establishments to ensure easy access to healthcare at all levels.	Ministry of Health & Family Welfare and Departments of Health of State Governments; Clinical establishments regulatory bodies and accreditation authorities such as National Accreditation Board for Hospitals & Healthcare Providers
90.	Ensuring healthcare workers are queer-affirmative.	Ministry of Health & Family Welfare and Departments of Health of State Governments
91.	Modifying medical curricula to make it queer inclusive.	Ministry of Health & Family Welfare and Departments of

S. No.	Proposed Action	Implementing Authority
		Health of State Governments; National Medical Commission; Under-Graduate Medical Education Board and the Post-Graduate Medical Education Board
<i>Making Health Laws Queer Inclusive</i>		
92.	Clarifications regarding laws like the Medical Termination of Pregnancy Act, 1971 and the Assisted Reproductive Technology (Regulation) Act, 2021, and others.	Ministry of Health & Family Welfare and Department of Health of State Governments
Chapter 4: Prevention of and protection from violence		
<i>Protection from state violence</i>		
93.	Amendment to relevant State police service rules wherein non-registration of complaints by queer persons who are facing violence/harassment or threat of violence on account of their gender identity, sexual orientation or for being in a queer relationship, is deemed to be an act of deliberate negligence or misconduct which warrants appropriate departmental and disciplinary action.	Department of Home for States
94.	Separate law enforcement unit for dealing with complaints relating to queer persons.	
95.	Integrating relevant people such as social workers, counsellors, and NGOs working in LGBTQI+ rights, with the law enforcement system.	

S. No.	Proposed Action	Implementing Authority
96.	Standard operating procedures that involve NGOs and mental health professionals in cases related to LGBTQI+ persons, ensuring comprehensive support.	
97.	Joint community programs to build trust between law enforcement and queer communities, to encourage reporting of crimes without fear of discrimination.	
98.	Mandatory sensitisation and training on issues faced by queer communities for police personnel and other law enforcement agencies.	Ministry of Home Affairs; Department of Home for States
99.	Executive order and directives to the police machinery in line with the directions in <i>Supriyo</i> and other relevant judgements such as <i>Lata Singh vs. State of UP</i> and <i>Shakti Vahini vs. Union of India</i> .	Executive Magistrates; Secretaries, Department of Home for States
<i>Protection of queer couples</i>		
100.	Executive order to the police machinery in line with the directions in <i>Supriyo</i> and other relevant judgements such as <i>Lata Singh vs. State of UP</i> , <i>Shakti Vahini vs. Union of India</i> , <i>S Sushma v Commissioner of Police</i> .	Executive Magistrates; Secretaries, Department of Home for States
<i>Prevention of workplace harassment</i>		
101.	Amendments to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, including the following: <ul style="list-style-type: none"> • additions to the manner of conducting workshops should include training sessions for people in managerial positions and bystander training. • Annual Reports submitted by the Internal Complaints Committee to include number of complaints received in a year, number of complaints disposed of nature of action taken by employer etc. • District Officers to conduct periodic inspections/audits of workplaces. 	Ministry of Women and Child Development

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S. No.	Proposed Action	Implementing Authority
	<ul style="list-style-type: none">Regular workplace audits.	
102.	Grievance redressal mechanism under the Transgender Persons (Protection of Rights) Rules, 2020 to introduce grievance redressal processes dealing with workplace sexual harassment akin to an employment tribunal.	Ministry of Social Justice and Empowerment
Issues specific to transgender persons		
103.	Circular clarifying that a transgender ID card is not mandatory under the Transgender Persons (Protection of Rights) Act, 2019, and should not be a precondition for people to be able to file complaints under the Act.	Ministry of Social Justice and Empowerment
104.	Queer support helplines with adequately trained professionals.	
Framework for shelter homes		
105.	Garima grehs to be set up in every state and union territory with adequate funds earmarked and transferred.	Ministry of Social Justice and Empowerment; and Ministry of Women and Child Development
106.	Existing garima grehs to be made safer and more inclusive.	
107.	Reconsider, remove, or increase the one-year limit for transgender persons to stay at garima grehs.	
108.	Set up new shelter homes, similar to garima grehs, for non-transgender members of the LGBTQI+ community who need protection, shelter or assistance.	
109.	Existing shelter homes for other marginalised sections of society, such as children's shelters, and one-stop centres for survivors of domestic violence, are to actively be made queer-inclusive.	

S. No.	Proposed Action	Implementing Authority
110.	Family shelter homes must be set up with provisions similar to garima grehs to allow LGBTQIA+ individuals to cohabit with their partners or persons with whom they share a relationship in the nature of chosen family.	



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Glossary of Terms

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 presumption 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, in the same way or to the same degree
Cisgender Person	A person whose gender identity corresponds with the sex assigned to them at birth.
Gay	A person, usually a man, who is emotionally, romantically or sexually attracted to members of the same gender.
Gender	Gender is how society perceives persons, based on the norms, behaviours and roles associated with the sex assigned at birth. The law currently recognised three genders: man, woman, transgender.
Gender Identity	A person's subjective sense of their gender. This can be man, woman, a combination of both, or relation to neither.
Heteronormative	The presumption that everyone is heterosexual and cisgendered.
Intersex Persons	Persons who have innate sex characteristics that do not fit medical and social norms for female or male bodies.
Lesbian	A woman who is emotionally, romantically or sexually attracted to other women.

LGBTQIA+ and allied acronyms	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual and other queer identities that are not heterosexual or cisgender.
Queer	An umbrella term that includes persons who are not cisgender or heterosexual.
Sex	This is the biological difference based on 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 any sexes or genders.
Transgender Person	A person whose gender identity does not correspond with the sex assigned to them at birth.

Introduction

I. Context

On October 17, 2023, the Supreme Court of India ('Court') delivered its judgement in the case of *Supriyo alias Supriya Chakraborty vs. Union of India* ('Supriyo').¹ While the Court recognised that it was the legislature's prerogative to enable marriage equality, it also recognised the discrimination faced by queer couples in various realms of life because of non-recognition of their relationships. 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 couples² and outline key areas that require State intervention to ensure the realisation of the constitutional rights of the queer community.

II. Mandate of the Committee

The Court has directed the Committee to consider the appropriate remedies needed to address discrimination that queer persons face due to: (i) their sexual orientation and/or gender identity;³ and (ii) the non-recognition of their relationships.⁴ The Court has recognised discrimination and has found that the "discriminatory impact cannot be ignored by the State". The Court has also directed the State "to take suitable remedial action" and stated that "discriminatory impacts ... have to be suitably redressed and removed by the State".⁵

Accordingly, the Committee is primarily tasked with the *identification of the appropriate remedies* for various forms of discrimination. Even here, the Court has expressly mentioned that the discrimination is rooted in a "legislative vacuum" and

¹ *Supriyo alias Supriya Chakraborty vs. Union of India* W.P.(C) No. 1011/2022 (Hereinafter referred to as *Supriyo*).

² *Supriyo*, Para 149 (As per Bhat J.).

³ *Supriyo*, Para 339 (As per Chandrachud J., Paras 16, 18 (As per Kaul J.), Paras 113, 114, 116, 117 (As per Bhat J.).

⁴ *Supriyo*, Para 339 (As per Chandrachud J., Paras 16, 18 (As per Kaul J.), Paras 113, 114, 116, 117 (As per Bhat J.).

⁵ *Supriyo*, Paras 146 and 147 (vi) (As per Bhat J.).

has mentioned an umbrella legislation, amendments to existing laws, and action by State legislatures as examples of potential remedies that can be considered.⁶ Apart from this, the Court has also directed the state to ensure that queer couples do not face violence and coercion and that the marriages of transgender persons and persons with intersex variations in heterosexual relationships be recognised under existing laws.⁷

The Court has observed that certain benefits accrue to married couples on account of the legal recognition of their marriage and that these are consequently not available to queer persons in similar relationships.⁸ The Court has specifically identified the following classes of benefits that must accrue to queer persons and persons in queer relationships:

- (a) **Social Welfare and Labour Benefits:** The Court has identified a range of benefits that accrue to married couples such as welfare benefits,⁹ earned or compensatory benefits,¹⁰ death benefits,¹¹ and employment benefits.¹² Since marital status is a relevant eligibility factor for accessing these benefits, queer couples cannot access them.¹³ The Court has noted that this amounts to discrimination and there is a duty on the State to take measures to address the same.¹⁴ Specifically, the Court has noted the Committee must consider enabling partners in queer relationships to be treated as part of the same family for the purpose of ration cards and have the facility to access joint bank accounts with the option to name their partner as the nominee.¹⁵

⁶ *Supriyo*, Para 148 (As per Bhat J.).

⁷ *Supriyo*, Paras 149 (ix) and (xi) (As per Bhat J.).

⁸ *Supriyo*, Paras 114, 115, 116 (As per Bhat J.).

⁹ The Court has noted that these benefits include rations (Para 340(i)) (As per Chandrachud J.).

¹⁰ The Court has noted that these benefits include compensation under the Motor Vehicles Act, 1988 (Para 116 (As per Bhat J.) as well as compensation under legislations such as Workmen's Compensation Act, 1923 (Para 113, 114 (As per Bhat J.)).

¹¹ The Court has noted that these benefits include the right to access a deceased partner's body and perform last rites (Para 340(iii) (As per Chandrachud J.)) as well as insurance benefits in the event of death (Para 340(iv) (As Per Chandrachud J.)).

¹² The Court has listed these benefits as including: employee state insurance benefits, provident fund, family pension, medical benefits and insurance benefits. (Para 149(vi) (As per Bhat J.)).

¹³ *Supriyo*, Para 149(vi) (As per Bhat J.).

¹⁴ *Supriyo*, 149(vi) (As Per Bhat J.).

¹⁵ *Supriyo*, Para 340(i) (As per Chandrachud J.).

- (b) **Family Law:** The Court has noted that there are a range of rights and benefits that flow from marriage that queer couples cannot avail. These include: maintenance, alimony, adoption, inheritance and surrogacy.¹⁶ Specifically, the Court has recognised the discriminatory impact of existing adoption laws on queer couples as only married couples can jointly adopt under the same.¹⁷ The Court has stated that ‘urgent state intervention’¹⁸ is required to address the discriminatory impact of adoption laws on queer couples.¹⁹ Further, given the social reality that queer couples are adopting in law as individuals but are cohabiting and raising children as de facto families means that the State has ‘urgent need to enable the full gamut of rights to such children, qua both parents’.²⁰ The Court has thus especially emphasised the need for the Committee to consider this particular area of family law: joint adoptions. The Committee may note that consideration of this question would bring into play a broader set of legal provisions that relate to joint parenthood, possibly including guardianship, maintenance of the child, succession etc. Further, the Court has also noted the Union Government’s representation that the Committee will outline the scope of entitlements of queer couples who are in unions.²¹
- (c) **Other Benefits:** The Court has outlined certain other benefits which are available to married couples such as evidentiary privileges which is the privilege accorded to communications during marriage under the Indian Evidence Act, 1872,²² tax benefits including deductions permitted under section 80-C²³ and section 80-D²⁴ of the Income Tax

¹⁶ *Supriyo*, Paras 150 (As per Chandrachud J.).

¹⁷ *Supriyo*, Paras 128, and 131-135 (As per Bhat J.).

¹⁸ *Supriyo*, Para 128 (As per Bhat J.),

¹⁹ *Supriyo*, Paras 128, and 131-135 (As per Bhat J.).

²⁰ *Supriyo*, Para 132 (As per Bhat J.).

²¹ *Supriyo*, Para 340(s) (As per Bhat J.).

²² *Supriyo*, Para 151 (As per Chandrachud J.).

²³ Section 80-C of the Income Tax Act, 1961 permits deduction of insurance premium paid for spouse’s life insurance policy.

²⁴ Section 80-D of the Income Tax Act, 1961 permits deduction of expenses towards spouse’s health insurance policy.

Act, 1961,²⁵ credit benefits such as joint loans,²⁶ citizenship benefits,²⁷ jail visitation rights,²⁸ and death related privileges such as access to the body of their partner and carrying out last rites.²⁹ The non-recognition of the relationship of queer couples results in their inability to access these benefits thus resulting in discrimination. Since the Court has issued a broad direction to remedy such discrimination, the State must undertake appropriate measures to address this. Specifically, the Court has asked the Committee to consider tax benefits, jail visitation rights, and death related privileges for queer couples.³⁰

- (d) **Violence:** The Court has noted that queer persons face violence both on account of their gender identity/sexual orientation as well as on account of being in queer relationships.³¹ Such violence can be at the hands of the natal family³² as well as State agents such as the police.³³ In fact the systemic violence that queer persons face has been noted by Courts in several judgements³⁴ as well as extensively documented.³⁵ The Court has explicitly directed that there is a duty on the State to ensure that the choice exercised by queer couples to cohabit is not interfered with and they are not subject to any violence or coercion.³⁶ In this light the Court has stated that whenever a queer couple's right to a relationship is under threat of violence, the state must extend protection.³⁷ Specifically, it has directed the State to: (a) establish a hotline that queer people can contact when faced with harassment and violence,³⁸ and (b) establish and publicise safe houses in all districts to provide shelter to members of the queer community who are

²⁵ *Supriyo* Para 150 (As per Chandrachud J.).

²⁶ *Supriyo*, Para 113 (As per Bhat J.).

²⁷ *Supriyo*, Para 151 (As per Chandrachud J.).

²⁸ *Supriyo*, Para 340(iii) (As per Chandrachud J.).

²⁹ *Supriyo*, Para 340 (iii) (As per Chandrachud J.).

³⁰ *Supriyo*, Para 340(iii) and (iv) (As per Chandrachud J.).

³¹ *Supriyo*, Para 8 (As per Chandrachud J.).

³² *Supriyo*, Para 340(o) (As per Chandrachud J.).

³³ *Supriyo*, Para 340(o) (As per Chandrachud J.).

³⁴ See, *Navtej Johar vs. Union of India*, Writ Petition (Criminal) No. 76 OF 2016, *NALSA vs. Union of India*, AIR 2014 SC 1863.

³⁵ Centering Familial Violence in the Lives of Queer and Trans Persons in the Marriage Equality Debates: A Report on the findings from a closed door public hearing', People's Union for Civil Liberties 2023 available at https://drive.google.com/file/d/1I2080A2x04aeirm9GSkoZjsY2bcMmr7_/view

³⁶ *Supriyo*, Para 149(xi) (As per Bhat J.).

³⁷ *Supriyo*, Para 149 (xi) (As per Bhat J.).

³⁸ *Supriyo*, Para 339(a)(iv) (As per Chandrachud J.).

facing violence or harassment.³⁹ Further, the Court has issued instructions to the police machinery to not subject queer persons and queer couples to harassment, to ensure that they are not forced to return to their natal families, to extend protection to them in the event of apprehension of violence, and to carry out an inquiry to determine whether a cognisable offence is made out before registering a FIR against a queer couple or one of the partners in a queer relationship.⁴⁰ As queer persons also face violence on account of their sexual orientation or/and gender identity, independent of their relationships, the Committee may consider addressing this as well since the source of the discrimination is their identity in either case.

- (e) **Healthcare and Involuntary Treatments:** The Court has noted that the family or relatives often compel queer persons to undergo “conversion” therapies to “convert” their sexual orientation. It has noted that such practices violate the right to health of queer persons, as well as their right to autonomy and dignity. It has further noted that such “treatments” aimed at changing sexual orientation are cruel and inhuman and degrading.⁴¹ The Court has directed the Union to take suitable steps to ensure that queer couples and transgender persons are not subject to any involuntary medical or surgical treatments.⁴²

The Court has also issued certain directions to the Union, State, and Union Territory Governments in relation to protecting the health of such individuals. These are: (i) take steps to sensitise the public about queer identity, including that it is not a mental disorder; (ii) ensure that “treatments” offered by doctors or other persons, which aim to change gender identity or sexual orientation are ceased with immediate effect; (iii) ensure that inter-sex children are not forced to undergo operations with regard to their sex, especially at an age where they are unable to fully comprehend and consent to such operations; (iv) ensure that no person should be forced to undergo hormonal therapy or sterilisation or any other medical procedure either as a condition or prerequisite to grant legal recognition to their

³⁹ *Supriyo*, Para 339(a)(v) (As per Chandrachud J.).

⁴⁰ *Supriyo*, Para 339(c) (As per Chandrachud J.).

⁴¹ *Supriyo*, Para 280 (As per Chandrachud J.).

⁴² *Supriyo*, Para 149(xi) (As per Bhat J.).

gender identity.⁴³ In addition, the Court has also directed that the appropriate Government under the Mental Healthcare Act, 2017 must design and implement programmes to promote mental health in the country, and also implement public health programmes to reduce suicides in India.⁴⁴

- (f) **Goods and Services:** The Court has stated that recognising the rights of queer couples involves ensuring that there is no denial of access to basic goods and services.⁴⁵ One illustration of the kinds of goods and services that may be considered under this head may be found at Section 3 of the Transgender Persons (Protection of Rights) Act 2019, which was discussed at length in the judgement.⁴⁶ This provision covers discrimination in educational establishments, employment or occupation, healthcare (discussed above), movement, residence and property, public or private offices, care or custody, and goods and services dedicated to or available to the general public. In line with these observations, the Court has also broadly urged the State to ensure that queer persons are not discriminated against because of their gender identity or sexual orientation and specifically required that there be no discrimination in access to goods and services available to the public.⁴⁷ It has also stated that there is urgent need for a law prohibiting discrimination on the basis of sexual orientation and giving effect to the civil and social rights of queer persons, given how approaching the courts for fundamental rights case-by-case is undesirable in this regard.⁴⁸

III. Consultations: Keshav Suri Foundation and the Vidhi Centre for Legal Policy

The Court has directed the Committee to conduct wide stakeholder consultations with queer persons, persons belonging to marginalised groups, and the governments of the State and Union territories prior to finalising its decision.⁴⁹ One of the

⁴³ *Supriyo*, Para 339 (As per Chandrachud J.).

⁴⁴ Section 29(1) and (2), Mental Healthcare Act, 2017.

⁴⁵ *Supriyo*, Paras 218 and 339(a) (ii) (As per Chandrachud J.).

⁴⁶ *Supriyo*, Paras 262-264 (As per Chandrachud J.).

⁴⁷ *Supriyo*, Para 339 (a) (i) and (ii) (As per Chandrachud J.).

⁴⁸ *Supriyo*, Paras 27-28 (As per Kaul J.).

⁴⁹ *Supriyo*, Para 340(s) (As per Chandrachud J.).



objectives of consultations with the queer community is to gather information regarding the challenges they face and to ensure they have an active stake in shaping the measures that can potentially address them. Consequently, law reform must be informed by the needs of the queer community and centre their voices.

The Keshav Suri Foundation ('KSF') and the Vidhi Centre for Legal Policy ('Vidhi') has carried out three public hybrid consultations across three cities in India, namely: New Delhi, Bombay, and Jaipur, with the queer community, lawyers, civil society organisations, and other interested stakeholders. The objective of these consultations was to solicit lived experiences and demands of the queer community in relation to law reform to ensure the realisation of the constitutionally protected right to equality, liberty, and dignity. The consultations were organised around five broad themes which were earmarked as areas requiring intervention by the Court in *Supriyo*, namely: (a) recognition of queer relationships, (b) queer parenthood, (c) access to goods and services, (d) violence, and finally (e) healthcare.

Each session began with a brief presentation by Vidhi outlining the directions of the Court in relation to the theme and was followed by presenting the legal and policy options available to remedy the discrimination across each of these areas. This was followed by an open floor conversation with the attendees where they shared their views, lived experiences, and demands in relation to law reform.

These day-long consultations were attended by around **150 stakeholders** and witnessed a plurality of views in relation to the challenges that queer persons and persons in queer relationships faced, the direction that law reform must take across various sectors, and the demands and expectations of the community from the State. The consultations were structured in a dialogue-based manner to build a certain degree of consensus amongst the attendees such that the recommendations borne out of them were democratically arrived at. The minutes of these consultations, with the identities of the attendees anonymised, are annexed to this submission for the Committee's perusal in the form of **Annexure**. The minutes present the range of lived experiences and views of the attendees in relation to each theme that was discussed and deliberated upon.

The recommendations in this submission are informed by interdisciplinary research, lived experiences, comparative law research, and most importantly inputs from the queer community and civil society organisations received during the consultations, and otherwise via conversations and research by community based civil society organisations. As mentioned at the outset in the Acknowledgements section, **the recommendations in these submissions have been informed by several organisations, individuals and stakeholders participating in different capacities.** Vidhi and KSF have attempted to ensure the incorporation of a plurality of views in a pragmatic fashion by outlining the interventions that make queer demands possible through legislative and executive measures.

IV. Chapterisation

The submissions made to the Committee are divided across four chapters, namely: **(a) recognition of queer relationships and families, (b) discrimination: access to goods and services, (c) queer-affirmative healthcare, and (d) prevention and protection from violence.** Each chapter presents a bouquet of options to the Committee, outlines how these measures can be achieved through legislative and executive action, and identifies the nodal authority/department that is responsible for implementation of the measure.

The brief details of the chapters are as follows:

- (a) Recognition of Queer Relationships and Families:** Chapter One on 'Queer Relationships and Families' provides recommendations for recognising various kinds of relationships and intimacies including atypical families. The Chapter deals with three avenues for recognition and regulation of relationships including marriage and reforms to secular family laws, a comprehensive legislation on civil unions, and a framework for nomination of persons not related by blood or marriage for various sectors. It also provides recommendations for recognition of queer and non-marital parenthood.
- (b) Discrimination: Access to Goods and Services:** Chapter Two on 'Discrimination: Access to Goods and Services' comprises two parts. Part One provides for general recommendations in the form of a comprehensive anti-discrimination legislation, and measures to improve and enforce the Transgender Persons (Protection of Rights) Act,

2019. Part Two of this Chapter provides sector specific recommendations covering the following sectors: financial services, labour and employment, education, and housing.

- (c) **Queer-Affirmative Healthcare:** Chapter Three on 'Queer-Affirmative Healthcare' looks at the discrimination in access to healthcare as well as areas where persons from the queer community require care. The recommendations suggest ensuring that queer persons are not subjected to involuntary medical or surgical treatments, especially those that claim to 'fix' one's sexual orientation and gender identity, preparing the healthcare and legal systems to become more queer-affirmative in terms of practices, language, and understanding. This would require changes in education systems such as the medical curricula and developing training material to sensitise healthcare workers about the language, and to the healthcare establishment to ensure that the processes and caregiving mechanisms account for queer identities.
- (d) **Prevention of and Protection from Violence:** Chapter Four on 'Prevention and Protection from Violence' looks at the various categories of violence persons from the LGBTQIA+ community face, from different sources. This includes state violence, societal violence, natal family violence, intimate partner violence, sexual violence, and workplace harassment. The recommendations suggest putting in place safeguards to protect LGBTQIA+ persons from state violence, such as through amendments to Police Acts to prohibit such violence. Moreover, suggestions have been made for altering sexual violence, domestic violence, and workplace harassment frameworks to account for violence against queer persons. Amendments have also been suggested to the Transgender Persons (Protection of Rights) Act, 2019, to adequately protect transgender persons against various types of violence, for example through making the punishments commensurate with the offence.

Chapter 1

Recognition of Queer Relationships and Families

Part One: Recognition of Queer Relationships

I. Introduction

The Court in *Supriyo* noted that it is the prerogative of the Legislature to enable marriage equality.⁵⁰ However, it also noted that the non-recognition of queer relationships results in discrimination.⁵¹ Such discrimination is evident in the fact that while heterosexual couples have access to rights as a unit including under family laws, employment laws, welfare laws, amongst others, persons in queer relationships don't.⁵² Thus, there is a duty on the State to correct such discrimination. The minority (J Chandrachud and J Kaul) recognised a fundamental right to form civil unions.⁵³ Additionally, Kaul J held that the SMA has the effect of discriminating against queer persons by leaving them outside its ambit, and an objective to exclude non-heterosexual relationships would be unconstitutional.⁵⁴

It is critical to note that a significant number of socio-economic welfare benefits and rights are linked to the relationship between two parties and what is considered a family under the law. Most welfare legislation restrict the understanding of a 'family' to a heterosexual unit, and 'spouse' to a husband or wife in a heterosexual marriage. As a result, queer individuals who are in relationships are often left out of the purview of 'family' and excluded from availing benefits that are restricted to marriages. Thus, there is a need for the law to extend legal recognition to persons in queer relationships. This can take two routes: *first*, amendments to existing family laws, and *second*, through the enactment of a fresh legislation on civil unions

⁵⁰ *Supriyo*, para 117, p. 977.

⁵¹ *Supriyo*, para 114, p. 977, 149(vi), p. 986 & para 339, p. 940.

⁵² *Supriyo*, para 113-115, p. 976-978.

⁵³ *Supriyo*, para 218, p. 908, para 223, p. 910 (J Chandrachud); para 19, p. 946 (J Kaul).

⁵⁴ *Supriyo*, para 16, p. 945.

as articulated by the minority. Simultaneously, we need to make space for non-marital relationships in laws that provide benefits based on a family or marital relationship.

Similarly, other areas of family law, such as inheritance are also designed in such a way that they exclude people in non-heterosexual relationships or exclude people who are not male or female in some cases. These laws should be amended to ensure that the benefit of inheritance is available to all concerned persons.

The scope of examination in this document is limited to civil laws relating to marriage, parenthood and inheritance. Personal laws including Hindu personal laws (including Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956), codified and uncodified Muslim Personal Law, Christian personal laws (including Indian Christian Marriage Act, 1872, Indian Divorce Act, 1869), and Parsi personal laws (including Parsi Marriage and Divorce Act, 1936), have been left out of the purview of examination in this document. A comprehensive analysis of all personal laws requires extensive research and consultation which necessitates further investment of time and resources. At this stage, therefore, the submissions are aimed at taking a first, overarching step in creating space for queer inclusion in family laws.

II. Inputs at the Consultation

Some participants recommended considering a new standalone framework for the recognition of queer relationships was to avoid conflict with personal laws. Most participants agreed that while marriage laws should be amended to cover LGBTQI+ persons, these laws must be comprehensively re-evaluated to address pressing issues such as concerns with the notice and objection regime, legal and practical barriers to entry and exit, the provision for restitution of conjugal rights, safeguarding privacy, etc.

Regarding civil unions, some participants stressed that such unions should not be considered secondary in status to marriage. They also emphasised the option of marriage and civil unions must be made available to all persons, irrespective of their gender and sexual orientation. A few other participants suggested that a law on civil unions could be an incremental step in the absence of LGBTQI+ persons being included in marriage laws, thus it was important that the rights and responsibilities of parties are clearly defined, and robust safeguards are put in place. Tamil Nadu's approach towards recognising queer

relationships via a Deed of Family Association was also proposed as a possible route for recognition of relationships in the LGBTQI+ community.

Discussions also focussed on not limiting marriage and civil union laws to a two person-unit but also recognising polyamorous family setups. In response, the difficulty of laying down concrete rights and obligations for multiple parties in the law was raised, which made it difficult to legally recognise polyamorous relationships.

Participants noted nominations as a welcome step towards making space for atypical intimacies. Some further recommended devising strong safeguards to ensure that family laws don't override the nomination and thus open a door for legal disputes between natal families and the nominee.

Some participants suggested that legal frameworks must include provisions for assessing vulnerabilities in queer relationships. Participants emphasised that laws should provide for protection for individuals in relationships marked by significant dependency, economic or otherwise, ensuring they have avenues for support if they need to exit such situations.

III. Measures

To address the issues pointed out and ensure the inclusion of persons from the queer community in these laws and allow them access to the benefits that flow from familial relationships, we propose the following measures:

1. Making Existing Family Laws Inclusive – Special Marriage Act, 1954 ('SMA') and the Indian Succession Act, 1925 ('ISA')
2. A Comprehensive Civil Union Legislation
3. Enabling a Nomination Process

(a) Amendments to the Special Marriage Act, 1954

It was observed in *Supriyo*, in the minority opinion, that “although substantive provisions of the SMA confer benefits only on heterosexual relationships, this does not automatically reflect the object of the statute”.⁵⁵ The absence of a suitable regulatory framework for non-heterosexual unions was recognised as a major deficiency in the country’s family laws. While the court could not read marriage equality into the provisions of the SMA, it is recognised that the provisions of the Act may be suitably amended to cover same sex/gender marriages within its ambit. In addition to making laws inclusive of queer relationships, it is also necessary to look at a complete overhaul of the laws, especially the SMA considering that it operates on a heteronormative conception of marriage. This section recommends amendments to both the SMA and the ISA to make them queer inclusive. Additionally, it also makes other recommendations to modernise the SMA. In May 2024, Vidhi Centre for Legal Policy published the Model Code on Indian Family Law (Model Code) conceptualising a modern, gender-just and inclusive family law code.⁵⁶ The Model Code proposed a complete overhaul of marriage, parenthood, and succession laws. Some of the changes proposed in this Code to marriage laws, that may also be recommended as part of these submissions to make the SMA progressive and suitable for a 21st century India, are as follows:

1. Registration of marriage:

- a. Notice and Objection framework: The notice and objection regime⁵⁷ under the SMA has often been used to harass interfaith and inter-caste couples.⁵⁸ This was also pointed out by several petitioners in the *Supriyo* matter who argued that such a regime violated the right to privacy and decisional autonomy. The Supreme Court in the course of the *Supriyo* hearings, while agreeing with the petitioners, expressed disapproval of these

⁵⁵ *Supriyo*, para 14, p. 945.

⁵⁶ Model Code on Indian Family Law, 2024 available at <https://shorturl.at/B99CZ>.

⁵⁷ Ss. 5 -10, Special Marriage Act, 1954.

⁵⁸ Shiba Kurian, ‘Kerala Interfaith couples harassed by right wing vigilantes using marriage notice’, The News Minute, available at <https://www.thenewsminute.com/kerala/kerala-interfaith-couples-harassed-right-wing-vigilantes-using-marriage-notice-129053>; <https://www.article-14.com/post/how-the-special-marriage-act-is-killing-love>

provisions.⁵⁹ In 2021 the High Court of Allahabad observed that the requirement for giving notice under the SMA was not mandatory.⁶⁰ Making marriage laws queer inclusive must be accompanied by efforts to remove provisions that can be relied upon to potentially target and harass queer partners who intend to get married. It is thus recommended that the SMA be amended to remove the 'notice and objection' regime.

- b. **Refusal of registration:** A significant amount of discrimination in marriage registration happens at the level of the Marriage Registrar who may require onerous documentation from queer couples or refuse registration on arbitrary grounds. This is also sometimes reflected in the State-level policies prescribing the process and documentation required for registration. Accordingly, a provision may be added allowing for registration of marriage to be refused on limited grounds of technical faults or non-fulfilment of the basic conditions of marriage provided under statute. The registration process must be simple and non-onerous and expressly provide for timelines and the documentation required for registration of marriage.

Grounds for refusal of registration.-

- (1) The Relationship and Marriage Officer will not refuse to register the marriage except on the following grounds-
 - (a) The Memorandum does not contain all the information as prescribed in the form; or
 - (b) The parties do not fulfil one or more of the conditions for marriage (see, section 4 of Special Marriage Act, 1954).
- (2) The Relationship and Marriage Officer will intimate the parties about the refusal within 7 days from the date of submission of Memorandum of Marriage.
- (3) Where the refusal is on the ground provided under sub-section (1)(a), the Relationship and Marriage Officer will give the parties an opportunity to rectify the insufficiency within 15 days from the date of intimation given under sub-section (2).

⁵⁹ Supriyo, para 119, p. 106.

⁶⁰ Live Law News Network, 'Breaking: Mandatory Publication of Notice of Intended Marriage Under Special Marriage Act Violates Right to Privacy', Live Law, <https://www.livelaw.in/top-stories/notice-of-intended-marriage-publication-optional-special-marriage-act-allahabad-high-court-168356>

- (4) If the parties successfully rectify the Memorandum of Marriage, the Relationship and Marriage Officer will register the Marriage in accordance with section 5 of this Code.

2. Restitution of Conjugal Rights:

The provision on restitution of conjugal rights⁶¹ ('RCR') permits a spouse to petition the Court to compel the return of the other spouse to the marital home. The constitutionality of this provision across family laws has been challenged before the Supreme Court and the matter is presently pending.⁶² It has been argued that the provision violates the autonomy of an individual by disregarding their will when it comes to the decision regarding returning or not returning to one's marital homes.⁶³ It is recommended that the SMA be amended to remove the provision on RCR.

3. Dissolution of Marriages:

Provisions relating to void, voidability and dissolution of marriage under the SMA, operate on a heteronormative idea of marriage, sometimes even acting as stigmatising queer individuals and relationships. For example, the fault-based grounds for divorce under the Act include grounds such as "suffering from venereal disease in a communicable form" and "suffering from leprosy".⁶⁴ These provisions promote stigma and have no place in the law in the 21st century. The SMA also provides for special fault-based grounds for divorce available exclusively to the wife. A marriage is voidable and may be annulled by a decree of court if it has not been consummated.⁶⁵ Such a provision disregards intimate relationships between asexual persons.

⁶¹ S. 22, Special Marriage Act, 1954.

⁶² *Ojaswa Pathak v Union of India*, WP (C) 250/2019, case status available at <https://www.scobserver.in/cases/ojaswa-pathak-union-of-india-challenge-to-restitution-of-conjugal-rights-case-background/>

⁶³ *Ojaswa Pathak v Union of India*, WP (C) 250/2019, petition available at https://www.scobserver.in/wp-content/uploads/2021/09/Writ_Petition_by_Ojaswa_Pathak_Restitution_of_Conjugal_Rights.pdf.

⁶⁴ S. 27, Special Marriage Act, 1954.

⁶⁵ S. 25, Special Marriage Act, 1954.

The following provisions have been proposed to be added to the SMA on void marriages, voidability of a marriage, and dissolution of marriage:

<i>Existing provision</i>	<i>Proposed provision</i>
<p>Void marriages. —</p> <p>(1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—</p> <p>(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or</p> <p>(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.</p> <p>(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:</p> <p>Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.</p>	<p>Void marriages. -</p> <p>Any marriage registered under this Act will be null and void and may be declared so, by a decree of nullity on a petition presented by either of the parties to the marriage before a Court, if any of the conditions specified in section [.] and [.] of this Act [<i>conditions for a valid marriage</i>] suit have not been fulfilled or, the respondent was impotent at the time of the marriage and at the time of institution of.</p>
<p>Voidable marriages.-</p>	<p>Voidable marriages.-</p> <p>(1) Any marriage under this Act will be voidable and may</p>

Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,—

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

- (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) that proceedings were instituted within a year from the date of the marriage; and
- (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—

- (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or
- (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

be annulled by a decree of nullity at the instance of either of the parties if,—

- (a) **such party was under the age of 18 at the time of marriage; or**
- (b) either of the parties refuses to cohabit with the other party; or
- (c) if their spouse was pregnant at the time of marriage through another person and the fact of the pregnancy was not known to either of the parties at the time of marriage;
- (d) **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; or**
- (e) the consent of such party to the marriage was obtained by coercion, fraud, or undue influence, as defined in the Indian Contract Act, 1872.

Explanation - For the purposes of this sub-section, “transition” means a process that a transgender person undergoes when they decide to live as the gender with which they identify rather than the one they were assigned at birth or the one they identified with at the time of marriage and may or may not involve medical processes such as hormone therapy or surgery.

- (2) A petition under sub-section (1)(a) may be filed at any time, but before the expiration of a period of 5 years

	<p>from the date of attaining majority by the petitioner.</p> <p>(3) The Court will not grant a decree of nullity under sub-section (1)(c) if,—</p> <p>(a) proceedings have not been instituted within 1 year after the fact of pregnancy was known; and/or,</p> <p>(b) the petitioner has with their free consent lived with the other party to the marriage after the fact of the pregnancy was known.</p> <p>(4) The Court will not grant a decree of nullity under sub-section (1)(d) if,—</p> <p>(a) proceedings have not been instituted within 1 year after the coercion had ceased or, as the case may be, the fraud had been discovered; or</p> <p>(b) the petitioner has, out of their free consent, lived with the other party to the marriage after the coercion had ceased or, as the case may be, the fraud had been discovered.</p>
<p>Divorce.—</p> <p>(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—</p> <p>(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse;</p>	<p>Grounds for dissolution of marriage.-</p> <p>(1) Any party to a marriage may file a petition for dissolution of marriage by a decree of divorce before a Court on the ground that the other party,-</p> <p>(a) has, after the commencement of marriage, had voluntary sexual intercourse with any person other than the spouse, without the consent of the spouse;</p> <p>(b) has deserted the applicant for a continuous period</p>

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;
 (c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code;
 (d) has since the solemnization of the marriage treated the petitioner with cruelty; or,
 (e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
 (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or
 (f) has been suffering from venereal disease in a communicable form; or
 (g) has been suffering from leprosy, the disease not having been contacted from the petitioner; or

of 2 or more years, immediately preceding the petition for divorce;
 (c) has treated the applicant with cruelty;
 (d) has been absent and not been heard of as being alive for a period of 7 years or more by those persons who would naturally have heard of it, had that party been alive;
 (e) has been sentenced to imprisonment for an offence for a term exceeding 7 years or more;
~~(f) has been suffering from venereal disease in a communicable form;~~
~~(g) has been suffering from leprosy, the disease not having been contacted from the petitioner;~~
 (h) **has failed to comply with an order granting maintenance under section [-] [Permanent alimony and maintenance] of this Act; or**
 (i) **has been suffering from a mental illness, whether incurable or of a persistent or intermittent nature, that significantly impairs their ability to maintain a harmonious marital relationship.**

Explanation 1- For the purposes of sub-clause (b) of this sub-section, “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage.

Explanation 2- For the purposes of sub-clause (h) of this sub-section, “mental illness” will have the same meaning as

(h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

Explanation.—In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;

(1A) A wife may also present a petition for divorce to the district court on the ground,—

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956, or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (or under the corresponding section 488 of the Code of Criminal Procedure, 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage

provided under section 2(s) of the Mental Healthcare Act, 2017.

(2) Either of the parties to a marriage may file a petition for dissolution of marriage by a decree of divorce before a Court on the ground that there has been no resumption of cohabitation between the parties to the marriage for a period of 1 year or more after the passing of a decree for judicial separation in a proceeding to which they were parties, under section [-] [*grounds for judicial separation*] of this Code.

(Amendment) Act, 1970, may present a petition for divorce to the district court on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Divorce by mutual consent.-

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months] after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

Divorce by mutual consent.-

(1) A petition for dissolution of marriage by a decree of divorce may be presented to the Court by both the parties to the marriage together, on the following grounds-

- (a) that they have been living separately for a period of **6 months or more, that they have not been able to live together; and**
- (b) **that they have mutually agreed that the marriage should be dissolved.**

(2) The court will, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

(3) Before passing a decree of divorce under sub-section

Restriction on petitions for divorce during first one year after marriage.—

(1) No petition for divorce shall be presented to the district court unless at the date of the presentation of the petition one year has passed since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the district court may, upon application being made to it, allow a petition to be presented before one year has passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the expiration of the said one year upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a

(2), where it deems necessary to do so, the Court may grant the parties a reasonable period of time upto 6 months to reconcile differences through counselling or any other method as the parties may deem fit, unless-

- (a) the parties have been living separately for a significant period of time; or
- (b) the Court is satisfied that the marriage has broken down irretrievably on consideration of factors provided in section [-] [*irretrievable breakdown of marriage*].

<p>reconciliation between the parties before the expiration of the said one year.</p>	
<p>-</p>	<p>Irretrievable breakdown of marriage.-</p> <p>(1) A petition for dissolution of marriage by a decree of divorce may be presented to the Court by one or both the parties to the marriage, at any point after a period of 1 year from the date of marriage, on the ground that the marriage has broken down irretrievably with no hope of reconciliation.</p> <p>(2) While adjudicating a petition filed under sub-section (1), the Court must take into consideration the following factors:</p> <ul style="list-style-type: none"> (a) the period of time for which the parties cohabited after marriage and last date of cohabitation; (b) any past or ongoing legal proceedings between the parties and the cumulative impact of such proceedings on the personal relationship; (c) past or ongoing attempts to settle the disputes through intervention of the Court, through mediation or out-of-court settlements; (d) maintenance of children; and (e) any other factual considerations that the court may deem relevant during the course of the proceedings.
<p>Judicial separation.— (1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—</p>	<p>Grounds for judicial separation.- (1) A petition for judicial separation may be presented to the Court by both the parties to the marriage jointly,</p>

(a) on any of the grounds specified in sub-section (1) and sub-section (1A) of section 27 on which a petition for divorce might have been presented; or
(b) on the ground of failure to comply with a decree for restitution of conjugal rights;
and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

(2) Where the court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

or by either of **the parties to the marriage** on any of the grounds specified in section [-] [*Grounds for divorce*] of this Act, and the Court may decree judicial separation, on being satisfied with respect to the following things:

- (a) the veracity of the statements made in such petition, and
- (b) that there is no legal ground why the application should not be granted.

(2) The Court may, on the application by petition of **either party** and on being satisfied of the veracity of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

4. Status of marriages where one of the parties undergoes transition as a transgender person post marriage:

It was highlighted during the hearings in *Supriyo* that under the SMA, heterosexual marriages where one or both parties are transgender persons would be valid under the SMA. Thus, a cisgender man can marry a transgender woman under the SMA, or a transgender man can marry a transgender woman, as long as it is two persons of opposite genders getting married. However, there is no clarity on the status of a marriage if one of the parties to a marriage transitions post marriage. The law needs to specify that such marriages will continue being valid while also providing the parties with the choice to annul the marriage. A new ground may thus be added making the marriage voidable on the grounds of a party to the marriage transitioning, allowing either of the parties to file a decree of nullity.

Any marriage under this Act will be voidable and may be annulled by a decree of nullity at the instance of either of the parties if,—

- (a) such party was under the age of 18 at the time of marriage;
- (b) either of the parties refuses to cohabit with the other party;
- (c) if their spouse was pregnant at the time of marriage through another person and the fact of the pregnancy was not known to either of the parties at the time of marriage;
- (d) **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; or**
- (e) the consent of such party to the marriage was obtained by coercion, fraud, or undue influence, as defined in the Indian Contract Act, 1872.

Explanation - For the purposes of this section, “transition” means a process that a transgender person undergoes when they decide to live as the gender with which they identify rather than the one they were assigned at birth or the one they identified with at the time of marriage, and may or may not involve medical processes such as hormone therapy or surgery.

i) **Section 2(b):** Gendered definition of “prohibited degrees of relationship”. In case of a female party to marriage, the relations that fall within prohibited degrees are restricted to male relations, and vice versa in case of a male. The provision may be amended to be similar to the Hindu Marriage Act, 1955 which is largely gender-neutral in language.

Certain concepts, like half blood and full blood, are inherently gendered in nature and may have to be retained in their current formulation. They do not impact the way degrees of prohibited relationships will be computed for non-heterosexual relationships.

Finally, the list of prohibited degrees of relationships in the Schedule will have to be suitably altered to make it gender inclusive.

Section	Existing Provision	Proposed Amendment

2(b)	(b) “degrees of prohibited relationship”- a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.	(b) “degrees of prohibited relationship”- a man and party to the marriage and any of the persons mentioned in Part [] of the First Schedule Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.
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ii) **Section 4:** Conditions relating to solemnization of special marriages- while the provision mentions marriage as between two “persons”, the valid age of consent mentions gender binaries in saying that the male must be “21 years” and the female must be “18 years”. While this may be interpreted contextually in case of same sex/gender relationships, a holistic amendment can prevent confusion.

Section	Existing Provision	Proposed Amendment
4	<p>Conditions relating to solemnization of special marriages.—</p> <p>Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—</p> <p>(a).....</p> <p>(b).....</p> <p>(c) the male has completed the age of twenty-one</p>	<p>Conditions relating to solemnization of special marriages.—</p> <p>Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—</p> <p>(a)</p> <p>(b)</p> <p>(c) both the parties have completed the age of eighteen years</p> <p>(d) neither of the parties is in an intimated civil union [This</p>

	years and the female the age of eighteen years	<i>condition is only applicable if a separate civil union legislation is passed].</i>
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iii) **Section 15:** Registration of marriage celebrated in other forms- the provision provides that the parties must have been living together as “husband and wife” for a marriage to be registered under the Act. The age of consent for registration of marriage under this section is uniform and 21 for both the parties.

Section	Existing Provision	Proposed Amendment
15	<p>Registration of marriages celebrated in other forms.—</p> <p>Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—</p> <p>(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;</p> <p>(b).....;</p> <p>(c)</p> <p>(d)</p> <p>(e), and</p> <p>(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which</p>	<p>Registration of marriages celebrated in other forms.—</p> <p>Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—</p> <p>(a) a ceremony of marriage has been performed between the parties and they have been living together as spouses ever since;</p> <p>(b).....;</p> <p>(c)</p> <p>(d)</p> <p>(e), and</p> <p>(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to them for registration of the marriage.</p>

	the application is made to him for registration of the marriage.	
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iv) Provisions that mention “husband” and “wife” may be amended to “spouse” or “parties to the marriage”: sections 22 (restitution of conjugal rights), 23 (judicial separation), 27 (divorce). Under section 27, the special grounds on which women may file for divorce against their husbands may be retained as they have been designed keeping the power dynamics in heterosexual relationships in mind.

Section	Existing Provision	Proposed Amendment
22	Restitution of conjugal rights.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. [Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.]	Omit
23	Judicial separation.— (1) A petition for judicial separation may be	Judicial separation.— (1) A petition for judicial separation may be presented to

	<p>presented to the district court either by the husband or the wife,—</p> <p>(a) on any of the grounds specified [in sub-section (1) [and sub-section (1A)] of section 27] on which a petition for divorce might have been presented; or</p> <p>(b) on the ground of failure to comply with a decree for restitution of conjugal rights;</p> <p>and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.</p> <p>(2).....</p>	<p>the district court by either spouse, on any of the grounds specified [in sub-section (1) [and sub-section (1A)] of section 27] on which a petition for divorce might have been presented, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.</p> <p>(2).....</p>
27	<p>Divorce.—</p> <p>[(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—</p> <p>[(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or</p> <p>(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]</p> <p>(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);</p>	<p>Divorce.—</p> <p>(1) Any party to a marriage may file a petition for dissolution of marriage by a decree of divorce before a Court on the ground that the other party,-</p> <p>(a) has, after the commencement of marriage, had voluntary sexual intercourse with any person other than the spouse, without the consent of the spouse;</p> <p>(b) has deserted the applicant for a continuous period of 2 or more years, immediately preceding the petition for divorce;</p> <p>(c) has treated the applicant with cruelty;</p> <p>(d) has been absent and not been heard of as being alive for a period of 7 years or more by those persons who would naturally have heard of it, had that party been alive;</p> <p>(e) has been sentenced to imprisonment for an offence</p>

	<p>(d) has since the solemnization of the marriage treated the petitioner with cruelty; or [(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.</p> <p>Explanation.— In this clause,— (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia; (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or (f) has been suffering from venereal disease in a communicable form; or] (g) has * * * been suffering from leprosy, the disease not having been contacted from the petitioner; or (h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; * * *</p> <p>[Explanation.— In this sub-section, the expression</p>	<p>for a term exceeding 7 years or more; (f) has failed to comply with an order granting maintenance under section [-] of this Act; (g) is in an intimated civil union with another person, or (h) has been suffering from a mental illness, whether incurable or of a persistent or intermittent nature, that significantly impairs their ability to maintain a harmonious marital relationship.</p> <p>Explanation 1- For the purposes of sub-clause (b) of this sub-section, “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage.</p> <p>Explanation 2- For the purposes of sub-clause (h) of this sub-section, “mental illness” will have the same meaning as provided under section 2(s) of the Mental Healthcare Act, 2017.</p> <p>(2) Either of the parties to a marriage may file a petition for dissolution of marriage by a decree of divorce before a Court on the ground that there has been no resumption of cohabitation between the parties to the marriage for a period of 1 year or more after the passing of a decree for judicial separation in a proceeding to which they were parties, under section [-] of this Act.</p>
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“desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;] * * * * *

[(1A) A wife may also present a petition for divorce to the district court on the ground,—

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

[(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the

	<p>commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground—</p> <p>(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or</p> <p>(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]</p>	
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v) **Section 37:** Permanent alimony and maintenance- The Special Marriage Act provides maintenance to be given only by the husband to the wife. Similar provisions under the Hindu Marriage Act are gender neutral. This provision on maintenance can be made gender-neutral while accounting for vulnerable parties. Factors to be taken into consideration while granting maintenance must consider non-financial contributions made to the relationship and any disadvantages faced for being part of the relationship.

Section	Existing Provision	Proposed Amendment
37	<p>Permanent alimony and maintenance.—</p> <p>(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that</p>	<p>Permanent alimony and maintenance.—</p> <p>(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the respondent spouse shall secure</p>

	<p>the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.</p> <p>(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.</p> <p>(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, 1 [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]</p>	<p>to the claimant spouse for the claimant's maintenance and support, if necessary, by a charge on the respondent's property such gross sum or such monthly or periodical payment of money for a term not exceeding the claimant's life, as, having regard to the claimant's own property, if any, the respondent's property and ability [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.</p> <p>(1A) While determining the amount of maintenance to be granted under sub-section (1), the Court must take into consideration the following factors:¹⁴⁴</p> <ul style="list-style-type: none"> (a) duration of the relationship; (b) the respondent's own income and other property, if any; (c) the income and other property of the applicant; (d) the needs of the applicant; (e) applicant's liabilities, financial responsibilities, or responsibility to maintain dependants; (f) the age and employment status of the parties; (g) the residential arrangements of the parties; (h) any illness or disability; (i) any contributions made by the applicant during the subsistence of the relationship, which may have given rise to a sustained benefit for the relationship and/or an economic disadvantage for the applicant; <p>Provided that absence of contributions made by the applicant as described in this sub-clause will not disentitle the applicant from claiming maintenance.</p> <ul style="list-style-type: none"> (j) protection of vulnerable parties;
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		<p>(k) preservation of the status of living as it existed during the subsistence of marriage; and</p> <p>(l) any other circumstances of the case, that the court may deem relevant.</p> <p>Explanation- For the purpose of this sub-section,</p> <p>(i) “contributions made” will include any action which seeks to contribute to the welfare of the spouse and/or their family, such as acquiring, conserving, or improving the property of the spouse and/or their family, looking after the home or caring for the family; and</p> <p>(ii) “economic disadvantage” will include making a substantial financial contribution and/or foregoing an independent income, independent ability to accumulate wealth, growth in career and profession, or such other disadvantages that the court may determine arising out of the relationship.</p> <p>(iii) “dependants” mean and include the following:</p> <p>(a) parents;</p> <p>(b) minor children;</p> <p>(c) adult children unable to maintain themselves; and,</p> <p>(d) widowed daughter-in-law, so long as not re-married;</p> <p>(2)</p> <p>(3) If the district court is satisfied that the claimant in whose favour an order has been made under this section has remarried or is not leading a chaste life, [it may, at the instance of the respondent vary, modify or rescind any</p>
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		such order and in such manner as the court may deem just.]
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(b) Amendments to the Indian Succession Act, 1925

The Indian Succession Act, 1925, is broadly gender-inclusive and grants similar inheritance rights to persons irrespective of their gender.

For instance, the Act provides inheritance rights for 'spouses', without distinguishing between genders. Once the SMA is amended to allow persons of any gender to marry, inheritance rights for such spouses will automatically accrue under the ISA.

However, the following amendments will be needed:

i) General amendments to remove gendered language: Various sections such as section 5 of the ISA, which deals with a person's domicile and the law of succession applicable to them, have gendered language that use the pronouns 'he' and 'his'. While 'his' has been interpreted to include women as well, in keeping with the aim of gender-inclusivity, gender-neutral pronouns such as 'they' and 'them' should be used.

ii) Sections 15 and 16: Section 15 deals with the domicile acquired by a woman upon marriage and section 16 with a wife's domicile during marriage. The provisions are outdated and gendered in nature. They can be omitted from the Act, such that married women's domicile is not affected by their marital status and is independent of their husband's domicile.

iii) Section 22: Section 22 allows only the father of a minor to allow settlement of a minor's property in contemplation of marriage. The section can be amended to allow a person's parent to give such approval, irrespective of their gender.

Section	Existing Provision	Proposed Amendment
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22	<p>Settlement of minor's property in contemplation of marriage.—</p> <p>(1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's father, or, if the father is dead or absent from [India], with the approbation of the High Court.</p> <p>(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.</p>	<p>Settlement of minor's property in contemplation of marriage.—</p> <p>(1) The property of a minor may be settled in contemplation of marriage, provided the settlement is made by the minor with the approbation of the minor's parent, or, if the parent is dead or absent from [India], with the approbation of the High Court.</p> <p>(2) Nothing in this section or in section 21 shall apply to any will made or intestacy occurring before the first day of January, 1866, or to intestate or testamentary succession to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.</p>
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iv) **Sections 25 and 27:** These sections deal with how relationships are established between people for the purpose of determining succession rights. They use gendered language such as father and grandfather. The language here can be made gender-inclusive to cover persons of all gender identities. The sections may be amended in the following manner without altering their intent and effect:

Section	Existing Provision	Proposed Amendment
25	<p>Lineal consanguinity.—</p> <p>(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in</p>	<p>Lineal consanguinity.—</p> <p>(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a person and their parent, grandparent and great-grandparent, and so</p>

	<p>the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.</p> <p>(2) Every generation constitutes a degree, either ascending or descending.</p> <p>(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.</p>	<p>upwards in the direct ascending line; or between a person and their child, grandchild, great-grandchild and so downwards in the direct descending line.</p> <p>(2) Every generation constitutes a degree, either ascending or descending.</p> <p>(3) A person's parent is related to them in the first degree, and so likewise is their child; their grandparent and grandchild in the second degree; their great-grandparent and great-grandchild in the third degree, and so on.</p>
27	<p>Persons held for purpose of succession to be similarly related to deceased.—</p> <p>For the purpose of succession, there is no distinction—</p> <p>(a) between those who are related to a person deceased through his father, and those who are related to him through his mother; or</p> <p>(b) between those who are related to a person deceased by the full blood, and those who are related to him by the half blood; or</p> <p>(c) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.</p>	<p>Persons held for purpose of succession to be similarly related to deceased.—</p> <p>For the purpose of succession, there is no distinction—</p> <p>(a) between those who are related to a person deceased through their parent, irrespective of the gender of the parent; or</p> <p>(b) between those who are related to a person deceased by the full blood, and those who are related to them by half blood; or</p> <p>(c) between those who were actually born in the lifetime of a person deceased and those who at the date of their death were only conceived in the womb, but who have been subsequently born alive.</p>

v) Sections 32 to 56:

These sections lay down how a deceased person's property will be distributed among the husband or wife of the deceased and other surviving heirs, such as their children and their parents.

In some cases, such as section 32 below, the language is gendered using terms like 'husband' and 'wife' even though the provision does not distinguish between the two categories of people. The language can be made gender-neutral and the term 'spouse' can be used here instead to ensure that it does not exclude any persons based on their gender identity. This is imperative since the law now officially recognises a third gender, and laws should not be restricted to binary gender of male and female.

Other provisions, such as those laying down inheritance rules for mothers and fathers, are discriminatory. The mother is allowed to inherit property only in the absence of the father, but such a condition does not apply for the father of the deceased person. These provisions should be amended to grant gender-agnostic equal inheritance rights.

Section	Existing Provision	Proposed Amendment
32	<p>Devolution of such property.—</p> <p>The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.</p>	<p>Devolution of such property.—</p> <p>The property of an intestate devolves upon the surviving spouse, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.</p>
33	<p>Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.—</p> <p>Where the intestate has left a widow— (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained; (b) 2 [save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of</p>	<p>Where intestate has left spouse and lineal descendants, or spouse and kindred only, or widow and no kindred.—</p> <p>Where the intestate has left a spouse— (a) if they have also left any lineal descendants, one-third of their property shall belong to their spouse, and the remaining two-thirds shall go to their lineal descendants, according to the rules hereinafter contained; (b) 2 [save as provided by section 33A], If they have left</p>

Section	Existing Provision	Proposed Amendment
	<p>kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;</p> <p>(c)if he has left none who are of kindred to him, the whole of his property shall belong to his widow.</p>	<p>no lineal descendant, but have left persons who are of kindred to them, one-half of their property shall belong to their widow, and the other half shall go to those who are kindred to them, in the order and according to the rules hereinafter contained;</p> <p>(c)if they have left none who are of kindred to them, the whole of their property shall belong to the spouse.</p>
33A	<p>Special provision where intestate has left widow and no lineal descendants.—</p> <p>(1) Where the intestate has left a widow but no lineal descendants and the net value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.</p> <p>(2) Where the net value of the property exceeds the sum of five thousand rupees, the widow shall be entitled to five thousand rupees thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees, with interest thereon from the date of the death of the intestate at 4 per cent. per annum until payment.</p> <p>(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the estate of such intestate remaining after payment of the said sum of five thousand rupees with interest as aforesaid, and such residue shall be distributed in accordance with the provisions of</p>	Omit

Section	Existing Provision	Proposed Amendment
	<p>section 33 as if it were the whole of such intestate's property.</p> <p>(4) The net value of the property shall be ascertained by deducting from the gross value thereof all debts, and all funeral and administration expenses of the intestate, and all other lawful liabilities and charges to which the property shall be subject.</p> <p>(5) This section shall not apply—</p> <p>(a) to the property of—</p> <p>(i) any Indian Christian,</p> <p>(ii) any child or grandchild of any male person who is or was at the time of his death an Indian Christian, or</p> <p>(iii) any person professing the Hindu, Buddhist, Sikh or Jaina religion the succession to whose property is, under section 24 of the Special Marriage Act, 1872 (3 of 1872), regulated by the provisions of this Act;</p> <p>(b) unless the deceased dies intestate in respect of all his property.</p>	
34.	<p>Where intestate has left no widow, and where he has left no kindred.—</p> <p>Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules hereinafter contained; and, if he has left none who are of kindred to him, it shall go to the Government.</p>	<p>Where intestate has left no spouse, and where they have left no kindred.—</p> <p>Where the intestate has left no spouse, their property shall go to their lineal descendants or to those who are of kindred to them, not being lineal descendants, according to the rules hereinafter contained; and, if they have left none who are of kindred to them, it shall go to the Government.</p>

Section	Existing Provision	Proposed Amendment
35.	<p>Rights of widower.—</p> <p>A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.</p>	Omit
36.	<p>Rules of distribution.—</p> <p>The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants shall be those contained in sections 37 to 40.</p>	<p>Rules of distribution.—</p> <p>The rules for the distribution of the intestate's property (after deducting the spouse's share, if they have left a spouse) amongst their lineal descendants shall be those contained in sections 37 to 40.</p>
37.	<p>Where intestate has left child or children only.—</p> <p>Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.</p>	<p>Where intestate has left child or children only.—</p> <p>Where the intestate has left surviving them, a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to their surviving child, if there is only one, or shall be equally divided among all their surviving children.</p>
38.	<p>Where intestate has left no child, but grandchild or grandchildren.—</p> <p>Where the intestate has not left surviving him any child but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the</p>	<p>Where intestate has left no child, but grandchild or grandchildren.—</p> <p>Where the intestate has not left surviving them any child but has left a grandchild or grandchildren and no more remote descendant through a deceased</p>

Section	Existing Provision	Proposed Amendment
	property shall belong to his surviving grandchild if there is one, or shall be equally divided among all his surviving grandchildren.	grandchild, the property shall belong to their surviving grandchild if there is one or shall be equally divided among all their surviving grandchildren.
39.	<p>Where intestate has left only great-grandchildren or remoter lineal descendants.—</p> <p>In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to him, or are all in a more remote degree.</p>	<p>Where intestate has left only great-grandchildren or remoter lineal descendants.—</p> <p>In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great-grandchildren to them, or are all in a more remote degree.</p>
40.	<p>Where intestate leaves lineal descendants not all in same degree of kindred to him, and those through whom the more remote are descended are dead.—</p> <p>(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.</p> <p>(2) One of such shares shall be allotted to each of the</p>	<p>Where intestate leaves lineal descendants not all in same degree of kindred to them, and those through whom the more remote are descended are dead.—</p> <p>(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to them, and the persons through whom the more remote are descended from them are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to them at their decease, or, having been of the like degree of kindred to them, died before them, leaving lineal descendants who survived them.</p> <p>(2) One of such shares shall be allotted to each of the</p>

Section	Existing Provision	Proposed Amendment
	lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.	lineal descendants who stood in the nearest degree of kindred to the intestate at their decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to their surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which them or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.
41.	<p>Rules of distribution where intestate has left no lineal descendants.—</p> <p>Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in sections 42 to 48.</p>	<p>Rules of distribution where intestate has left no lineal descendants.—</p> <p>Where an intestate has left no lineal descendants, the rules for the distribution of their property (after deducting the spouse's share, if they have left a spouse) shall be those contained in sections 42 to 48.</p>
42.	<p>Where intestate's father living.—</p> <p>If the intestate's father is living, he shall succeed to the property.</p>	<p>Where intestate's parents are or parent is living.—</p> <p>If the intestate's parents are living, they shall succeed to the property.</p>
43.	Where intestate's father dead, but his mother, brothers and sisters living.—	Omit

Section	Existing Provision	Proposed Amendment
	<p>If the intestate's father is dead, but the intestate's mother is living and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.</p>	
44.	<p>Where intestate's father dead and his mother, a brother or sister, and children of any deceased brother or sister, living.—</p> <p>If the intestate's father is dead but the intestate's mother is living, and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.</p>	Omit
45.	<p>Where intestate's father dead and his mother and children of any deceased brother or sister living.—</p> <p>If the intestate's father is dead, but the intestate's mother is living, and the brothers and sisters are all</p>	Omit

Section	Existing Provision	Proposed Amendment
	dead, but all or any of them have left children who survived the intestate, the mother and the child or children of each deceased brother or sister shall be entitled to the property in equal shares, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.	
46.	<p>Where intestate's father dead, but his mother living and no brother, sister, nephew or niece.—</p> <p>If the intestate's father is dead, but the intestate's mother is living, and there is neither brother, nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.</p>	Omit
47.	<p>Where intestate has left neither lineal descendant, nor father, nor mother.—</p> <p>Where the intestate has left neither lineal descendant, nor father, nor mother, the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.</p>	<p>Where intestate has left neither lineal descendant, nor parent.—</p> <p>Where the intestate has left neither lineal descendant, nor parent, the property shall be divided equally between their siblings and the child or children of such of them as may have died before them, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the intestate's death.</p>
48.	Where intestate has left neither lineal descendant, nor	Where intestate has left neither lineal descendant, nor

Section	Existing Provision	Proposed Amendment
	<p>parent, nor brother, nor sister.—</p> <p>Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.</p>	<p>parent, nor sibling.—</p> <p>Where the intestate has left neither lineal descendant, nor parent, nor sibling, their property shall be divided equally among those of their relatives who are in the nearest degree of kindred to them.</p>
49.	<p>Children's advancements not brought into hotchpot.—</p> <p>Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during his life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.</p>	<p>Children's advancements not brought into hotchpot.—</p> <p>Where a distributive share in the property of a person who has died intestate is claimed by a child, or any descendant of a child, of such person, no money or other property which the intestate may, during their life, have paid, given or settled to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.</p>
50.	<p>General principles relating to intestate succession.—</p> <p>For the purpose of intestate succession among Parsis— (a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive; (b) a lineal descendant of an intestate who has died in the</p>	<p>General principles relating to intestate succession.—</p> <p>For the purpose of intestate succession among Parsis— (a) there is no distinction between those who were actually born in the lifetime of a person deceased and those who at the date of the deceased person's death were only conceived in the womb, but who have been subsequently born alive; (b) a lineal descendant of an intestate who has died in</p>

Section	Existing Provision	Proposed Amendment
	<p>lifetime of the intestate without leaving a widow or widower or any lineal descendant or [a widow or widower of any lineal descendant] shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and</p> <p>(c) where a [widow or widower of any relative] of an intestate has married again in the lifetime of the intestate, [such widow or widower] shall not be entitled to receive any share of the property of which the intestate has died intestate, and [such widow or widower] shall be deemed not to be existing at the intestate's death.</p>	<p>the lifetime of the intestate without leaving a spouse or any lineal descendant or [a spouse of any lineal descendant] shall not be taken into account in determining the manner in which the property of which the intestate has died intestate shall be divided; and</p> <p>(c) where a [spouse of any relative] of an intestate has married again in the lifetime of the intestate, [such spouse] shall not be entitled to receive any share of the property of which the intestate has died intestate, and [such spouse] shall be deemed not to be existing at the intestate's death.</p>
51.	<p>Division of intestate's property among widow, widower, children and parents.—</p> <p>(1) Subject to the provisions of sub-section (2), the property of which a Parsi dies intestate shall be divided,—</p> <p>(a) where such Parsi dies leaving a widow or widower and children, among the widow or widower, and children so that the widow or widower and each child received equal shares;</p> <p>(b) where such Parsi dies leaving children, but no widow or widower, among the children in equal shares.</p> <p>(2) Where a Parsi dies leaving one or both parents in addition to children or widow or widower and children,</p>	<p>Division of intestate's property among surviving spouse, children and parents.—</p> <p>(1) Subject to the provisions of sub-section (2), the property in respect of which a Parsi dies intestate shall be divided,—</p> <p>(a) where such Parsi dies leaving a spouse and children, among the spouse, and children so that the spouse and each child received equal shares;</p> <p>(b) where such Parsi dies leaving children, but no spouse, among the children in equal shares.</p> <p>(2) Where a Parsi dies leaving one or both parents in addition to children or spouse and children, the property of which such Parsi dies intestate shall be so</p>

Section	Existing Provision	Proposed Amendment
	the property of which such Parsi dies intestate shall be so divided that the parent or each of the parents shall receive a share equal to half the share of each child.	divided that the parent or each of the parents shall receive a share equal to half the share of each child.
53.	<p>Division of share of predeceased child of intestate leaving lineal descendants.—</p> <p>In all cases where a Paris dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:—</p> <p>(a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this Chapter as if he had died immediately after the intestate's death: Provided that where such deceased son has left a widow or a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this Chapter as property of which the intestate has died intestate, and in making the division of such residue the said deceased son of the intestate shall not be taken into account.</p> <p>(b) If such deceased child was a daughter, her share shall be divided equally among her children.</p> <p>(c) If any child of such deceased child has, also died</p>	<p>Division of share of predeceased child of intestate leaving lineal descendants.—</p> <p>In all cases where a Paris dies leaving any lineal descendant, if any child of such intestate has died in the lifetime of the intestate, the division of the share of the property of which the intestate has died intestate which such child would have taken if living at the intestate's death shall be in accordance with the following rules, namely:—</p> <p>(a) The child's spouse and children shall take shares in accordance with the provisions of this Chapter as if the child had died immediately after the intestate's death: Provided that where such deceased son has left a spouse or a spouse of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the provisions of this Chapter as property in respect of which the intestate has died intestate, and in making the division of such residue the said deceased child of the intestate shall not be taken into account.</p> <p>(b) If such deceased child was a daughter, her share shall be divided equally among her children.</p>

Section	Existing Provision	Proposed Amendment
	<p>during the lifetime of the intestate, the share which he or she would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b), as the case may be.</p> <p>(d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which he or she would have been entitled if living at the intestate's death by reason of the predecease of all the intestate's lineal descendants directly between him or her and the intestate.</p>	<p>(c) If any child of such deceased child has also died during the lifetime of the intestate, the share which they would have taken if living at the intestate's death, shall be divided in like manner in accordance with clause (a) or clause (b), as the case may be.</p> <p>(d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis to the division of any share to which they would have been entitled if living at the intestate's death by reason of the predecease of all the intestate's lineal descendants directly between them and the intestate.</p>
54.	<p>Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow or widower of any lineal descendant.—</p> <p>Where a Parsi dies without leaving any lineal descendant but leaving a widow or widower or a widow or widower of a lineal descendant, the property of which the intestate dies intestate shall be divided in accordance with the following rules, namely:—</p> <p>(a) if the intestate leaves a widow or widower but no widow or widower of a lineal descendant, the widow or widower shall take half the said property;</p> <p>(b) if the intestate leaves a widow or widower and also a widow or widower of any lineal descendant, his widow or her widower shall receive one-third of the said</p>	<p>Division of property where intestate leaves no lineal descendant but leaves a widow or widower or a widow or widower of any lineal descendant.—</p> <p>Where a Parsi dies without leaving any lineal descendant but leaving a spouse or a spouse of a lineal descendant, the property in respect of which the intestate dies intestate shall be divided in accordance with the following rules, namely:—</p> <p>(a) if the intestate leaves a spouse but no spouse of a lineal descendant, the spouse shall take half the said property;</p> <p>(b) if the intestate leaves a spouse and also a spouse of any lineal descendant, the intestate's spouse shall receive one-third of the said property and the spouse</p>

Section	Existing Provision	Proposed Amendment
	<p>property and the widow or widower of any lineal descendant shall receive another one-third or if there is more than one such widow or widower of lineal descendants, the last mentioned one-third shall be divided equally among them;</p> <p>(c) if the intestate leaves no widow or widower, but one widow or widower of the lineal descendant, such widow or widower of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no widow or widower but -more than one widow or widower of lineal descendants, two-thirds of the said property shall be divided among such widows or widowers of the lineal descendants in equal shares; (d) the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares;</p> <p>(e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.</p>	<p>of any lineal descendant shall receive another one-third or if there is more than one such spouse of lineal descendants, the last mentioned one-third shall be divided equally among them;</p> <p>(c) if the intestate leaves no spouse, but one spouse of the lineal descendant, such spouse of the lineal descendant shall receive one-third of the said property or, if the intestate leaves no spouse but -more than one spouse of lineal descendants, two-thirds of the said property shall be divided among such spouses of the lineal descendants in equal shares;</p> <p>(d) the residue after the division specified in clause (a), or clause (b) or clause (c) has been made shall be distributed among the relatives of the intestate in the order specified in Part I of Schedule II; and the next-of-kin standing first in Part I of that Schedule shall be preferred to those standing second, the second to the third and so on in succession, provided that the property shall be so distributed that each person male and female standing in the same degree of propinquity shall receive equal shares regardless of their gender;</p> <p>(e) if there are no relatives entitled to the residue under clause (d), the whole of the residue shall be distributed in proportion to the shares specified among the persons entitled to receive shares under this section.</p>
55.	Division of property where intestate leaves neither	Division of property where intestate leaves neither

Section	Existing Provision	Proposed Amendment
	<p>lineal descendants nor a widow or widower nor a widow or widower of any lineal descendant.—</p> <p>When a Parsi dies leaving neither lineal descendants nor a widow or widower nor [a widow or widower of any lineal descendant] his or her next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each male and female standing in the same degree of propinquity shall receive equal shares.</p>	<p>lineal descendants nor a spouse nor a spouse of any lineal descendant.—</p> <p>When a Parsi dies leaving neither lineal descendants nor a spouse nor [a spouse of any lineal descendant], the intestate's next-of-kin, in the order set forth in Part II of Schedule II, shall be entitled to succeed to the whole of the property of which they die intestate. The next-of-kin standing first in Part II of that Schedule shall be preferred to those standing second, the second to the third, and so on in succession, provided that the property shall be so distributed that each person male and female standing in the same degree of propinquity shall receive equal shares regardless of their gender.</p>
56.	<p>Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—</p> <p>Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to him.</p>	<p>Division of property where there is no relative entitled to succeed under the other provisions of this Chapter.—</p> <p>Where there is no relative entitled to succeed under the other provisions of this Chapter to the property of which a Parsi has died intestate, the said property shall be divided equally among those of the intestate's relatives who are in the nearest degree of kindred to the intestate.</p>

(c) New Legislation Governing Civil Unions

Need for a separate legislation in India

Efforts have been made by the government in the past year to extend recognition to queer relationships for the purpose of opening joint bank accounts and procuring ration cards as a family. However, the one difficulty that persists here is—how will such relationships be established and recognised under the law? Many countries have done this through recognising civil unions.

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.

Both heterosexual and queer individuals are increasingly choosing non-marital cohabitation as a valid family structure. While there is no explicit legislative framework recognizing cohabitation as a legal right, judicial decisions have progressively affirmed the right to cohabit. In *Payal Sharma v. Superintendent of Nari Niketan, Agra*, the Allahabad High Court recognized that a man and a woman can live together without being married. Similarly, in *S. Khushboo v. Kanniammal*, the Supreme Court emphasized that live-in relationships should not be viewed through a criminal lens. Further, in *Madhubala v. State of Uttarakhand*, the High Court affirmed the right of same-sex couples to cohabit outside of marriage.

While these rulings mark progress, the absence of a clear legislative framework leaves individuals in non-marital cohabitation without legal certainty regarding their rights and entitlements. To address this, policy measures should be introduced to provide statutory recognition of stable, long-term cohabiting relationships, ensuring access to socio-economic protections such as inheritance rights, healthcare decision-making, and social security benefits.

Moreover, rights and obligations within a marital relationship—such as joint adoption, property sharing, maintenance, and divorce—directly impact access to benefits under related laws, including labour and employment regulations. The implications of these rights, as well as the legal status of individuals in a partnership, are best addressed through a comprehensive law.

The recognition of civil unions should not be seen as an alternative to marriage but should exist alongside marital rights for queer persons. A comprehensive legal framework should provide for both marriage equality and recognition of civil unions to ensure inclusivity in family law and the protection of diverse relationship structures.

In the following parts, we have tried to demonstrate how the various facets of civil unions may be regulated through law and have also included illustrative provisions that such a law can include.

International jurisprudence on recognising civil unions and same sex marriages

Same-sex relationships have been recognised as ‘civil unions’ or ‘civil partnerships’ in various jurisdictions around the world. The United Kingdom passed the Civil Partnership Act of 2004⁶⁶ allowing same-sex partners to be recognised by the law. Later, with the enactment of the Marriage (Same Sex Couples) Act, 2013, same-sex marriages were legalised, and partnerships registered under the Civil Partnership Act of 2004 could be converted into marriages.

The Family Law Act of Australia⁶⁷ through a 2009 amendment, recognised ‘de facto relationships’ under section 4AA between any two persons of the same or opposite sex. The provision lays down circumstances that may be considered in determining whether two persons are in a de facto relationship, including, duration of relationship, nature and extent of common residence, degree of financial dependence or interdependence, degree of mutual commitment to a shared life, among others.

In Canada, before the nation-wide recognition of same-sex marriages in 2005, different states and provinces progressively recognised and regulated civil unions. The Civil Code of Quebec⁶⁸ for example, was amended in 2002 to recognise civil

⁶⁶ The Civil Partnership Act, 2004 (United Kingdom), available at <https://www.legislation.gov.uk/ukpga/2004/33/section/1>.

⁶⁷ The Family Law Act, 1975 (Australia), available at: <https://www.legislation.gov.au/C2004A00275/latest/text>.

⁶⁸ The Civil Code of Quebec (Canada), available at: <https://www.legisquebec.gouv.qc.ca/en/pdf/cs/CCQ-1991.pdf>

unions that may be entered into between two adult persons who express their free and enlightened consent to share a community of life and to uphold the rights and obligations that derive from that status.

Before the legal recognition of same-sex marriages in Germany in 2017, the Registered Life Partnership Act of 2004⁶⁹ was enacted to extend the benefits of marriage such as joint adoption, and simpler alimony.

Thus, many countries around the world recognise civil unions. These are usually characterised by factors such as mutual commitment, emotional and financial interdependence, a shared household, and a long-term intention to build a life together.

Contents of a civil union legislation

A comprehensive civil union legislation must necessarily include a set of provisions setting out the scope of what a civil union relationship entails, and the status and rights accorded to such a relationship in law.

Who can enter into a civil union?

It is necessary to 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 legal marriage, for example, might not be eligible for being in a civil partnership under a legislation.

Existing marriage registrars can serve as Relationship and Marriage Officers, and can register marriages as well as civil unions.

- 1. Conditions for entering into a Civil Union.** - Any two persons will be recognised to be in a civil union, through intimation to the Relationship and Marriage Officer in the manner prescribed under this Code, subject to the fulfilment of the following conditions:
 - (a) both persons have completed the age of 18 years;
 - (b) both persons do not have a subsisting marriage; and,
 - (c) both persons do not have a subsisting civil union with any other person.

⁶⁹ The Registered Life Partnership Act, 2004 (Germany), available at: https://www.gesetze-im-internet.de/englisch_lpartg/englisch_lpartg.html.

Recognition of civil unions

Any such law will need to clarify how civil unions will be recognised as relationships under the law. One of the most common methods of entering into a civil union in laws is through registration under the legislation. The Quebec Civil Union law provides that a civil union can be contracted openly before an officiant competent to solemnise marriages and in the presence of two witnesses. Under the UK Civil Partnership Act, a civil partnership is formed between two people when they register as civil partners of each other.

Similarly, a civil union legislation in India may provide for a simple registration process for entering into a civil partnership. The marriage registrar under the SMA can serve as the Relationship and Marriage Officer for the purpose of registering civil unions.

2. Intimation process for civil unions.-

- (1) Any two persons intending to be recognised as being in a civil union, may intimate the Relationship and Marriage Officer of the district in which at least one of the parties to the union has resided for a period of not less than 7 days, through an application in the format as prescribed in Form [].
- (2) On satisfaction of the veracity of the details provided as part of the application submitted under sub-section (1), the Relationship and Marriage Officer shall issue a Civil Union Certificate, within a period of 7 days from the date of the application, through electronic or paper mode.
- (3) The Civil Union Certificate will be conclusive proof of the existence of a civil union.
- (4) A civil union will not be considered invalid merely for non-intimation.
- (5) The Relationship and Marriage Officer will not refuse to issue a Civil Union Certificate, except on the following grounds:
 - (i) the application does not include all details as set out in Form []; or,
 - (ii) the parties do not fulfil any of the conditions provided under section 1.
- (6) The process of verification of details under sub-section (2) will be as prescribed by the appropriate Government.

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. Courts have thus 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.

3. Determination of the existence of a civil union in the absence of intimation.-

- (1) On a petition filed by any person claiming to be part of a civil union, the Court may determine the existence of such union, despite the fact that such civil union has not been intimated to the Relationship and Marriage Officer.
- (2) The determination under sub-section (1) will be subject to the fulfilment of conditions specified under section 1 of this Code.
- (3) While considering a petition in accordance with sub-section (1), the court will take into consideration any of the factors set out in section 4.
- (4) The Court may make a determination of the existence of a civil union under sub-section (1), regardless of the fact that either of the parties to such union was at the same time, a party to a subsisting marriage or civil union.

What is a civil union and its characteristics?

A civil union can be seen as a legally recognised partnership with rights and entitlements similar to those flowing from a marriage.

The components of a personal relationship that will qualify it as a civil union must be clearly laid out. The Australian Family Law Act states that two persons are in a *de facto* relationship, if they are not legally married to each other, not related to each other by family, and having regard to all the circumstances of their relationship, have a relationship as a couple living together on a genuine domestic basis. The Registered Life Partnership Act of Germany provides that life partners registering under the Act have a duty to care for and support one another and to shape their lives together. The Quebec law prescribes that a civil union is a commitment by two persons 18 years of age or over who express their free and enlightened consent to share a community of life and to uphold the rights and obligations that derive from that status.

These features provide definition to what kind of relationship is being envisaged as a civil union partnership under the Act and help bring clarity to both the lawmakers and the stakeholders of the legislation.

4. Factors to be considered while determining the existence of a civil union.-

While considering a petition in accordance with section 3, the court will take into consideration any of the following factors-

- (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.

Explanation - "Intermittent cohabitation" in a shared household means that the parties shared the same place to live, whether or not permanently, and irrespective of whether or not one or both had other places to live.

How can civil unions be dissolved?

Flowing from the question of formation of civil partnerships, is the question of dissolution of civil partnerships. Under the UK Civil Partnership Act, a civil partnership may come to an end either through death, dissolution or annulment, or through conversion into marriage under UK laws. Clear provisions need to be laid out specifying the mode of dissolution of a civil partnership.

5. Dissolution of civil union.-

- (1) A civil union may be dissolved at any time at the instance of either of the parties by submitting an application to the Relationship and Marriage Officer, in the format as set out in Form [].
- (2) On satisfaction of the veracity of the details provided as part of the application submitted under sub-section (1), the Relationship and Marriage Officer will issue confirmation of dissolution of civil union within a period of 14 days from the date of the application, through electronic or paper mode.
- (3) The Relationship and Marriage Officer will ensure that both the parties have knowledge of the fact of dissolution of the civil union.
- (4) The process of verification of details under sub-section (2) will be as prescribed by the appropriate Government.

Rights flowing from a civil union

Marriage as an institution, comes with a bouquet of rights and benefits. An exercise of establishing an alternate system to marriage, of the nature of civil unions, would be incomplete without clear identification of such rights and benefits which will equally flow from a civil partnership. Questions of parenthood and adoption need to be dealt with and clarified in a civil partnership legislation. Similarly, matters of custody of children and rights such as the right of inheritance from each other must be provided for in a civil partnership law.

6. Rights and obligations arising out of civil unions.-

- (1) Both the parties to a civil union will be entitled to maintenance in accordance with [sections on maintenance between spouses] of this Code.
- (2) Both the parties to a civil union will owe each other a duty of respect, mutual support, and assistance.
- (3) Both the parties to a civil union will have parental responsibilities and rights in relation to the child that they are jointly the parents of.

7. Custody of Child.-

- (1) In the event of dissolution of civil union, the Court will make an order deciding the custody of the child.
- (2) In deciding custody, whether joint custody or sole custody, the Court will -
 - (a) consider the best interests of the child; and
 - (b) take into account the intelligent preference of the child.
- (3) In making an order of joint legal custody, the Court will specify the circumstances under which consent of both parents has to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.
- (4) In making an order of joint physical custody, the Court will specify the manner in which such an arrangement will be operationalised and ensure that such an arrangement does not render the child or the parent at the risk of violence or harm.
- (5) The Court will, in addition to custody, also issue an order for maintenance of the child as per section [provision on maintenance of children] of this Code.
- (6) Orders under this section are of an interim nature and may be modified upon application by either parent.

8. Division of assets of civil union.-

In the event of dissolution of a civil union, either of the parties to the civil union may file a petition before Court for determination of right, title and interest in any assets jointly or individually owned by the parties to the civil union.

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.

In case the civil union is not registered/intimated, but the court determines that a civil union exists, the court should decide what the inheritance rights of a civil union partner will be in such a case, depending on factors like the duration of a relationship, etc.

Most jurisdictions around the world have followed an incremental approach in providing for queer inclusivity in laws, starting with recognition of queer relationships in alternate structures such as civil unions to finally extending all rights available in a marriage to all queer relationships either through marriage or other forms of relationships.



(d) Nominations



The LGBTQIA+ community has consistently advocated for legal recognition of atypical families including bonds of mutual care and dependence which are not contingent on romantic, sexual, or marital relations. This demand was strongly articulated in a petition filed by a group of queer-feminists, *Rituparna Borah vs. Union of India*.⁷⁰ The petition made a case for relational equality⁷¹ by arguing for legal recognition of chosen families—a concept prevalent in queer communities given their alienation from natal families.

In many instances, the law allows benefits due to a person to pass on to somebody else in circumstances such as their death or gives other people decision making capacity in relation to the person in question. Usually, this is the next of kin. For instance, many labour and employment benefits automatically go to your next of kin after your death, which is deemed to be people who are related to the deceased by blood, marriage, or adoption. This does not account for the chosen family setups that many LGBTQIA+ persons live in and how many such persons may be alienated from their natal families for a variety of reasons.

The petition thus prayed for:

- (a) a direction that a constitutional right to chosen families be recognised in place of next of kin, and
- (b) a direction that an unmarried person can nominate anyone of their choice with respect to healthcare decisions in case of incapacity and for assignment of any legal right, interest, title, claim or benefit, irrespective of whether this person is their next of kin or not.⁷²

Enabling a nomination regime is particularly critical if non-heterosexual marriages and civil unions are not recognised. The Court in *Supriyo* has specifically pointed to the bouquet of benefits which are available to married heterosexual couples and denied to partners and families in the LGBTQI+ community on account of their non-recognition by the law. These benefits

⁷⁰ *Rituparna Borah v Union of India*, petition available at <https://vartagensex.org/wp-content/uploads/2023/04/154-sc-rituparna-borah-ors-queer-mrg-pttn-2023.pdf>

⁷¹ Diksha Sanyal, 'Going Beyond Marriage: A case for relational equality', 10th May 2023, Supreme Court Observer, available at <https://www.scobserver.in/journal/going-beyond-marriage-a-case-for-relational-equality/#:~:text=The%20Rituparna%20Borah%20petition%20was,by%20marriage%2C%20birth%20or%20adoption.>

⁷² *Supra* note z18 at Para 133(vi).

include: healthcare benefits, employment benefits, welfare benefits, financial benefits, etc. It is recommended that interventions for these benefits be enabled sector wise, depending on the nature of the benefit.

The following measures are recommended across sectors:

A) Financial Services

Financial services span across banking services, credit services, insurance, pension, and taxation. Present regulations in relation to most of these classes of benefits allow persons to nominate anyone of their choice to be able to access such benefits jointly. The exception to this is taxation benefits wherein benefits extend only to spouses and other family members recognised by the law. It is critical to strengthen the nomination regime through executive measures across all financial services akin to the measures proposed in Chapter 2, specifically Part Two on 'Financial Benefits'.

B) Labour and Employment Benefits:

The Supreme Court in *Supriyo* explicitly identified employment benefits as a class of benefits which accrued to only married couples, thus excluding queer partners and families.⁷³ It is critical to provide for a nomination regime under labour and employment laws to allow individuals to nominate any person of their choice for the purpose of benefits which accrue to married couples. The principles informing such a nomination regime under labour laws must be as follows - *First*, a person should be able to nominate any person of their choice for labour benefits only if they are not in a subsisting marriage or civil union. This will ensure that there is no misuse of this provision to deny benefits to spouses or civil union partners through nomination of third parties. In the event that the party enters into a marriage or a civil union, the nomination will stand automatically rescinded. *Second*, the procedure for nominations must be prescribed through model rules which provide for a simple, accessible and non-onerous process along with a model form that must be uniformly adopted across all States. For an illustration of a draft provision of this nature, please refer to Chapter 3, specifically the section on 'Labour and Employment'.

C) Welfare Benefits:

Like labour benefits, joint welfare benefits⁷⁴ have been identified by the Supreme Court as a class of benefits that must be made available to queer partners and queer families. Specifically, the Court pointed to ration as an illustration of

⁷³ *Supriyo*, para 114&115, p. 977.

⁷⁴ *Supriyo*, para 228, p. 911, para 114, p. 977 .

such a benefit.⁷⁵ Following *Supriyo*, the Department of Food and Public Distribution ('DFPD') issued an advisory to all States and Union Territories to ensure that partners in a queer relationship are treated as a part of the same household for ration cards.⁷⁶ The Department also mandated that necessary measures be taken to ensure partners in queer relationships are not subject to discrimination in the issuance of ration cards.⁷⁷ This is a critical first step taken by the Government to make ration benefits accessible to queer families and must be extended across all other classes of welfare benefits through a nomination process. Akin to labour benefits, the following principles can be followed - *First*, a person should be able to nominate any person of their choice for welfare benefits only if they are not in a subsisting marriage or civil union. This will ensure that there is no misuse of this provision to deny benefits to spouses or civil union partners through nomination of third parties. If the party enters into a marriage or a civil union, the nomination will stand automatically rescinded. *Second*, the procedure for nominations must be prescribed through model rules which provide for a simple, accessible, and non-onerous process along with a model form that must be uniformly adopted across all States. Such a step can be enabled through executive measures by the relevant parent Ministry and Departments akin to the step taken by the DFPD.

⁷⁵ *Supriyo*, para 340 (s)(i), p. 943.

⁷⁶ Ministry of Social Justice and Empowerment Press Note on 'Host of measures taken by Government of India for the LGBTQI+ community', available at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=2050655#:~:text=Department%20of%20Food%20and%20Public,the%20purposes%20of%20ration%20card>

⁷⁷ Ministry of Social Justice and Empowerment Press Note on 'Host of measures taken by Government of India for the LGBTQI+ community', available at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=2050655#:~:text=Department%20of%20Food%20and%20Public,the%20purposes%20of%20ration%20card>

Part Two: Parent-Child Relations

I. Introduction

In India parent-child relations are governed by both civil laws such as the Guardianship and Wards Act, 1890, Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act') and Central Adoption Regulation Agency ('CARA') Adoption Regulations issued under it, the Assisted Reproductive Technology Act, 2021, and the Surrogacy 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. Under laws on adoption, surrogacy and ART, single parents are also permitted to access parenthood but the same is contingent 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. Along these lines, gender identity continues to be informed by the binary understanding of sex as including only male and female, thus leaving out non-binary transgender persons. Laws on parenthood 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 relegated to the role of caregivers. It is only after the father, that the mother becomes the guardian of the child. The outdated concept of illegitimacy of the child also continues to inform laws on this issue, wherein children born out of wedlock do not enjoy rights at par with children born within wedlock.

Laws on parent-child relations thus have be reformed to: (a) address sex discrimination, (b) ensure queer inclusion, (c) remove binary understanding of sex and gender identity, (d) address discrimination against single parents, (e) abolish the concept of 'illegitimacy of children' born out of wedlock, (f) codify the principle of 'best interest of the child', and (g) strengthen custody and maintenance regimes generally, and especially in cases where parents are not in a marital relationship and chose to separate.

In *Supriyo*, the Court has noted that there are a range of rights and benefits that flow from marriage that queer couples cannot avail. These include: maintenance, alimony, adoption, inheritance and surrogacy.⁷⁸ Specifically, the Court has recognised the discriminatory impact of existing adoption laws on queer couples as only married couples can jointly adopt under the same.⁷⁹ The Court has stated that ‘urgent state intervention’⁸⁰ is required to address the discriminatory impact of adoption laws on queer couples.⁸¹ Further, given the social reality that queer couples are adopting in law as individuals but are cohabiting and raising children as de facto families means that the State has ‘*urgent need to enable the full gamut of rights to such children, qua both parents*’.⁸² The Court has thus especially emphasised the need for the Committee to consider this particular area of family law: joint adoptions. The Committee may note that consideration of this question would bring into play a broader set of legal provisions that relate to joint parenthood, possibly including guardianship, maintenance of the child, succession etc. Further, the Court has also noted the Union Government’s representation that the Committee will outline the scope of entitlements of queer couples who are in unions.⁸³

II. Inputs at Consultation

Several persons at the consultation raised concerns about law on parent-child relations, and the prohibition on queer parents to adopt jointly. There was consensus on the issue that queer parents should be able to adopt jointly. It was also indicated that the discrimination that single parents are subject to, including restrictions on male prospective adoptive parents being prohibited from adopting children of the opposite gender, must be addressed. There was agreement that the rights of children should not be contingent on the marital status of parents.

⁷⁸ *Supriyo*, Paras 156, 157 and 158.

⁷⁹ *Supriyo*, Para 543.

⁸⁰ *Supriyo*, Para 543.

⁸¹ *Supriyo*, Para 333 and 543.

⁸² *Supriyo*, Para 547.

⁸³ *Supriyo*, Para 365(s).

III. Measures

(a) Secular Adoption Laws

The secular adoption law in India is Chapter VII of the JJ Act and CARA Adoption Regulations. In *Supriyo*, some of the petitioners challenged the CARA Circular dated 16th June 2022 which prohibited single live-in couples from adopting children.⁸⁴ While the minority struck down this regulation for being unconstitutional, the majority upheld its validity. The petitioner's argued that while heterosexual live-in couples have the option to adopt jointly by marrying, queer couples do not have that option since India's laws do not permit adoption by unmarried partners. Both the majority and minority noted that this was an area of law that required intervention by the State as de-facto families involving unmarried partners and children was a reality, and children in such relationships must have the full range of rights that children in married families do. In light of this the following amendments are recommended:⁸⁵

Section	Existing Provision	Proposed Amendment	Rationale
Section 57, JJ Act	<p>Eligibility of prospective adoptive parents.—</p> <p>(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him.</p> <p>(2) In case of a couple, the consent</p>	<p>Eligibility of prospective adoptive parents.—</p> <p>(1) The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing such child a good upbringing.</p>	<p>The following modifications have been made to this provision:</p> <p>1. Eligibility criteria for couples has been expanded to include married couples, partners in a civil union, and persons who seek to adopt jointly, irrespective of gender</p>

⁸⁴ Central Adoption Resource Authority, CARAICA013/1/2022 Administration, available here https://api.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Judgement_17-Oct-2023.pdf

⁸⁵ Vidhi Centre for Legal Policy, 'Model Code on Indian Family Laws, 2024', available here <https://vidhilegalpolicy.in/research/the-model-code-on-indian-family-law/#:~:text=The%20Model%20Code%20on%20Indian%20Family%20Law%2C%202024%20is%20a,of%20civil%20society%20and%20activists.>

Section	Existing Provision	Proposed Amendment	Rationale
	<p>of both the spouses for the adoption shall be required.</p> <p>(3) A single or divorced person can also adopt, subject to fulfilment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.</p> <p>(4) A single male is not eligible to adopt a girl child</p> <p>(5) Any other criteria that may be specified in the adoption regulations framed by the Authority.</p>	<p>(2) In the case of a married couple, partners in a civil union, or persons seeking to adopt jointly, consent of both parties for adoption is required.</p> <p>(3) A single or divorced person is eligible to adopt.</p> <p>(4) Delete.</p> <p>(5) Any other criteria that may be specified in the adoption regulations framed by the Authority</p>	<p>identity or sexual orientation.</p> <p>2. The prohibition on single male persons from adopting female children has been deleted as the same is a liberty restriction that does not serve any legitimate state interest. 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.⁸⁶ Further the provision of 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).</p> <p>3. As far as the welfare of the child</p>

⁸⁶ See, Protection of Children from Sexual Offences Act, 2021.

Section	Existing Provision	Proposed Amendment	Rationale
			is concerned which can be ensured through the provision of a stable, secure and safe home, it can be regulated through criteria framed by the CARA. As noted by the Supreme Court, marriage by itself does not guarantee a safe, secure or stable home for the adopted child. Additionally, it should be noted that such criteria must not discriminate against individuals or joint adoptees directly or indirectly.

(b) Other Reforms

- **Abolish the principle of illegitimacy of child**

Existing laws on parent-child relations discriminate between children whose parents are married vis-a-vis children whose parents are not married. Children born out of wedlock are still deemed 'illegitimate children' and often don't have inheritance rights vis-a-vis their father. A progressive family law for the 21st century must abolish the outdated principle of 'illegitimacy of child' such that a child's rights in relation to their parents is not contingent on their marital status. This is consistent with the principle of the 'best interests of the child'.

- **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 custodian of the child. It is only after the father, that the mother becomes the guardian. Such a principal discriminates on the basis of sex as it deems the father to be fit to take legal decisions in relation to the child and their property, and the mother the mere caretaker of such child thus reinforcing outdated gendered roles. 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 often makes space for prejudices to inform decision making which may result in discrimination based on stereotypes and an authority’s preconceived notions about the ideal family. It is critical to codify this principle in law to place limits on exercise such discretion. This will limit the possibility of discrimination in the exercise of discretion in the application of the principle.⁸⁷

- **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-

⁸⁷ For an illustration of codification of the ‘best interests of the child’, please see ‘The Model Code on Indian Family Law, 2024’ Vidhi Centre for Legal Policy, available here <https://vidhilegalpolicy.in/research/the-model-code-on-indian-family-law/#:~:text=The%20Model%20Code%20on%20Indian%20Family%20Law%2C%202024%20is%20a,of%20civil%20society%20and%20activists>, Pg. 90.

marital family formations that exist. Such a regime for custody must provide for both sole custody as well as joint custody.⁸⁸ An illustration of such a provision is as follows:

Illustration provision:

Custody of minor child.-

- (1) In the event of separation of parents, including through dissolution of a marriage or a civil union, the Court will, during the course of dissolution proceedings, or upon an application filed by a parent, make an order deciding the custody of the child.
- (2) In deciding custody, whether joint custody or sole custody, the Court will -
 - (a) consider the best interests of the child; and
 - (b) take into account the intelligent preference of the child.
- (3) In making an order of joint legal custody, the Court will specify the circumstances under which consent of both parents has to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent.
- (4) In making an order of joint physical custody, the Court will specify the manner in which such an arrangement will be operationalised and ensure that such an arrangement does not render the child or the parent at the risk of violence or harm.
- (5) The Court will, in addition to custody, also issue an order for maintenance of the child.
- (6) Orders under this section are of an interim nature and may be modified upon application by either parent.

- **Inclusion in laws on Surrogacy and Assisted Reproductive Technology**

⁸⁸ For more information, please see 'The Model Code on Indian Family Law, 2024' Vidhi Centre for Legal Policy, available here <https://vidhilegalpolicy.in/research/the-model-code-on-indian-family-law/#:~:text=The%20Model%20Code%20on%20Indian%20Family%20Law%2C%202024%20is%20a,of%20civil%20society%20and%20activists>, page 57 onwards.



The Surrogacy 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. The constitutionality of these laws has been challenged before the Supreme Court. One of the grounds of challenge is the exclusion of queer persons and queer couples.⁸⁹ It is critical to make appropriate amendments to these Acts to make them queer inclusive.⁹⁰

⁸⁹ Padmakshi Sharma, "Infringes Reproductive Rights" : IVF Specialist Moves Supreme Court Challenging Provisions Of Surrogacy Regulation Act & ART Act', Live Law, available at <https://www.livelaw.in/top-stories/ivf-specialist-moves-supreme-court-challenging-provisions-of-surrogacy-regulation-act-art-act-207695>

⁹⁰ For more information, please see 'The Model Code on Indian Family Law, 2024' Vidhi Centre for Legal Policy, available here <https://vidhilegalpolicy.in/research/the-model-code-on-indian-family-law/#:~:text=The%20Mode%20Code%20on%20Indian%20Family%20Law%2C%202024%20is%20a,of%20civil%20society%20and%20activists>, page 190 onwards.

Chapter 2

Discrimination: Access to Goods and Services

I. Introduction

In *Supriyo*, it was noted by the Supreme Court that queer persons were subject to discrimination based on their gender identity and/or sexual orientation,⁹¹ and on account of non-recognition of their relationships.⁹² It was observed that there is a duty on the State to address this discrimination through appropriate measures.⁹³ Justice Kaul, speaking for the minority, articulated the need for an anti-discrimination legislation which explicitly prohibited discrimination based on sexual orientation.⁹⁴ Specifically, he stressed on the necessity of '*a law that places a horizontal duty of anti-discrimination is provided by the spirit of Article 15, which prohibits discrimination by both the State and private actors*'.⁹⁵ It should be noted that after the Supreme Court's judgements in cases such as *NALSA vs. Union of India*⁹⁶ and *Supriyo*, sex under Article 15 of the Constitution of India now includes the analogous grounds of gender identity and sexual orientation, respectively. Along the lines of the Transgender Persons (Protection of Rights) Act, 2019, there is a duty on the State to introduce a legislation that prohibits discrimination based on sexual orientation.

⁹¹ *Supriyo*, Para 339 (As per Chandrachud J., Paras 16, 18 (As per Kaul J.), Paras 113, 114, 116, 117 (As per Bhat J.).

⁹² *Supriyo*, Para 339 (As per Chandrachud J., Paras 16, 18 (As per Kaul J.), Paras 113, 114, 116, 117 (As per Bhat J.).

⁹³ *Supriyo*, Paras 146 and 147 (vi) (As per Bhat J.).

⁹⁴ *Supriyo*, Para 27 (per Kaul J.),

⁹⁵ *Supriyo*, Para 27 (per Kaul J.).

⁹⁶ 2014 INSC 275.

As noted by the Supreme Court itself, India's approach to anti-discrimination takes a patch-work form, where statutes adopt different approaches towards addressing discrimination. These legislations include: the Transgender Persons (Protection of Rights Act), 2019, the Rights of Persons with Disabilities Act, 2016, the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, the Mental Healthcare Act, 2017, and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Each of these acts suffer from shortcomings which include issues such as poor enforcement, absence of a robust and accessible grievance redressal mechanism, and lack of remedies in case of private discrimination. It is critical for India to deliberate and introduce a comprehensive and progressive anti-discrimination legislation,⁹⁷ akin to measures taken by modern constitutional democracies around the world.

In this chapter, two broad approaches to addressing discrimination are outlined. **First**, 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. **Second**, sector specific recommendations covering financial services, labour and employment, education, and housing.

II. Inputs at Consultation

One of the sessions of the consultations focused on the pervasive discrimination faced by queer individuals in accessing goods and services and proposed comprehensive reforms to ensure equality. Participants discussed the need for a robust anti-discrimination law and improved enforcement of the Transgender Persons (Protection of Rights) Act, 2019. Key challenges included the bureaucratic hurdles and delays in acquiring transgender identity cards, the cumbersome process of changing gender and name on official documents, and the exclusionary practices in financial services, education, labour benefits, and housing. Recommendations included streamlining administrative processes, mandating anti-bullying and gender-inclusive policies in educational institutions, and expanding corporate diversity, equity, and inclusion ('DEI') mandates.

⁹⁷ Lalit Panda and Husain Anis Khan, 'The State Shall Not Discriminate', The Vidhi Centre for Legal Policy, available at <https://vidhilegalpolicy.in/research/the-state-shall-not-discriminate/>.

Participants shared numerous lived experiences relating to discrimination in accessing goods and services during the consultations. Many transgender individuals described facing systemic barriers in financial services, such as difficulties in obtaining loans or opening bank accounts due to mismatched documentation that did not align with their gender identity. Even in the presence of anti-discrimination laws, participants highlighted the lack of sensitivity training among staff at financial institutions and other service providers. These barriers often compounded their financial exclusion and insecurity. Additionally, several transgender individuals recounted the challenges posed by bureaucratic red tape and the stigmatizing processes required to update gender markers on government-issued identity documents, further limiting their access to essential services like housing and education.

Discrimination also extended to workplace settings and public infrastructure. Participants narrated instances of being denied access to gender-appropriate restrooms, which forced them into unsafe or undignified alternatives. In educational institutions, queer students reported harassment and a lack of inclusive policies, such as gender-neutral uniforms or grievance mechanisms to address discrimination. Similarly, the enforcement of the Transgender Persons (Protection of Rights) Act, 2019, was criticized for its failure to address these systemic issues effectively. Participants emphasized the need for comprehensive anti-discrimination laws with robust accountability mechanisms and highlighted the emotional and psychological toll that everyday discrimination exacts on the LGBTQIA+ community.

Specific suggestions were made to address systemic inequities, such as expanding labour benefits to chosen families and civil unions, revising the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 to include queer persons, and enhancing grievance redressal mechanisms for state discrimination. Participants emphasized the need for mandatory sensitization and training for state officials, corporate entities, and educational institutions to foster inclusivity and accountability. Overall, the session stressed the necessity of creating inclusive systems and ensuring equal access to goods and services for all gender and sexual minorities.

Part One: General Recommendations

I. A comprehensive anti-discrimination legislation

One of the key measures that the State must undertake is the introduction of a comprehensive anti-discrimination law. For reference of a template legislation, please see: (a) **The Equality Bill, 2019**,⁹⁸ and (b) **The Kerala Anti-Discrimination and Equality Bill, 2021**.⁹⁹ For comparative law, please see: (a) **The United Kingdom's Equality Act, 2010**,¹⁰⁰ and (b) **The South Africa Promotion of Equality and Prevention of Unfair Discrimination Act, 2000**.¹⁰¹

The key features of a comprehensive anti-discrimination legislation must be as follows:

- **Horizontal Application:** This legislation must not only prohibit and address discrimination on the basis of protected characteristics by the state and state actors, but also acts of discrimination carried out by private parties against each other.
- **Protected Characteristics:** This legislation must prohibit discrimination based on the following grounds:
 - (a) those explicitly stated in Article 15 such as religion, race, caste, sex, place of birth,
 - (b) analogous grounds such as sexual orientation¹⁰² and gender identity¹⁰³,

⁹⁸ Centre for Law and Policy Research, *The Equality Bill, 2021*, available at <https://clpr.org.in/wp-content/uploads/2020/01/Equality-Bill-2021-8th-January-2021.pdf>.

⁹⁹ *The Kerala Anti-Discrimination and Equality Bill, 2021*, available at https://docs.google.com/document/d/1a08SHXpZxCkiBSFf-fLpYDmVzoXgWxom42F4hA61n_A/edit?tab=t.0.

¹⁰⁰ *The Equality Act, 2010*, available at <https://www.legislation.gov.uk/ukpga/2010/15>

¹⁰¹ *The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*, available at https://www.gov.za/sites/default/files/gcis_document/201409/a4-001.pdf

¹⁰² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, 291 (per Malhotra, J., concurring).

¹⁰³ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, 488 (per Radhakrishnan, J., concurring).

- (c) grounds already protected by existing legislation such as disability,¹⁰⁴ mental health status,¹⁰⁵ and HIV related grounds¹⁰⁶
- (d) grounds recognised in judgements of constitutional Courts, such as marital status¹⁰⁷ and pregnancy.¹⁰⁸

Further, such a Bill must allow for other grounds to be added in the future, based on general anti-discrimination law principles, namely: the ground must be an immutable characteristic,¹⁰⁹ relate to a fundamental choice,¹¹⁰ or related to the dignity of an individual/group.¹¹¹

- **Comprehensive Definition of Discrimination:** This legislation must comprise a comprehensive definition of discrimination and must prohibit direct discrimination,¹¹² indirect discrimination,¹¹³ intersectional discrimination,¹¹⁴ discrimination based on stereotyping,¹¹⁵ and discrimination based on association.¹¹⁶

¹⁰⁴ The Rights of Persons with Disabilities Act, 2016, The Mental Healthcare Act, 2017.

¹⁰⁵ The Mental Health Care Act, 2017.

¹⁰⁶ The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

¹⁰⁷ *X2 v State (NCT of Delhi)* (2023) 9 SCC 433 [127]; *Deepika Singh v CAT and Ors* (2023) 13 SCC 681 [27].

¹⁰⁸ *Neetu Bala v Union of India and Ors* 2016 SCC OnLine P&H 602 [67]; *Air India v Nergesh Meerza* (1981) 4 SCC 335 [90].

¹⁰⁹ *Naz Foundation v. State of Delhi* 2009 (6) SCC 712, Paras 102 and 103.

¹¹⁰ *Naz Foundation v. State of Delhi* 2009 (6) SCC 712, Paras 108.

¹¹¹ Based on Article 10 of the South African Constitution.

¹¹² Art. 15, Constitution of India, 1950.

¹¹³ *Lt. Col Nitisha vs. Union of India*, SCC Online SC 261 Paras 66-70 and *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, 28, (per Chandrachud, J., concurring).

¹¹⁴ *Id.*, *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348, ¶28 (per Kaul, J., concurring); *Patan Jamal Vali vs. State of Andhra Pradesh* LL 2021 SC 231, Paras 20 and 21 (per Chandrachud J.)

¹¹⁵ *Navtej Johar vs. Union of India* (2018) 10 SCC 1, Para 37 (per Chandrachud, J concurring).

¹¹⁶ Centre for Law and Policy Research, The Equality Bill, 2021, available at <https://clpr.org.in/wp-content/uploads/2020/01/Equality-Bill-2021-8th-January-2021.pdf>

- **Enforcement:** This legislation must provide for an independent, robust, accessible, and effective enforcement mechanism that can address complaints of discrimination.¹¹⁷ The powers and functions of such an authority enforcing the legislation can include, but not be limited to:
 - (a) Receiving complaints and *suo motu* cognizance
 - (b) Calling for information
 - (c) Conducting an inquiry
 - (d) Issuing appropriate directions
 - (e) Taking action pursuant to enquiry
 - (f) Imposing civil penalties

- **Policy, Sensitisation and Monitoring:** This legislation must provide for a body that carries out functions in relation to policy formulation, advisory, awareness creation, sensitisation, and monitoring, amongst others.

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

The need for reforming and better enforcement of the Transgender Persons (Protection of Rights) Act, 2019 ('2019 Act') has been written upon extensively¹¹⁸ and was voiced during the consultations by several transgender persons and

¹¹⁷ For illustration of such an authority please see Chapter X, XI and XII of the Personal Data Protection Bill, 2018, available at https://www.meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2018.pdf

¹¹⁸ Shagun Bhargava, 'The Inadequacy of the Transgender Persons Act to Tackle Workplace Discrimination', Law School Policy Review, available at <https://lawschoolpolicyreview.com/2020/10/09/the-inadequacy-of-the-transgender-persons-act-to-tackle-workplace-discrimination/>; Uthara UR, 'Why securing a transgender ID in Delhi feels like an obstacle race', The Scroll, available at https://scroll.in/article/1074681/why-securing-a-transgender-id-in-delhi-feels-like-an-obstacle-race?utm_campaign=linkinbio&utm_medium=referral&utm_source=later-linkinbio; Vaivab Das, 'The Reality of India's Transgender Welfare Boards: What an RTI Investigation Reveals', The Wire, available at <https://thewire.in/government/the-reality-of-indias-transgender-welfare-boards-what-an-rti-investigation-reveals>

transgender rights activists as well. At present a petition is pending in the Supreme Court where the constitutionality of the 2019 Act has been challenged.¹¹⁹

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
Clarity regarding identity documents needed to access benefits and processes under the 2019 Act and otherwise	<p>Section 5 provides that a person “may” apply to the district magistrate for the issuance of a Transgender ID card, indicating that obtaining a transgender ID card is not mandatory under the law. The 2019 Act does not specify what the purpose of obtaining the ID card is, especially since it is not mandatory.</p> <p>At the same time, benefits such as those under the SMILE scheme require people to necessarily possess a transgender ID certificate. This includes being able to access <i>garima grehs</i>. There have also been reports about transgender persons not being able to access legal protections because of not possessing a transgender ID, despite the Act</p>	<p>Nature: Executive</p> <p>Action: Reassess the provision for obtaining an ID card under the 2019 Act and the purpose that an ID card is supposed to serve, especially since it is possible for people to change their gender on other identity documents such as their Aadhaar card and voter ID card. The feasibility of existing identity proof documents serving as a proof of gender should thus be examined.</p>	Ministry of Social Justice and Empowerment

¹¹⁹ Grace Banu Ganeshan & Ors. vs. Union of India, available at <https://clpr.org.in/litigation/grace-banu-ganeshan-ors-v-union-of-india-anr/> ; The Leaflet, SC issues notice to Centre on a plea against the Transgender (Protection of Rights) Act, 2019, available at <https://theleaflet.in/supreme-court/sc-issues-notice-to-centre-on-a-plea-against-transgender-protection-of-rights-act-2019>

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
	<p>not making it mandatory to possess an ID to file complaints under section 18 of the 2019 Act.¹²⁰</p> <p>This acts as a significant barrier in transgender persons being able to exercise their rights due to difficulty in obtaining transgender ID cards, which often takes years.¹²¹</p>		
Access to Identity Documents	<p>Section 5 of the 2019 Act provides that a transgender person may make an application to the District Magistrate for issue of a certificate of identity as a transgender person, also known as the TG Card. This process must be followed even in cases where a transgender person wants to identify within the binary genders of man or woman. This is in consonance with the NALSA judgement, where the Court</p>	<p>Nature: Legislative</p> <p>Action: Amendment to section 5 as follows:</p> <p>5. Application for certificate of identity. – A transgender person may make an application to the District Magistrate for issuing a certificate of identity as</p>	Ministry of Social Justice and Empowerment

¹²⁰ Vandana Bansal, 'Why Only 236 Trans Person Victims Of Crimes Were Recorded In India In 2020', Indiaspend, available at <<https://www.indiaspend.com/gendercheck/why-only-236-trans-person-victims-of-crimes-were-recorded-in-india-in-2020-823034>>.

¹²¹ Uthara UR, 'Why securing a transgender ID in Delhi feels like an obstacle race', The Scroll, available at https://scroll.in/article/1074681/why-securing-a-transgender-id-in-delhi-feels-like-an-obstacle-race?utm_campaign=linkinbio&utm_medium=referral&utm_source=later-linkinbio

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
	recognised a transgender person's right to identify as per their chosen gender. ¹²²	<p>a transgender person, man or woman, in such form and manner, and accompanied with such documents, as may be prescribed:</p> <p>Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.</p>	
Removal of prerequisite of medical intervention for applying for gender change within the binary of male and female	Section 7 of the 2019 Act requires a transgender person to undergo surgery (while Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 requires medical intervention towards gender affirming procedures) to render them eligible to identify within the binary of male and female. This requirement is in violation of NALSA which recognised a person's right to choose their gender identity independent	<p>Nature: Legislative</p> <p>Action: Deletion of section 7.</p>	Ministry of Social Justice and Empowerment

¹²² *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, 489

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
	of medical intervention. ¹²³		
Reservations in Public Employment and Education	<p>The NALSA judgement directed that transgender persons must be provided reservations in matters of public employment and education. However, the 2019 Act is silent on this issue.</p> <p>Horizontal reservations in education and employment must be provided for through the 2019 Act.</p> <p>Some states, like Karnataka¹²⁴ and Tamil Nadu,¹²⁵ have mandated the same.</p>	<p>Nature: Legislative</p> <p>Action: Reservations can be provided for within the Transgender Persons Act, 2019, modelled on Sections 33 and 34 of the Rights of Persons with Disabilities Act, 2016.</p>	Ministry of Social Justice and Empowerment; Department of Social Justice of State Governments
Adherence to	Despite clear timelines being prescribed in	Nature: Executive	Ministry of Social

¹²³ *National Legal Services Authority v. Union of India*, (2014) 5 SCC Para 60.

¹²⁴ Centre for Law and Policy Research, Policy Brief: Reservation for Transgender Persons in India, available at <https://clpr.org.in/wp-content/uploads/2018/12/Reservations-for-Transgender-Persons-Draft-Policy-Brief.pdf>; Mihir Rajamane, Horizontal Reservations for Transgender Persons: Taking Intersectionality Forward, available at <https://clpr.org.in/blog/horizontal-reservations-for-transgender-persons-taking-intersectionality-forward/>; See 'Govt. notifies 1% reservation for transgender persons in jobs', (*The Hindu*, 7 July 2021), available at <https://www.thehindu.com/news/national/karnataka/govt-notifies-1-reservation-for-transgender-persons-in-jobs/article35181785.ece>.

¹²⁵ *Rashika Raj v. State of Tamil Nadu*, Madras High Court, W.P.No.6967 of 2022, Para 12, available at https://www.livelaw.in/pdf_upload/rakshika-raj-v-state-of-tn-542802.pdf.

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
timelines prescribed in Transgender Persons (Protection of Rights) Rules, 2020 for issue of identity card	the Transgender Persons (Protection of Rights) Rules, 2020, it has been revealed that getting access to a Transgender ID Card is burdensome ¹²⁶ and takes up to years in some cases, leading to barriers in accessing benefits linked to the TG Card. This concern was articulated at all three consultations hosted by Vidhi and KSF by multiple transgender persons.	Action: Issuance of a circular directing all officers carrying out functions under the Transgender Persons (Protection of Rights) Act, 2019 to strictly adhere to timelines prescribed for different processes including issuance of the Transgender Card.	Justice and Empowerment. Department of Social Justice of Relevant State Governments
Physical In-Person Portals for Application of the Transgender Card	At present, a transgender person can only apply online via the Transgender Certificate and Identity Card Portal ¹²⁷ for a card. The process is inaccessible to several transgender persons who do not have access to the internet, the necessary education, or support from the community or civil society. In light of this, it is critical to designate physical in-person processes for	Nature: Executive Action: Designate physical in-person portals such as post offices or physical sites earmarked for Aadhaar application as places where transgender persons can apply for the transgender card in	Ministry of Social Justice and Empowerment and Unique Identification Authority of India

¹²⁶ Uthara UR, 'Why securing a transgender ID in Delhi feels like an obstacle race', The Scroll, available at https://scroll.in/article/1074681/why-securing-a-transgender-id-in-delhi-feels-like-an-obstacle-race?utm_campaign=linkinbio&utm_medium=referral&utm_source=later-linkinbio

¹²⁷ Ministry of Social Justice and Empowerment, National Portal for Transgender Persons, available at https://transgender.dosje.gov.in/Applicant/Registration/ApplyNow_1.

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
	application for this card, wherein a trained person can assist transgender persons to apply.	person. Ensure sensitised officials are available at such sites to aid transgender persons.	
Accessible Grievance Redressal for Private Discrimination	<p>Currently, the Act provides for the designation of a complaint officer in each establishment to address violations of the provisions of the Act. Further, one of the functions of the National Council is to 'redress grievances.' However, both these mechanisms are ineffective because no powers are devolved upon the complaint officers and the National Council to adjudicate upon violations and non-compliance with the Act.</p> <p>Specifically with reference to private discrimination, it is alarming that there is no proper mechanism under the Act. This has been noted by Justice Chandrachud in <i>Supriyo</i> as well.¹²⁸</p>	<p>Nature: Legislative</p> <p>Action: Amendment to provide for the designation of special courts or tribunals which are empowered to hear matters arising out of violations or non-compliance with the Act.</p>	Ministry of Social Justice and Empowerment

¹²⁸ *Supriyo v. Union of India*, 2023 SCC OnLine SC 1348, 196 (per Chandrachud, J., concurring).

Part Two: Financial Services

I. Introduction

Financial services broadly include - banking facilities, credit facilities, and insurance. For the purpose of this chapter, we are also including benefits in relation to pension and taxation. The Supreme Court in *Supriyo* recognised that access to financial services is hindered by virtue of non-recognition of queer relationships. It went on to mention taxation and pension as illustrations,¹²⁹ and directed that queer person be permitted to open bank accounts jointly.¹³⁰

In pursuance of the direction in *Supriyo*, the Department of Financial Services ('DFS') issued a notification where it clarified that persons in queer relationships could jointly open bank accounts and could name their partner as their nominee.¹³¹ However, there was no clarity on whether self-declaration is sufficient for the purpose of being recognised as partners in a queer relationship. Additionally, the notification merely states that there is no prohibition on persons in queer relationships opening bank accounts, allowing banks discretion to exclude queer persons in their internal policies and processes.

A piece by the *Deccan Herald* revealed that of the seven banks they spoke with, four required proof of a marital relationship before permitting persons to open a joint bank account.¹³² Thus, in the absence of a protocol issued by the regulator, banks act at their own discretion when it comes to internal policies regarding joint bank accounts.

Beyond recognising queer persons and persons in queer relationships as eligible to access financial services free of discrimination, it is also critical for the State to take affirmative measures for their inclusion within formal systems of banking and credit. This is particularly true for transgender communities, who suffer systemic marginalisation and are excluded from accessing goods and services. In fact, a study by the National Human Rights Commission pointed out that around 45 percent of transgender persons surveyed did not have bank accounts, 31 percent did not have any money in their bank accounts,

¹²⁹ *Supriyo* Para 150 (As per Chandrachud J.).

¹³⁰ *Supriyo*, Para 340(i) (As per Chandrachud J.).

¹³¹ Ministry of Finance, Department of Financial Services, 'Advisory dated August 28, 2024', available at <https://transgender.dosje.gov.in/docs/AdvisorybyDepartmentofFinancialServices.pdf>

¹³² Barkha Kumari, 'Grey area: Queer couples' joint bank accounts encounter hurdles' The Deccan Herald, available at <https://www.deccanherald.com/india/karnataka/bengaluru/grey-area-queer-couples-joint-bank-accounts-encounter-hurdles-3179074>

and 51 percent had monthly savings of less than Rs. 2000.¹³³ Given this reality, it is critical for the State to take affirmative measures to correct for the systemic discrimination that transgender persons face. Thus, this section also touches upon affirmative measures that can be undertaken for the financial inclusion of transgender persons.¹³⁴

II. Types of Financial Services

There is need for a range of legislative and executive measures to ensure financial inclusion of queer persons and persons in queer relationships. This section outlines the benefit/financial service, the issue, the proposed action, and identifies the implementing authority across six broad heads: (a) general measure, (b) banking services, (c) credit facilities, (d) insurance, (e) pension, (f) taxation, and (g) affirmative steps.

(a) General Measure

Financial benefits can only be extended to persons in queer relationships if such relationship is recognised by the State. As outlined in the chapter on *Recognition of Queer Relationships and Families*, the necessary steps to achieve this are either through recognition of queer marriage, or a comprehensive and inclusive civil union legislation. In the absence of marriage or civil unions, it is critical for the State to issue a standard, binding protocol that would form the basis of joint access to financial services. Such a process must be simple and prioritise autonomy of choice. 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. Such a measure would also be a critical step towards achieving relational equality, a demand that has been made consistently by several quarters in the queer community.¹³⁵

¹³³ National Human Rights Commission, 'Study on Human Rights of Transgenders as Third Gender', available at https://nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf

¹³⁴ The Reserve Bank of India defines financial inclusion as "making financial services accessible to people from low income and weaker socio-economic backgrounds and ensuring credit access to these groups."

¹³⁵ See, *Rituparna Borah vs. Union of India*, available at <https://vartagensex.org/wp-content/uploads/2023/04/154-sc-rituparna-borah-ors-queer-mrg-pttn-2023.pdf>; Diksha Sanyal, 'Going Beyond Marriage: A Case of Relational Equality' Supreme Court Observer, <https://www.scoobserver.in/journal/going-beyond-marriage-a-case-for-relational-equality/>

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
Recognition of queer relationship for purpose of access to financial services	<p>The DFS notification clarifies that queer partners can open joint bank accounts and nominate each other as nominees. Prior to this notification, there were no legal relationship-linked restrictions on persons from opening joint bank accounts.</p> <p>However, the challenge lies at the stage of implementation. First, in the absence of a standard protocol, banks follow their individual policies on the issue. Second, despite the absence of a legal mandate for joint accounts being available only to individuals related by law, bank officials can discriminate against queer persons and unmarried persons when they attempt to access financial services jointly. Third, the DFS clarification is restricted to bank accounts and does not include other financial services.</p>	<p>Nature: Executive</p> <p>Action: A notification which provides that self-declaration and nomination is sufficient basis for accessing joint financial services across sectors such as banking, insurance, and credit. Such notification must not be merely clarificatory but must also explicitly prohibit discrimination by banks against queer persons and persons in queer relationships. Relevant safeguards may be introduced to ensure that the consent to open a joint bank account is free from coercion and fraud.</p> <p>A set of guidelines may also be issued guiding banks on establishment of policies for opening of joint bank accounts.</p>	Ministry of Finance

(b) Banking Services

Banking services include a range of benefits including opening bank accounts, autonomy to select a nominee and joint account holder of one's choice, inclusive onboarding processes and forms, and affirmative measures aimed towards financial inclusion of groups alienated from formal banking services.

Benefit	Issue	Proposed Action	Implementing Authority
Clear procedure for opening of joint bank accounts and nomination	Both the RBI ¹³⁶ and the DFS ¹³⁷ have clarified that there are no restrictions on queer partners from opening joint bank accounts or naming each other as nominees. Despite this, banks follow their own internal policies wherein marriage or natal family relation becomes a criterion to qualify for joint bank accounts.	Nature: Executive Action: A circular which mandates Banks to open joint bank accounts for any two persons, including persons in queer relationships, if they declare an intention to open such an account and nominate each other for such purpose. Further, the RBI must prescribe a uniform protocol to be followed by banks in this regard and mandate sensitisation of all bank officials when it comes to rights of queer persons in accessing financial services, free of discrimination.	Reserve Bank of India
Basic Savings Bank Deposit Accounts for Transgender	A large proportion of the transgender community does not have access to formal financial services. At present, while there	Nature: Executive Action: A policy which nudges banks	Ministry of Finance and Reserve

¹³⁶ Ministry of Finance, Department of Financial Services, 'Advisory dated August 28, 2024', available at <https://transgender.dosje.gov.in/docs/AdvisorybyDepartmentofFinancialServices.pdf>

¹³⁷ Ministry of Finance, Department of Financial Services, 'Advisory dated August 28, 2024', available at <https://transgender.dosje.gov.in/docs/AdvisorybyDepartmentofFinancialServices.pdf>

Benefit	Issue	Proposed Action	Implementing Authority
Persons	are State welfare schemes ¹³⁸ and the Pradhan Mantri Jan Dhan Yojana ('PMJDY') also known as Basic Saving Bank Deposit Accounts ('BSBDA'). Thus, it is critical to ensure that financial inclusion measures are also targeted towards the community. One such measure could be through mandating BSBDA accounts for transgender persons across banks. BSBDA are bank accounts with no minimum balance requirements. BSBDA services are provided free of cost and there are no charges imposed on such accounts in case of non-operation/inactivity. ¹³⁹ In November 2005, the RBI advised Urban Cooperative Banks ('UCBs') to provide BSBDA services ¹⁴⁰ and provide wide publicity to the same. ¹⁴¹ BSBDA can be opened based on simplified KYC ('Know Your Customer') Norms, and in such a case they are treated	to identify transgender persons as a target group for BSBDA accounts, requiring them to widely advertise the same, including to transgender persons who approach banks for financial services and transgender communities. State sponsored publicity of this measure, through various forms of media, is also critical. While the PMJDY already provides for certain concessions such as zero balance, and overdraft facilities upto Rs. 10,000, it is critical to <i>first</i> , proactively reach out to the transgender community to assist them in opening bank accounts and <i>second</i> , for the State to frame financial inclusion measures which go beyond the benefits associated with the PMJDY for the transgender	Bank of India

¹³⁸ See, The Ministry of Social Justice and Empowerment's Support for Marginalized Individuals for Livelihood and Enterprise ('SMILE Scheme'); the Government of Kerala *Karuthal* Scheme for transgender persons; the Government of Telangana's Scheme for transgender persons.

¹³⁹ Reserve Bank of India, 'Financial Inclusion- Access to Banking Services - Basic Savings Bank Deposit Account', available at <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7511&Mode=0>

¹⁴⁰ Reserve Bank of India, 'Financial Inclusion - UCs', available at <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=2636&Mode=0>

¹⁴¹ Reserve Bank of India, 'Financial Inclusion - UCs', available at <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=2636&Mode=0>

Benefit	Issue	Proposed Action	Implementing Authority
	as a 'Small Account' and subject to certain conditions. BSBDA's have played a critical role in financial inclusion of economically disadvantaged groups, including women. ¹⁴²	community. The first target can be achieved by training and sensitising banking correspondents ¹⁴³ to actively reach out to trans-communities and assist them in opening accounts and accessing financial services and benefits, and the second may be achieved through affirmative provision of benefits such as direct transfers, lower interest on loans, insurance coverage, to trans-held bank accounts.	
Aadhaar as the relevant identify document for proof of gender for transgender persons	The process for availing a TG Card under the Transgender Persons (Protection of Rights) Act, 2019 has been onerous and challenging for transgender persons. ¹⁴⁴ Inordinate delays have been consistently cited as one grievance in relation to the	Nature: Executive Action: Studies have shown that it has been easiest for transgender persons to change their gender	Reserve Bank of India

¹⁴² Somiha Chatterjee, 'Women's Financial Inclusion in Digital India: Need for Gender Thrust', Social and Political Research Foundation, available at https://sprf.in/wp-content/uploads/2021/09/SPRF-2021_IB_Gender-and-Financial-Inclusion.pdf

¹⁴³ Evidence demonstrates that female Business Correspondents have played an important role in ensuring the financial inclusion of women. Similar evidence based proactive measures to bring transgender persons within the net of formal financial services would be a welcome move. See, <https://vidhilegalpolicy.in/research/the-law-needs-to-account-for-her/#:~:text=Vidhi's%20working%20paper%20titled%20The,offered%20to%20women%20customers%20and>

¹⁴⁴ This was also highlighted by several participants, particularly transgender persons, during the open consultations on 'Queering the Pitch' organised by Keshav Suri Foundation in collaboration with Vidhi Centre for Legal Policy.

Benefit	Issue	Proposed Action	Implementing Authority
	process. In the absence of a TG Card, transgender persons are often unable to access financial services, specifically those earmarked for transgender persons.	identity on Aadhaar. ¹⁴⁵ Thus, recognising Aadhaar as a basis of availing financial services earmarked for transgender persons will play a critical role in ensuring financial inclusion. A circular mandating banks to enable transgender persons to rely on Aadhaar as well for the purpose of verifying their gender identity for access to financial services and benefits would be an appropriate measure.	
Prohibition of Discrimination against Queer Persons and Persons in Queer Relationships	Despite measures to enable queer persons access to banking services, discrimination against queer persons and persons in queer relationships continues to be rampant. This discrimination is often meted out by consumer/citizen facing officials, often without consequence. In light of judgments such as <i>Supriyo</i> , <i>Navtej</i> and <i>NALSA</i> it is critical to tailor measures to prohibit and discourage such discrimination.	<p>Nature: Executive</p> <p>Action: A circular which prohibits banks from discriminating against queer persons based on their gender identity and/or sexual orientation, and persons in queer relationships, and mandates banks to comply with Section 11 of the Transgender Persons (Protection of Rights) Act, 2019 which requires all establishments to set up a complaints</p>	Reserve Bank of India

¹⁴⁵ Vidhi Centre for Legal Policy, 'The Law Isn't Straight: A Queer Persons' Guide to accessing rights', available at https://vidhilegalpolicy.in/wp-content/uploads/2020/06/180514_TheLawisntstraight-web.pdf

Benefit	Issue	Proposed Action	Implementing Authority
		officer to deal with complaints regarding the violation of the Act.	
Transgender Persons to be identified as a target group in efforts towards financial inclusion	The RBI's approach towards gender inclusion has largely viewed only cis-gendered women as a target group. For example, the RBI's National Strategy for Financial Inclusion 2019-2024 ¹⁴⁶ (which was prepared in consultation with other regulators such as the Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority of India) identifies women as a critical target group for the purpose of financial inclusion. Transgender persons do not feature as a gender category that must be targeted for financial inclusion, despite being socio-economically marginalised.	<p>Nature: Executive</p> <p>Action: The Ministry of Finance and financial regulators must actively include transgender persons as a gender category when framing policies for financial inclusion. In light of the NALSA judgement, it is critical to recognise that there are now three gender categories in law beyond the binary of male and female.</p>	Ministry of Finance, Reserve Bank of India, Insurance Regulatory and Development Authority of India, and Pension Fund Regulatory and Development Authority of India
Clarify that Guidelines on Fair	The RBI's Guidelines on Fair Practice Code for Lenders ¹⁴⁷ , specifically clause (v),	Nature: Executive	Reserve Bank of India

¹⁴⁶ National Strategy for Financial Inclusion 2019-2024, available at [https://slbcne.nic.in/NE/NSFI%20REPORT%20\(Eng\).pdf](https://slbcne.nic.in/NE/NSFI%20REPORT%20(Eng).pdf)

¹⁴⁷ Reserve Bank of India, Guidelines on Fair Practice Code for Lenders', available at <https://www.rbi.org.in/commonperson/English/scripts/Notification.aspx?Id=141#:~:text=Lenders%20must%20not%20discriminate%20on,resort%20to%20undue%20harassment%20viz>

Benefit	Issue	Proposed Action	Implementing Authority
Practice Code for Lenders prohibits lender discrimination based on gender identity and sexual orientation	prohibits discrimination based on “grounds of sex, caste and religion in the matter of lending”. Post the Supreme Court’s judgements in <i>NALSA</i> and <i>Supriyo</i> sex now includes the analogous grounds of gender identity and sexual orientation, respectively.	Action: A circular which clarifies that discrimination based on sex also includes gender identity and sexual orientation and is prohibited in matters of lending.	
Accessible Grievance Redressal	While executive measures by regulators in the form of circulars, directions and notifications can play a role in ensuring that queer persons are able to access financial services free from discrimination, it is also critical to provide for accessible grievance redressal forums in case queer persons/persons in queer relationships are subject to discrimination. ¹⁴⁸ Such grievance redressal must be accessible, timely and effective. While violation of the directions of the RBI are met with penalties under section 58B of the Reserve Bank of India Act, 1934, it is critical for the RBI to take proactive and affirmative steps towards ensuring discrimination free access to financial services. The RBI	Nature: Executive Action: In light of the details of the RBI Integrated Ombudsman Scheme, 2021 (‘2021 Scheme’), the RBI may issue a circular clarifying that denial of service (on constitutionally protected grounds of gender identity and/or sexual orientation), will constitute a ‘Deficiency in Service’ under the Scheme and invite penalties.	Reserve Bank of India

¹⁴⁸ Vinita Bhatia, ‘The Trans Community Never-Ending Fight for Financial Inclusion’, Outlook Business, available at <https://www.outlookbusiness.com/news/the-trans-community-s-never-ending-fight-for-financial-inclusion--news-202307>

Benefit	Issue	Proposed Action	Implementing Authority
	Integrated Ombudsman Scheme, 2021 defines 'Deficiency of Service' as 'a shortcoming or an inadequacy in any financial service or such other services related thereto, which the Regulated Entity is required to provide statutorily or otherwise, which may or may not result in financial loss or damage to the customer'. ¹⁴⁹ The Ombudsman established under the 2021 Scheme can direct compensation up to Rs. 20 lakhs.		

(c) Credit Facilities

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 queer persons, specifically transgender persons and communities, can play a key role towards the broader objective of financial inclusion.

Benefit	Issue	Proposed Action	Implementing Authority
Extension of formal credit to	Ensuring access to formal credit for enterprises led by marginalised groups is	Nature: Executive	Ministry of Micro, Small and Medium

¹⁴⁹ Clause 3(g), Reserve Bank - Integrated Ombudsman Scheme 2021, available at https://rbidocs.rbi.org.in/rdocs/content/pdfs/RBIOS2021_amendments05082022.pdf

Benefit	Issue	Proposed Action	Implementing Authority
transgender led enterprises	<p>critical for financial empowerment of such a group. However, efforts aimed at gendered financial inclusion including access to formal credit only identify women as a target group. Despite the rise of transgender led enterprises,¹⁵⁰ they have not been identified as a target group for such efforts.</p> <p>A concrete illustration of this is the Credit Guarantee Fund Trust for Micro and Small Enterprises ('CGTME') Scheme¹⁵¹ which has been jointly set up by the Ministry of Micro, Small & Medium Enterprises ('MSME'), Government of India and Small Industries Development Bank of India ('SIDBI'). The objective of this scheme is to ensure access to credit to underserved groups by ensuring that the terms of credit are less onerous as compared to other formal sources of lending (for instance, by doing away with the requirement of collaterals and guarantees). While the scheme explicitly identifies women led</p>	<p>Action: An amendment to the CGTME Scheme, specifically Clause 8 which identifies the target categories of women, SC/ST persons, persons with disabilities and <i>agniveers</i> as eligible for additional concessions/relaxation in guaranteed fees to include transgender persons. Further, the Board of the CGTME Scheme must issue specific guidelines pertaining to transgender led enterprises. Such guidelines must be framed in consultation with the transgender community and a comprehensive study of their credit needs.</p>	Enterprises

¹⁵⁰ Credit Guarantee Fund Trust for Micro and Small Enterprises, available at <https://www.cgtmse.in/>

¹⁵¹ Credit Guarantee Fund Trust for Micro and Small Enterprises, 'About CGTME', available <https://www.cgtmse.in/Home/VS/3>

Benefit	Issue	Proposed Action	Implementing Authority
	enterprises as a target group and extends various benefits to them (through enhanced credit guarantee coverage), such efforts are absent for transgender led enterprises.		
Micro Credit Schemes for Transgender Self-Help Groups	Micro Credit schemes for self-help groups allow persons from marginalised groups to form collectives with persons of similar socio-economic backgrounds to access formal credit to meet personal expenses. Extending credit to Women Self Help Groups has played a key role in financial inclusion of women, particularly in rural India. Specific schemes have been devised to target Women Self-Help Groups as well. ¹⁵²	<p>Nature: Executive</p> <p>Action: Two forms of measures are outlined below for consideration:</p> <p>(a) A comprehensive study of transgender collectives in atypical family formations such that financial inclusion efforts through extension of micro credit to Self-Help Groups can be tailored for transgender households. Transgender households can also be deemed as a target Self-Help Group to which credit is to be extended under the Self-Help Group Scheme.</p> <p>(b) Credit based welfare</p>	For measure (a) the Ministry of Social Justice and Empowerment along with the Reserve Bank of India. For measure (b) The Department of Finance and Department of Social Justice of State Governments.

¹⁵² Scheme for promotion of Women SHGs (WSHG) in backward & LWE districts of India, available at [https://www.nabard.org/auth/writereaddata/File/Scheme%20for%20promotion%20of%20Women%20SHGs%20\(WSHG\)%20in%20backward%20&%20LWE%20districts%20of%20India.pdf](https://www.nabard.org/auth/writereaddata/File/Scheme%20for%20promotion%20of%20Women%20SHGs%20(WSHG)%20in%20backward%20&%20LWE%20districts%20of%20India.pdf)

Benefit	Issue	Proposed Action	Implementing Authority
		schemes may be formulated by State Governments under section 8(a) of the Transgender Persons (Protection of Rights) Act, 2019.	
Joint Loans to Queer Persons	The RBI Master Circular on Loans and Advances, ¹⁵³ does not prohibit joint loans by persons who are not related by marriage or blood. Similarly, the RBI Master Circular ¹⁵⁴ on Housing Finance does not mention any relationship-based requirement for accessing a housing loan. However, the India Banks' Association Model Educational Loan Scheme for Pursuing Higher Education ¹⁵⁵ that the RBI has asked Banks to follow ¹⁵⁶ prescribes that in case of joint borrowing, the joint borrower 'should normally be parent(s)/guardian of the student borrower. In case of a married person, joint	Nature: Executive Action: To ensure that financial institutions do not impose marital relation or familial relations as a mandatory requirement for availing of a joint loan the RBI can issue a circular to all Banks which prohibit them from imposing the blanket imposition of such a requirement for access to joint-loans. Banks may pursue ordinary avenues to verify the creditworthiness of joint borrowers.	Reserve Bank of India

¹⁵³ Reserve Bank of India, 'Master Circular- Loans and Advances - Statutory and Other Restrictions', available at https://rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?Id=8135&Mode=0

¹⁵⁴ Reserve Bank of India, 'Master Circular: Housing Finance', available at https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12656

¹⁵⁵ Indian Banks Association, 'Model Educational Loan Scheme For Pursuing Higher Education In India And Abroad' 2015 (Amended 2016), available at [https://www.iba.org.in/pdf/education/Educational-Loan-Scheme-2015-\[Amended-2016\].pdf](https://www.iba.org.in/pdf/education/Educational-Loan-Scheme-2015-[Amended-2016].pdf)

¹⁵⁶ Reserve Bank of India, 'Education Loan', available at <https://www.rbi.org.in/commonman/english/Scripts/FAQs.aspx?Id=3372>

Benefit	Issue	Proposed Action	Implementing Authority
	<p>borrower can be either spouse or the parent(s)/parents-in-law'. The use of the word <i>normally</i> however indicates flexibility in the choice of the bank in dictating conditions for joint borrowing beyond natal and marital familial relationships.</p> <p>Thus, depending on the nature of the loan the conditions for joint borrowing vary, with education loans requiring familial ties as the basis for such borrowing. Even in cases where there are no restrictions on joint borrowing, individual bank policies might discriminate on the basis of the existence of a marital or blood relationship between the parties for the purposes of applying for a loan together. For instance, HDFC Bank requires the co-applicant to a home loan to be an immediate family member.¹⁵⁷</p>		
Priority Sector Lending for Transgender Persons	Inclusion of transgender persons within formal systems of credit requires affirmative steps, including through identification of transgender persons as a	<p>Nature: Executive</p> <p>Action: The Reserve Bank of India Master Directions on Priority</p>	Ministry of Finance

¹⁵⁷ HDFC Bank, 'Benefits of Taking a Joint Home Loan', available at <https://www.hdfc.com/blog/home-finance/benefits-taking-joint-home-loan>

Benefit	Issue	Proposed Action	Implementing Authority
	target group. At present, there is very little effort towards this end.	Sector Lending, identifies target groups for the purpose of financial inclusion. ¹⁵⁸ Clause 16 of the Circular on 'Weaker Groups' recognises women, marginal farmers, self-help groups, persons with disabilities, etc. as weak groups for priority sector loans. Clause 16.1(xi) empowers the Central Government to notify communities as weak communities from time to time for priority sector loans. In pursuance of this power, the Central Government must notify 'transgender persons' as a target group for priority sector loans.	
Public Sector Banks - Earmarking of Credit for Lending to Transgender	Earmarking credit for transgender persons can play a big role in nudging public sector banks in taking affirmative steps towards financial inclusion of the transgender community.	<p>Nature: Executive</p> <p>Action: The RBI had issued a 14-point Action Plan in the year 2000 to promote women's access to bank credit and credit plus</p>	Reserve Bank of India

¹⁵⁸Reserve Bank of India, 'Master Directions - Priority Sector Lending (PSL) - Targets and Classification (Updated as on June 21, 2024)', available at https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11959

Benefit	Issue	Proposed Action	Implementing Authority
Persons		services. This included advising Public Sector Banks ('PSBs') to earmark 5 percent of their Adjusted Net Bank Credit for lending to women. This measure has played a critical role in nudging public banks from disbursing credit to women. ¹⁵⁹ A measure of this nature wherein PSBs are advised to earmark credit for transgender persons is advised.	

(d) Pension

The Court in *Supriyo* identified family pension as a class of benefits which is denied to queer couples and families on account of their non-recognition in law.¹⁶⁰ It is critical for the State to take measures to ensure queer families can access the same at par with heterosexual families.

¹⁵⁹ Ministry of Micro, Small and Medium Enterprises, 'Financial Literacy Camps organized by Financial Literacy Centres and rural branches of banks for women business owners', available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1906359>

¹⁶⁰ *Supriyo*, Para 340(iv) (As per Chandrachud J.).

Benefit	Issue/Rationale	Proposed Action	Implementing Authority
Recognition of queer relationship for purpose of access to pension	Rule 4 of the Payment of Arrears of Pension (Nomination) Rules, 1983 provides that a pensioner may nominate any person to receive their pension post their death. Forms A and B which the pensioner must fill to nominate their person of choice requires the pensioner to state the "Relationship with the pensioner". As law only recognises natal family and marital family relations, queer families may not be able to nominate persons of their choice under the present regime.	<p>Nature: Executive</p> <p>Action: A notification which clarifies that a person can nominate <i>any person of their choice</i> to receive pension and marriage, or a natal family connection is not a prerequisite for the purpose of nomination.</p>	Ministry of Personnel, Public Grievances and Pensions

(e) 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. Medical expenses are mounting at an unprecedented rate with advancements in medical technology, as well as inflation. Taking care of these expenses in case of an emergency adds to an already huge burden on the diseased as well as their family. Even after hospitalisation, in case of death, everyone wishes to secure their family with sufficient financial stability to the best of their abilities.

LGBTQIA+ individuals are often left out of some of the benefits flowing from availing an insurance scheme, such as joint insurance and nomination of family members as beneficial nominees. Insurance has also been recognised in *Supriyo* as a key benefit that is available as part of the bundle of rights available to a married heterosexual couple under the present laws.¹⁶¹

<i>Benefit</i>	<i>Issue/Rationale</i>	<i>Proposed action</i>	<i>Implementing authority</i>
Health and Life Joint Insurance Schemes	Insurance providers providing health and life insurance often have schemes for families and spouses in the form of joint insurance policies. ¹⁶² These joint insurance schemes allow the insured persons to avail lower premiums and higher benefits. A recognition of queer relationships as a family through marriage, civil unions or nomination would allow queer persons to avail these schemes.	<i>Nature:</i> Executive <i>Action:</i> A circular extending availability of joint insurance schemes to civil unions (if recognised by law) and queer partners through a nomination scheme.	Insurance Regulatory and Development Authority
Nomination in Life Insurance	The Insurance Amendment Act, 2015 amended section 39 of the Act to include sub-section (7), which allows for nominating a beneficial nominee. ¹⁶³ As per this provision, a beneficial nominee is beneficially	<i>Nature:</i> Legislative <i>Action:</i> Expand beneficial nominee by amending Section 39(7) to include	Department of Economic Affairs, Ministry of Finance

¹⁶¹ *Supriyo*, Para 340(iv) (As per Chandrachud J.).

¹⁶² A 'family insurance policy' search on popular insurance schemes aggregator Policy Bazaar requires an applicant to select members that they are looking to include as part of the family insurance plan and the options are limited to spouse, children, parents, parents-in-law and grandparents. Policy Bazaar aggregates a list of insurance providers providing for insurance schemes based on the applicant's requirements. See search at https://health.policybazaar.com/?offerid=5&r=true&pb_source=google&pb_medium=cpc&pb_term=Health+insurance+for+family&pb_campaign=Health_BMM_De sktop00Family_network&loc_interest_ms=&loc_physical_ms=9303169&gad_source=1&gclid=CjwKCAiAm-67BhBIEiwAEVftNvVvdK6bsK6M7eD9hJeLBMKYKW3yfl3uRku6dmtcfRzdC5tW4uot1ZR0CEzAQAvD_BwE

¹⁶³ S. 45, The Insurance Laws (Amendment) Act, 2015.

<i>Benefit</i>	<i>Issue/Rationale</i>	<i>Proposed action</i>	<i>Implementing authority</i>
	<p>entitled to the amount payable by the insurer to them. A beneficial nominee may be the parents, spouse, children, spouse and children, or any of them.</p> <p>While it is unclear from the statute whether a beneficial nominee would be entitled to payment in exclusion of other nominees or the legal successors under inheritance laws as well, the benefits to be availed by virtue of being a beneficial nominee must be extended to queer relationships.</p>	<p>queer relationships. Here “queer relationships” may be defined as an Explanation to the provision, or it may derive its definition from a Civil Union legislation, or it may be enabled through a nomination framework. Through a nomination framework, a person may nominate any person of their choice as a beneficial nominee. However, this should be allowed only if a person is not in an existing marriage or civil union, so that this process is not used to deny benefits to existing civil union or marital partners.</p>	

<i>Benefit</i>	<i>Issue/Rationale</i>	<i>Proposed action</i>	<i>Implementing authority</i>
Health and Life Joint Insurance Schemes	Insurance providers providing health and life insurance often have schemes for families and spouses in the form of joint insurance policies. ¹⁶⁴ These joint insurance schemes allow the insured persons to avail lower premiums and higher benefits. A recognition of queer relationships as a family through marriage, civil unions or nomination would allow queer persons to avail these schemes.	<i>Nature:</i> Executive <i>Action:</i> A circular extending availability of joint insurance schemes to civil unions (if recognised by law) and queer partners through a nomination scheme.	Insurance Regulatory and Development Authority
Nomination in Life Insurance	The Insurance Amendment Act, 2015 amended section 39 of the Act to include sub-section (7), which allows for nominating a beneficial nominee. ¹⁶⁵ As per this provision, a beneficial nominee is beneficially entitled to the amount payable by the insurer to them. A beneficial nominee may be the parents, spouse, children, spouse and children, or any of them.	<i>Nature:</i> Legislative <i>Action:</i> Expand beneficial nominee by amending Section 39(7) to include queer relationships. Here “queer relationships” may be defined as an Explanation to the	Department of Economic Affairs, Ministry of Finance

¹⁶⁴ A ‘family insurance policy’ search on popular insurance schemes aggregator Policy Bazaar requires an applicant to select members that they are looking to include as part of the family insurance plan and the options are limited to spouse, children, parents, parents-in-law and grandparents. Policy Bazaar aggregates a list of insurance providers providing for insurance schemes based on the applicant’s requirements. See search at https://health.policybazaar.com/?offerid=5&r=true&pb_source=google&pb_medium=cpc&pb_term=Health+insurance+for+family&pb_campaign=Health_BMM_De sktop00Family_network&loc_interest_ms=&loc_physical_ms=9303169&gad_source=1&gclid=CjwKCAiAm-67BhBIEiwAEVftNvVvdK6bsK6M7eD9hJeLBMKYKW3yfl3uRku6dmtcfRzdC5tW4uot1ZR0CEzAQAvD_BwE

¹⁶⁵ S. 45, The Insurance Laws (Amendment) Act, 2015.

<i>Benefit</i>	<i>Issue/Rationale</i>	<i>Proposed action</i>	<i>Implementing authority</i>
	While it is unclear from the statute whether a beneficial nominee would be entitled to payment in exclusion of other nominees or the legal successors under inheritance laws as well, the benefits to be availed by virtue of being a beneficial nominee must be extended to queer relationships.	provision, or it may derive its definition from a Civil Union legislation, or it may be enabled through a nomination framework. Through a nomination framework, a person may nominate any person of their choice as a beneficial nominee. However, this should be allowed only if a person is not in an existing marriage or civil union, so that this process is not used to deny benefits to existing civil union or marital partners.	

(f) Taxation

The Income Tax, 1961 provides for the levy of income tax or direct tax on citizens as well as the exemptions and deductions that may be claimed from the payment of the entire amount of income tax payable.¹⁶⁶

¹⁶⁶ *Supriyo*, Para 340(iv) (As per Chandrachud J.).

Benefit	Issues	Proposed action	Implementing Authority
Deduction in income tax	<p>The provisions of the Income Tax Act, 1961 Act outline all income that will be the total taxable income. Once the total taxable income is calculated, certain expenditures may be claimed as deductions from this total taxable income, based on various factors. Some of these deductions are available to individuals for being part of a marital family, i.e. with spouse and children, for expenditures traditionally incurred by virtue of being part of such a family. This understanding naturally favours traditional heteronormative family structures and therefore, there is a need to look closely at these benefits in the form of deductions, unavailable to persons in queer relationships.</p> <p>Some provisions of the Income Tax Act that recognise and favour traditional family structures are being examined below:</p> <p>Section 10(5) - This section provides a deduction for any travel concession received by an individual from their employer for themselves or their <i>family</i>, in connection with proceeding on leave or in connection with travel on retirement or termination of employment (subject to conditions).</p>	<p>Nature: Legislative</p> <p>Action: Amendment to definition of “family” in Explanation 1 to section 10(5) to include civil union partners.</p> <p>and,</p> <p>Nature: Legislative & Executive</p> <p>Action: Amendments to concomitant laws under which a benefit is provided and then recognised as a deduction under the income tax regime. For e.g., family insurance being extended to queer families.</p>	Department of Revenue, Ministry of Finance and, Relevant ministries for concomitant laws

Benefit	Issues	Proposed action	Implementing Authority
	<p>Explanation 1 to this sub-section defines family as: (i) the spouse and children of the individual ; and (ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual. Thus, partners in relationships that do not fall within the folds of marriage are unable to access any deduction offered for a travel concession from their employer for travelling with family.</p> <p>Section 10(18)(ii) & 10(19)- section 10(18) provides for deduction of <i>family pension</i> received by any member of the family of a person who has received any of the mentioned gallantry awards. The definition of “family” is the same as the Explanation to section 10(5). Section 10(19) provides for deduction of <i>family pension</i> received by any member of the family of a person employed in the armed forces.</p> <p>Section 17 - The definition of “perquisites” under this section excludes the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer.</p> <p>Section 80D - Deduction for <i>family health insurance</i> is allowed under this section. The definition of family is the same as in the Explanation to section 10(5).</p>		

(g) Affirmative Measures

In addition to the above recommended measures, certain broad affirmative measures are underlined below.

Benefit	Issue	Proposed Action	Implementing Authority
Evidence based policymaking for financial inclusion of transgender persons	Gender Disaggregated Data plays a critical role in evidence-based policymaking for financial inclusion. At present, the RBI directs PSBs to submit women-centric credit flow data and make quarterly submissions of the same under its 2000 RBI Directions. ¹⁶⁷ Similarly, Basic Statistical Returns are the primary source of gender disaggregated data for scheduled commercial banks. ¹⁶⁸	Nature: Executive Action: The RBI must identify transgender persons as a target group when it comes to collection of gender disaggregated data to allow for evidence-based policymaking in the sphere of financial inclusion.	Reserve Bank of India
Financial Inclusion Schemes under the Transgender Persons (Protection of Rights) Act, 2019	One of the major schemes designed for inclusion of transgender persons is the SMILE (Support for Marginalized Individuals for Livelihood and Enterprise) Scheme, which is being implemented by the Ministry of Social Justice and Empowerment. Other than the SMILE Scheme, both the Central and the State Government can devise schemes specifically for the purpose of financial inclusion of	Nature: Executive Action: Both the Central and the State Government can design and implement evidence-based schemes for transgender persons under section 8(1) of the Transgender Persons (Protection of Rights) Act, 2019.	Ministry of Social Justice and Empowerment; Department of Social Justice, State Governments

¹⁶⁷ Reserve Bank of India, 'Strengthening of credit delivery to women particularly in Tiny and SSI sector', available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=323&Mode=0>.

¹⁶⁸ Shreya Garg and Manvi Khanna, 'The Law Needs to Account for Her', The Vidhi Centre for Legal Policy, available at <https://vidhilegalpolicy.in/research/the-law-needs-to-account-for-her/#:~:text=Vidhi's%20working%20paper%20titled%20'The,offered%20to%20women%20customers%20and>



Benefit	Issue	Proposed Action	Implementing Authority
	transgender persons.		

Part Three: Labour and Employment

I. Introduction

Labour laws¹⁶⁹ fall in the Concurrent List of Schedule VII of the Constitution of India. This means that both the Parliament and the State Legislative Assemblies are competent to enact, amend and modify labour laws. This chapter outlines the measures that must be taken to make labour laws inclusive of queer persons as well as persons in queer relationships. In fact, the Supreme Court in *Supriyo* pointed out labour benefits as benefits which must be made available to persons in queer relationships on par with heterosexual married couples.¹⁷⁰ The Supreme Court in *NALSA* has also indicated the necessity of making all laws inclusive of transgender persons by expanding gendered categories beyond the binary of male and female sex.¹⁷¹ This section proposes measures for making labour laws inclusive for queer persons across the below five themes. While both the Ministry of Labour and Employment, and the Department of Labour of State Governments have the competence to enact the measures recommended, as far as the measures under heads (d) and (e) are concerned, the implementing authority is different and stated along with the recommended measures:

- (a) Parental Benefits: Labour Laws and Queer Parenthood
- (b) Extending Labour Benefits to Queer Families
- (c) Prohibition of Discrimination in Public Sector Employment
- (d) Affirmative Action in Public Employment for Transgender Persons
- (e) Informal Sector Reforms.

¹⁶⁹ The measures in this Chapter are made in relation to the four labour codes: namely, the Code on Wages, 2019; the Code on Social Security, 2020; the Code on Industrial Relations, 2020, and the Code on Occupational Safety, Health and Working Conditions, 2020 that are set to consolidate and replace the existing labour laws occupying the domain. Besides the Code of Wages, 2019, the other three codes are yet to come in force. The recommendations in this chapter must be read in relation to existing labour laws in force as well, till they are replaced by the labour codes.

¹⁷⁰ See, *Supriyo* (The Court has listed these benefits as including: employee state insurance benefits, provident fund, family pension, medical benefits and insurance benefits.

¹⁷¹ *NALSA*, para 75.

II. Parental Benefits: Labour Laws and Queer Parenthood

(a) Maternity Benefit

The Supreme Court in *Supriyo* recognised the discriminatory impact of existing adoption laws on queer couples, as only married couples can jointly adopt under the same. The Court has stated that ‘urgent state intervention’ is required to address the discriminatory impact of adoption laws on queer couples.¹⁷² Further, given the social reality that queer couples are adopting in law as individuals but are cohabiting and raising children as de facto families means that the State has an ‘urgent need to enable the full gamut of rights to such children, qua both parents.’¹⁷³ The Court has thus especially emphasised the need for the Committee to consider this particular area of family law: joint adoptions. The recognition of queer parenthood must be followed by consequential amendments to other laws that apply to parenthood, including laws on maternity benefit and the medical termination of pregnancy. In this context, maternity benefits must be reconceptualised and expanded to provide for parental benefits to be inclusive of parents of all genders. Such a process must be consultative and involve all relevant stakeholders and experts.

- (i) **Pregnancy Leave:** In addition to cis-gender women, it is also possible for non-binary individuals and trans individuals, including transmen,¹⁷⁴ to conceive, and experience pregnancy and childbirth. In the case of *A (Mother of X) v. State of Maharashtra*,¹⁷⁵ a 3-judge bench of the Supreme Court used the term ‘pregnant person’ to refer to the pregnant individual, rather than the term ‘pregnant woman’. The Court clarified as follows in footnote 6: “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.” In line with the Court’s usage, it is

¹⁷² *Supriyo*, Para 128 (As per Bhat J.).

¹⁷³ *Supriyo*, Para 132 (As per Bhat J.).

¹⁷⁴ ‘In a first in country, Kerala transman gives birth, keeps gender of baby secret’, The Economic Times (Feb 09, 2023), available at <https://economictimes.indiatimes.com/news/india/in-a-first-in-country-kerala-transman-gives-birth-keeps-gender-of-baby-secret/articleshow/97752059.cms?from=mdr>

¹⁷⁵ 2024 INSC 371.

therefore imperative that Chapter VI of the Social Security Code pertaining to Maternity Benefits be read in a gender-neutral manner, when referring to leave, pay, and other legal entitlements accruing to pregnant persons.

- (ii) **Parental Leave:** There are two reasons why parental leave (leave for childcare applicable to all parents irrespective of gender identity) should be introduced, rather than restricting the ambit of maternity benefit only to mothers. *One*, to account for same sex/gender persons adopting together, it is critical to shift from a law on maternity benefit to a law on parental benefits which extends benefits to all parents irrespective of their sex or gender identity. This will ensure that many transgender persons as well as men in queer relationships are able to access parental benefits. *Two*, the burden of childcare often falls solely on mothers. This leads to an unequal division of labour in heterosexual relationships. Therefore, to ensure that childcare is a responsibility that is equally shared by all parents irrespective of gender, parental leave should be available to all parents.
- (iii) **Rationalising Leave Period:** There is currently a stark distinction between the period of leave availed by persons who conceive and give birth, persons who adopt and persons who become parents through availing surrogacy. Distinctions, if any, must be informed by an evidence-based approach. As of now, persons who give birth are entitled to 26 weeks of leave (Section 5(3) of the Maternity Benefit Act, 1961; Section 60(3) of the Code on Social Security) while persons who become parents via adoption/surrogacy are entitled to only 12 weeks of leave (Section 5(4) of the Maternity Benefit Act, 1961; Section 60(4) of the Code on Social Security). There has been a shift towards ensuring parity in parental leave across jurisdictions, irrespective of the method through which a person has become a parent. Ultimately, the objective of parental leave is to also ensure that the parent has sufficient time to care for the child. Pregnant women are entitled to a maximum of 8 weeks of leave pre-delivery (Section 5(3) of the Maternity Benefit Act, 1961; Section 60(3) of the Code on Social Security). If some or all of those leaves are not used, then post-delivery leave can be claimed in a way that the total period of leave adds up to 26 weeks. Therefore, the concept of providing at least 18 weeks of post-delivery leave is presumably for the purposes of childcare. Based on the same rationale, at the bare minimum, 18 weeks of leave must be extended to adoptive parents and parents who rely on surrogacy to enable effective childcare.

- (iv) **Adoption Leave:** A person is entitled to maternity leave only if the adopted child is below three months of age (Section 5(4) of the Maternity Benefit Act, 1961; Section 60(4) of the Code on Social Security). Two issues require attention: *first*, persons adopting children older than three months are not entitled to leave under the statute. *Second*, the rationale for the cut-off at three months is not informed by any publicly available evidence on the issue. An evidence-based call must be taken in this regard to ensure that adoptive parents are not subject to discrimination in the matter of leave.

(a) ***Pregnancy Leave: Making pregnancy inclusive of all genders***

Section	Existing Provision	Proposed Amendment	Rationale
2(91), Definitions, The Code on Social Security, 2020	“Woman” means a woman employed, whether directly or through any contractor, for wages in any establishment <i>Provided that</i> for the purposes of Chapter IV, a woman who is or was an employee in respect of whom contribution is or were payable under the said Chapter, and who by reason thereof, entitled to any of the benefits provided under the said Chapter	Insert Second Proviso to section 2(91) as follows, <i>“Provided further for the purposes of Chapter VI that the term ‘woman’ shall be read as ‘person’.”</i>	This position recognises that it is possible for individuals of all gender identities to conceive and experience pregnancy and childbirth. ¹⁷⁶ In the case of <i>A (Mother of X) v. State of Maharashtra</i> (2024 INSC 371), a 3-judge bench of the Supreme Court used the term ‘pregnant person’ to refer to the pregnant individual, rather than the term ‘pregnant woman’. The Court clarified as

¹⁷⁶ Hindustan Times, *Transman gives birth to baby in Kerala*, available at <https://www.hindustantimes.com/india-news/in-a-first-transcouple-welcomes-baby-in-kerala-101675881768079.html> (Last accessed on December 2, 2024).

Section	Existing Provision	Proposed Amendment	Rationale
	shall be called “Insured Woman” and shall include- (i) a commissioning mother who as biological mother wishes to have a child and prefers to get embryo implanted in any other woman; (ii) a woman who legally adopts a child of up to three months of age.		follows in footnote: “We use the term ‘pregnant person’ and recognise that in addition to cisgender women, pregnancy can also be experienced by some non-binary people and transgender men among other gender identities.” ¹⁷⁷ In line with the Supreme Court’s usage, it is therefore, imperative that the Act be read in a gender-neutral manner when referring to the benefits granted to the pregnant person.

(b) Parental Benefits

Section	Existing Provision	Proposed Amendment	Rationale
60(4), The Code on Social Security, 2020	(4) A woman who legally adopts a child below the age of three months or a commissioning	(4) A person who legally adopts a child below the age of three months or a commissioning parent shall be	Any person (regardless of gender) adopting a child or having a child through surrogacy would be

¹⁷⁷ A (Mother of X) v. State of Maharashtra, 2024 INSC 371, footnote 6.

Section	Existing Provision	Proposed Amendment	Rationale
	mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.	entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting parent or the commissioning parent , as the case may be.	required to engage in childcare. Single parents can also adopt and have children through surrogacy. Therefore, there is no reason to restrict such leave to only women. These entitlements should be extended to all adoptive and commissioning parents.

(b) Extending Labour Benefits to Queer Families

The recommendations under this section can be extended to queer families and queer persons through three routes. They are provided for the three core labour codes: The Code on Social Security, 2020; the Code on Occupational Safety, Health and Working Conditions, 2020, and the Code on Wages, 2019.

- **Making Marriage Laws Inclusive:** If marriage laws are amended to recognise same sex/gender partners, then all the benefits available to married couples will automatically extend to queer partners who are married as well.
- **Extending Benefits to Civil Unions:** If civil unions are recognised, benefits available to married couples must be extended to partners in a civil union. For this purpose, an amendment has to be effected, and the draft provision for the same is provided.
- **Nominations:** If neither marriage nor civil unions are recognised for queer persons, it is critical to provide for a process via which queer persons can nominate any person of their choice for availing the benefit available to married couples. For this purpose, an amendment has to be effected and the draft provision for the same is provided.

(i) *The Code on Social Security, 2020*

Section	Existing Provision	Proposed Amendment	Rationale
2(13): Definitions	"Commissioning mother" means a biological mother who uses her egg to create an embryo implanted in any other woman;	"Commissioning parent" means a person who uses their egg to create an embryo implanted in any other person ;	Making the language gender-neutral to recognise that in addition to cis-women, transmen, and non-

Section	Existing Provision	Proposed Amendment	Rationale
			binary persons can also be a commissioning parent by using their egg to create an embryo
2(24): Definitions	<p>(24) "dependant" means any of the following relatives of deceased employee, namely:— a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother:</p> <p>...</p> <p>(c) if wholly or in part dependent on the earnings of the employee at the time of his death, — (i) a widower.</p>	<p>(24) "dependant" means any of the following relatives of deceased employee, namely:— a spouse, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed parent:</p> <p><i>Explanation: Spouse includes-</i> <i>(a) A partner of an employee in a civil union; or</i> <i>(b) If a person is not married or not in a civil union, then any person nominated by the employee as the procedure prescribed.</i> <i>If an employee subsequently marries or enters into a civil union then the nomination under sub-clause (b) will stand automatically rescinded.</i></p> <p>(c) if wholly or in part dependent on the</p>	<p>The definition of spouse has been expanded to include partners in civil unions, as well as any nominees of the employees receiving the benefits. This, however, would function in a paradigm where civil unions are recognised between same-sex partners, and/or a regime of nominations is put in place for social security benefits.</p>

Section	Existing Provision	Proposed Amendment	Rationale
		earnings of the employee at the time of his death, — (i) Repealed	
2(33)(a) Definitions	(33) "family" means all or any of the following relatives of an employee or an unorganised worker, as the case may be, namely: — (a) a spouse;	Insert Explanation to section 2(33)(a), <i>Explanation: Spouse includes-</i> <i>(a) A partner of an employee in a civil union; or</i> <i>(b) If a person is not married or not in a civil union, then any person nominated by the employee as per the procedure prescribed.</i> <i>If an employee subsequently marries or enters into a civil union then the nomination under sub-clause (b) will stand automatically rescinded.</i>	The definition of spouse has been expanded to include partners in civil unions, as well as any nominees of the employees receiving the benefits. This, however, would function in a paradigm where civil unions are recognised between same-sex partners, and/or a regime of nominations is put in place for social security benefits.
2(33)(e) Definitions	(e) dependent parents (including father-in-law and mother-in-law of a woman employee), whose income from all sources does not exceed such income as may be prescribed by the Central Government;	dependent parents (including <i>parents-in-law of an employee</i>), whose income from all sources does not exceed such income as may be prescribed by the Central Government;	This has been made gender-neutral to account for same-sex/gender parental couples. Further, the benefit of this should be extended to all employees and not just women

Section	Existing Provision	Proposed Amendment	Rationale
			employees.
2(91) Definitions	<p>(91) "woman" means a woman employed, whether directly or through any contractor, for wages in any establishment:</p> <p>Provided that for the purposes of Chapter IV, a woman who is or was an employee in respect of whom contribution is or were payable under the said Chapter and who is by reason thereof, entitled to any of the benefits provided under the said Chapter shall be called "insured woman" and shall include—</p> <p>(i) a commissioning mother who as biological mother wishes to have a child and prefers to get embryo implanted in any other woman;</p> <p>(ii) a woman who legally</p>	<p>(91) "woman" means a woman employed, whether directly or through any contractor, for wages in any establishment:</p> <p>Provided that for the purposes of Chapter IV, a woman will be read to include a person who is or was an employee in respect of whom contribution is or were payable under the said Chapter and who is by reason thereof, entitled to any of the benefits provided under the said Chapter shall be called "insured person" and shall include—</p> <p>(i) a commissioning parent who as biological parent wishes to have a child and prefers to get embryo implanted in any other person;</p> <p>(ii) a person who legally adopts a child of up to three months of age.</p>	<p>The proviso has been made gender-neutral to recognise that people of all gender identity can be pregnant persons, commissioning parents and adoptive parents.</p>

Section	Existing Provision	Proposed Amendment	Rationale
	adopts a child of up to three months of age.		
6(4): National Social Security Board & State Unorganised Workers' Board	6(4) Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities, and women.	Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities, transgender persons , and women.	This is to ensure plurality of representation, including of transgender persons, in the National Social Security Board & State Unorganised Workers' Board as a minority group.
6(12): National Social Security Board & State Unorganised Workers' Board	6(4) Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.	Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities, transgender persons , and women.	This is to ensure plurality of representation, including of transgender persons, in the National Social Security Board & State Unorganised Workers' Board as a minority group.
15(1)(b): Schemes	(1) The Central Government may, by notification— (b) frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for— (i) superannuation pension, retiring pension or permanent	(1) The Central Government may, by notification— (b) frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for— (i) superannuation pension, retiring pension or permanent total disablement pension to the employees of any	The definition of spouse has been expanded to include partners in civil unions as well as any nominees of the employees receiving the benefits. This, however, would function in a paradigm where civil unions

Section	Existing Provision	Proposed Amendment	Rationale
	<p>total disablement pension to the employees of any establishment or class of establishments to which this Chapter applies;</p> <p>(ii) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees; and</p> <p>(iii) nominee pension;</p>	<p>establishment or class of establishments to which this Chapter applies;</p> <p>(ii) deceased spouse's pension, children pension or orphan pension payable to the beneficiaries of such employees; and</p> <p>Explanation: Spouse includes- (a) A partner of an employee in a civil union; or (b) If a person is not married or not in a civil union, then any person nominated by the employee as the procedure prescribed. If an employee subsequently marries or enters into a civil union then the nomination under sub-clause (b) will stand automatically rescinded.</p> <p>(iii) nominee pension;</p>	<p>are recognised between same-sex/gender partners, and/or if a regime of nominations is put in place for social security benefits.</p>
32: Benefits	<p>(1) Subject to the provisions of this Code, the Insured Persons, their dependants, or the persons hereinafter mentioned, as the case may be, shall be entitled to</p>	<p>(1) Subject to the provisions of this Code, the Insured Persons, their dependants, or the persons hereinafter mentioned, as the case may be, shall be entitled to the following benefits, namely: —</p>	<p>This is to recognise that people of all gender identities can become pregnant.</p>

Section	Existing Provision	Proposed Amendment	Rationale
	<p>the following benefits, namely:</p> <p>—</p> <p>(b) periodical payments to an Insured Person being a woman in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such woman being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);</p>	<p>(b) periodical payments to an Insured Person being a pregnant person in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage, such pregnant person being certified to be eligible for such payments by an authority specified in this behalf by the regulations (hereinafter referred to as maternity benefit);</p>	
41(7)(b): General Provisions as to Benefits	<p>.....</p> <p>(b) Any woman employee eligible for availing maternity benefit under this Chapter shall not be entitled to claim maternity benefit from her employer under Chapter VI.</p>	<p>.....</p> <p>(b) Any person employed eligible for availing maternity benefit under this Chapter shall not be entitled to claim maternity benefit from their employer under Chapter VI.</p>	This is to recognise that people of all gender identities can become pregnant.
133: Penalty for Failure to	If any person, —	If any person, —	This is to prevent discrimination broadly on

Section	Existing Provision	Proposed Amendment	Rationale
Pay Contributions Etc.	<p>(a) in contravention of the provisions of Chapter IV or Chapter VI or rules, regulations or schemes made or framed under this Code respectively, relating to such Chapters, dismisses, discharges, reduces in rank or otherwise penalises a woman employee; or</p> <p>(b) fails to provide any maternity benefit to which a woman is entitled under this Code; or</p>	<p>(d) in contravention of the provisions of Chapter IV or Chapter VI or rules, regulations or schemes made or framed under this Code respectively, relating to such Chapters, dismisses, discharges, reduces in rank or otherwise penalises a woman or transgender employee; or</p> <p>.....</p> <p>(i) fails to provide any maternity benefit to which any person is entitled under this Code; or</p> <p>.....</p>	<p>the basis of gender identity, and not restrict such protections to cis-women alone.</p> <p>This is to recognise that people of all gender identities can become pregnant.</p>
Section 155(2)(b) Power of Central Government to Make Rules	<p>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p>	<p>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —</p> <p>..</p>	<p>This provision is gender-neutral to include queer parental couples. Further, the ambit of this section has been expanded to include parents-in-law of all</p>

Section	Existing Provision	Proposed Amendment	Rationale
	<p>...</p> <p>(b) manner of establishment and maintenance of career centre and the career services under clause (9), the income of dependant parents (including father-in-law and mother-in-law of a woman employee), under sub-clause (e) of clause (33) and other authority who shall be deemed to be the occupier under sub-clause (c) and the matters which are directly related to the condition of ship, for which the owner of ship shall be deemed to be the occupier under the proviso to the said sub-clause (c) of clause (52), of section 2;</p>	<p>(b) manner of establishment and maintenance of career centre and the career services under clause (9), the income of dependant parents (including parents-in-law of an employee), under sub-clause (e) of clause (33) and other authority who shall be deemed to be the occupier under sub-clause (c) and the matters which are directly related to the condition of ship, for which the owner of ship shall be deemed to be the occupier under the proviso to the said sub-clause (c) of clause (52), of section 2;</p>	<p>employees and not just of women employees.</p>

(ii) *Code on Occupation Safety, Health, and Working Conditions, 2020*

Section	Existing Provision	Proposed Amendment	Rationale
Section 2(x): Definitions	(x) "family", when used in relation to a worker, means— (i) spouse;	Insert Explanation to section 2(x), <i>Explanation: Spouse includes-</i> <i>(a) A partner of an employee in a civil union; or</i> <i>(b) If a person is not married or not in a civil union, then any person nominated by the employee as per the procedure prescribed. If an employee subsequently marries or enters into a civil union then the nomination under sub-clause (b) will stand automatically rescinded.</i>	The definition of spouse has been expanded to include partners in civil unions as well as any nominees of the employees receiving the benefits. This, however, would function in a paradigm where civil unions are recognised between same-sex partners, and/or a regime of nominations is put in place for social security benefits.

Section	Existing Provision	Proposed Amendment	Rationale
Section 82: Dangerous Operations	<p>82. The appropriate Government may by rules make the provisions relating to any factory or class or description of factories in which manufacturing process or operation is carried on which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease, for—</p> <p>(b) prohibiting or restricting the employment of pregnant women in the manufacturing process or operation;</p>	<p>82. The appropriate Government may by rules make the provisions relating to any factory or class or description of factories in which manufacturing process or operation is carried on which exposes any of the persons employed in it to a serious risk of bodily injury, poisoning or disease, for—</p> <p>(b) prohibiting or restricting the employment of pregnant persons in the manufacturing process or operation;</p>	This is to recognise that people of all gender identities can become pregnant.

(iii) *Code on Wages, 2019*

Section	Existing Provision	Proposed Measure	Rationale
3: Prohibition of Discrimination on Ground of Gender	3. (1) There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the	<p>The following two measures are recommended:</p> <p><i>Legislative Action:</i></p> <p>(2) No employer shall,—</p>	<i>Legislative:</i> An amendment to section 3(2)(ii) replacing 'sex' with 'gender'. Sex and gender are two distinct terms, including in law.

Section	Existing Provision	Proposed Measure	Rationale
	<p>same work or work of a similar nature done by any employee.</p> <p>(2) No employer shall,—</p> <p>(ii) make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.</p>	<p>(ii) make any discrimination on the ground of gender while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.</p> <p><i>Executive Action:</i> The Ministry of Labour and Employment must issue a circular clarifying that section 3 also covers transgender persons.</p>	<p>While there are two categories of sex in law namely male and female, post NALSA there are three categories of gender, namely, man, woman and transgender persons.</p> <p><i>Executive:</i> This is in line with the Supreme Court's judgement in NALSA v. Union of India, and the Transgender Persons (Protection of Rights) Act, 2019.</p>
42(3)(b): Central Advisory Board and State Advisory Boards	<p>(3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to—</p> <p>(b) providing increasing employment opportunities for women;</p>	<p>(3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to—</p> <p>(b) providing increasing employment opportunities for women and transgender persons;</p>	<p>This is to ensure greater gender diversity, participation and representation at the workplace.</p>
42(4)(b): Central	<p>(4) Every State Government shall</p>	<p>(4) Every State Government shall</p>	<p>This is to ensure greater</p>

Section	Existing Provision	Proposed Measure	Rationale
Advisory Board and State Advisory Boards	constitute a State Advisory Board for advising the State Government— (b) for the purpose of providing increasing employment opportunities for women;	constitute a State Advisory Board for advising the State Government— (b) for the purpose of providing increasing employment opportunities for women and transgender persons ;	gender diversity, participation, and representation at the workplace.

(c) Prohibition of Discrimination in Public Sector Employment

Public sector employment with the government is governed by the Articles 308 to 323 of the Constitution, and the rules framed in pursuance of these articles. These include the Central Civil Services (Classification, Control and Appeal) Rules (CCS (CCA) Rules) and the Central Civil Services (Conduct) Rules (Conduct Rules). These Rules contain the granular details of the law relating to various aspects of a government service, including but not limited to, the conduct, entitlements, recruitment, termination of employment, and departmental inquiry and punishment of government employees. Different government departments and Public Sector Undertakings ('PSUs') have their own set of Rules specific to the sector. However, such Rules are modelled on the Central Civil Services Rules in most aspects.

While access to employment is essential to ensuring equality and inclusion for members of the queer community, a safe and conducive work environment free from discrimination and harassment is a non-negotiable aspect of the same. This section is recommending additions to the understanding of "misconduct" under the rules and concomitant proceedings, to include workplace harassment or discrimination based on an individual's sexual orientation or gender identity. This measure must be incorporated across all laws regulating services.

Benefit	Issue	Proposed Action	Implementing Authority
Discrimination	The Central Civil Services	<i>Nature:</i> Executive	Department of

Benefit	Issue	Proposed Action	Implementing Authority
based on gender identity and or/sexual orientation as a form of misconduct inviting penalty	<p>(Conduct) Rules, 1964 provide the standards for conduct to be followed by government employees. A violation of these standards amounts to 'misconduct' and action may be taken against a violating employee for such misconduct under the Central Civil Services (Classification, Control and Appeal) Rules.</p> <p>With changes in society and the legal landscape, other behaviours such as sexual harassment at workplace were made part of the Conduct Rules.</p> <p>However, despite Article 15 which prohibits discrimination based on gender identity and sexual orientation, no measures exist to protect queer persons in the public sector.</p>	<p><i>Action: First,</i></p> <p>Addition of Rule 3D to the Central Civil Services (Conduct) Rules, 1964 - Prevention of harassment and discrimination on grounds of sexual orientation or gender identity - No Government Servant shall discriminate against another government servant on the grounds of sexual orientation, or gender identity in accordance with the Transgender Rights (Protection of Rights) Act, 2019, and any other law for the time being in force.</p> <p>No Government Servant shall indulge in any acts of workplace harassment against any individual on grounds of their sexual orientation or gender identity.</p> <p><i>Explanation</i> - "workplace harassment on grounds of sexual orientation or gender</p>	Personnel and Training, the Ministry of Personnel, Public Grievances and Pensions

Benefit	Issue	Proposed Action	Implementing Authority
		<p>identity” means interference with work or creating an intimidating or offensive or hostile work environment targeted at an individual on the ground of their sexual orientation or gender identity or on account of them being in a same sex or same gender relationship.”</p> <p><i>Second,</i> Training and Sensitisation: It is critical for the State to carry out training and sensitisation of all government officials and public servants on rights of queer persons to ensure that they do not engage in discriminatory behaviour. Such training should be carried out in partnership with Civil Society organisations equipped for the task.</p>	
Equal Opportunity Policy for Transgender Persons 2024 ¹⁷⁸	The Policy was formulated by the Ministry of Social Justice and Empowerment and applies only to the employees of the Ministry and	<p>Nature: Executive</p> <p>Action: Extend/Adopt the Equal Opportunity</p>	Department of Personnel and Training, Ministry of Personnel, Public

¹⁷⁸ Ministry of Social Justice and Empowerment, “Equal Opportunity Policy for Transgender Persons’, available at <https://socialjustice.gov.in/writereaddata/UploadFile/67311708075108.pdf>

Benefit	Issue	Proposed Action	Implementing Authority
	<p>its operations. While the Policy is a welcome step as it addresses discrimination and harassment in a government service employment setup, the same must be extended to all such setups and made part of the Conduct Rules.</p> <p>The Policy prescribes a grievance redressal mechanism. However, the mechanism is vague and lacks accountability for the Complaint Officer. The existing service law framework already has a mechanism for dealing with workplace grievances against a government employee through the Central Civil Services (Classification, Control and Appeal) Rules (CCS (CCA) Rules). Accordingly, the grievance redressal mechanism under the Policy may also be aligned with the CCS (CCA) Rules.</p>	<p>Policy for Transgender Persons, framed and issued by the Ministry of Social Justice and Empowerment, to all government services.</p> <p>Align the Grievance Redressal Mechanism under the policy with the Central Civil Services (Classification, Control, and Appeals) Rules, 1965.</p>	<p>Grievances and Pensions, and the Ministry of Social Justice and Empowerment</p>

(d) Affirmative Action in public employment for transgender persons

The Supreme Court in *NALSA* issued directions to the Central and State Governments to ‘take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.’¹⁷⁹ In pursuance of the directions in *NALSA* and the High Court of Karnataka’s order in the case *Sangama by its Director & Anr. v. State of Karnataka & Ors.*,¹⁸⁰ the State of Karnataka passed the Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021 providing 1 percent horizontal reservation to transgender persons in matters of public employment.

Topic	Issue	Proposed Action	Implementing Authority
Horizontal Reservations for Transgender Persons	Despite the direction in <i>NALSA</i> , the Transgender Persons (Protection of Rights) Act, 2019 does not provide for reservations for transgender persons.	<p>Nature: Legislative</p> <p>Action: An amendment to the Transgender Persons (Protection of Rights) Act, 2019 mandating reservations for transgender persons in matters of public employment and education. Relevant Departments at the Central and State level will have to</p>	Ministry of Social Justice and Empowerment; Relevant Departments of the State Government

¹⁷⁹ *NALSA*, Para 129(3).

¹⁸⁰ W.P. No.8511/2020 (EDN-RES) (PIL).

Topic	Issue	Proposed Action	Implementing Authority
		incorporate these processes via relevant rules.	
Complaints Officer	Despite the mandate under section 11 of the Transgender Persons (Protection of Rights) Act, 2019, most establishments - public and private - have not set up a complaints officer.	<p>Nature: Executive</p> <p>Action: A direction to all establishments to set up a complaints officer for handling complaints from transgender employees regarding the violation of the Act. Additionally, rules must be issued to outline the eligibility criteria for such an officer, mandate sensitivity training to ensure they are well-equipped to process complaints from transgender persons, and outline the action they can take in the event of violations of the Act.</p>	Ministry of Social Justice and Empowerment

(e) Informal Sector Reforms

Many transgender persons do not have access to avenues of employment on account of discrimination, including in the informal sector. Thus, they often turn to sex work and vagrancy to earn a livelihood. Often, anti-begging laws and laws on

sex work such as the Immoral Traffic (Prevention) Act, 1961 are used to harass transgender persons who engage in begging or are involved in sex work. It is critical to take steps to address these issues. Additionally, it is crucial to introduce welfare schemes specifically for transgender workers in the informal sectors under the Code on Social Security, 2020 as well as the Transgender Persons (Protection of Rights) Act, 2019.

Topic	Issue	Proposed Action	Implementing Authority
Anti-Vagrancy Legislations	The criminalisation of poverty through anti-vagrancy legislations ends up impacting the most marginalised sections of society, including transgender persons who resort to begging. The High Court of Delhi in <i>Harsh Mander vs. Union of India</i> ¹⁸¹ declared several provisions of the Bombay Prevention of Begging Act, 1959 as extended to the Union Territory of Delhi (now the NCT of Delhi) for criminalising poverty.	Nature: Legislative Action: Repeal legislations such as anti-begging and anti-vagrancy legislations which criminalise begging.	Relevant Department of the Concerned State Government
Protecting rights of sex workers, including transgender sex workers	Addressing the misuse of Immoral Traffic (Prevention) Act, 1961 ('ITPA') to harass sex workers, including transgender sex workers.	Nature: Executive Action: The Ministry of Home Affairs issues circulars concerning the implementation of the ITPA. In Circular	Ministry of Home Affairs

¹⁸¹ AIR 2018 DELHI 188.

Topic	Issue	Proposed Action	Implementing Authority
		<p>No. 14051/14/2011-F.VI,¹⁸² the Ministry directed that the police must adopt a victim centric approach as per the SAARC Convention when dealing with victims of trafficking. It is critical for the MHA to take affirmative steps to ensure that <i>first</i>, sex workers and victims of trafficking are not treated as the same class. <i>Second</i>, given the rampant harassment of sex workers, including transgender persons in sex work, it is critical to ensure that law enforcement officials are trained to protect the rights of sex workers and are held accountable for rights violations. The following measures may be considered:</p> <p>(a) Set up an independent Committee comprising retired judges, sex workers including transgender persons in sex work, bureaucrats, and independent</p>	

¹⁸² Ministry of Home Affairs, 'Office Memorandum no. 14051/14/2011-F.VI', dated May 1st, 2012, available at <https://www.mha.gov.in/sites/default/files/AmdmntAdvForeign-030512.pdf>.

Topic	Issue	Proposed Action	Implementing Authority
		<p>experts to conduct consultations with sex worker unions to identify areas of intervention and reform.</p> <p>(b) Mandate sensitisation and training of law enforcement to mitigate the misuse of ITPA and other laws to harass sex workers.</p> <p>(c) Issue directions to law enforcement to ensure sex workers and victims of trafficking are not subject to arbitrary arrest or forcibly removed against their will.</p> <p>(d) It is also critical to put in place independent accountability mechanisms for grievance redressal in case of misuse of police powers against sex workers.</p>	
Social Security and Employment Schemes for Transgender Persons and	Given the marginalisation of transgender persons from employment and avenues for social security, it is critical for the State to take affirmative measures through passage of appropriate schemes to ensure a	<p>Nature: Executive</p> <p>Action: Two actions are envisaged:</p> <p><i>First</i>, frame social security and</p>	Ministry of Labour and Employment, Ministry of Social Justice and Empowerment, and

Topic	Issue	Proposed Action	Implementing Authority
Transgender Workers	dignified life for transgender persons.	<p>employment schemes targeting transgender persons in pursuance of their mandate under sections 8 and 14 of the Transgender Persons (Protection of Rights) Act, 2019, respectively.</p> <p><i>Second</i>, frame social security schemes under section 109 of the Code of Social Security, 2020 specifically for transgender workers, including self-employed transgender workers.</p>	the Department of Labour and Department of Social Justice, State Governments

Part Four: Education

I. Introduction

The Right of Children to Free and Compulsory Education Act, 2009 ('RTE Act') guarantees free and compulsory education to everyone between the ages of 6 to 14 years. However, education remains inaccessible to many queer persons, owing largely to discrimination in attitudes and infrastructure. This chapter addresses the challenges relating to education for queer students at the primary, secondary and higher education levels (schools,¹⁸³ colleges, and universities¹⁸⁴) under the following themes:

- (a) Discrimination in admission
- (b) Gendered activities
- (c) Infrastructure
- (d) Curriculum
- (e) Peer-led discriminatory behaviour
- (f) Corporal punishment
- (g) School Management
- (h) Mental healthcare

The Supreme Court in *Supriyo* underscored the transcendental relevance of education and its integral importance to achieving the constitutional ideals of justice, equality, and individual development. In light with this observation, legislative and executive actions are recommended to ensure equal access to education for all persons.

¹⁸³ As defined under Section 2(n) of the RTE Act 2005.

¹⁸⁴ As defined under Section 2(f) of the UGC Act, 1956.

(a) Discrimination in Admission

In India, queer students often face systemic barriers to education, starting from the admission process. Discrimination in admissions is a significant challenge, with queer students, particularly transgender individuals, facing issues in being accommodated into educational institutions. Schools and colleges must adopt policies that explicitly prohibit such discrimination and create awareness among admission committees to foster understanding. The 'disadvantaged category' under the Right of Children to Free and Compulsory Education Act, 2009, must include transgender students in its ambit. Additionally, the reservation policies should be introduced for transgender individuals in public education as per the direction issued in *NALSA*. These policies need effective implementation to ensure that they translate into actual opportunities for queer students to access quality education.

Benefit	Issue	Proposed Action	Implementing Authority
Reservation in education	The RTE Act provides for free and compulsory education, and extends reservations to disadvantaged groups under section 12, Transgender students must be allowed to avail the benefit of this provision. Delhi, ¹⁸⁵ Bihar, ¹⁸⁶ Tamil	Nature: Executive Action: Transgender children should be included within the ambit of "child belonging to disadvantaged groups" under Section 12(1)(c) of the RTE Act, 2009 across all States.	Ministry of Education; Department of Education at the State level

¹⁸⁵ Directorate of Education, Delhi, 'Circular No. 1162/66 dated 9 March 2022', (9 March 2022) <https://www.edudel.nic.in/upload/upload_2021_22/1162_66_dt_09032022.pdf>, accessed 18th November 2024.

¹⁸⁶ Department of Education, Bihar, 'RTE Admission 2024-25' (2024) <https://gyandeep-rte.bihar.gov.in/static/media/RTE%20Admission%202024-25_0001.1acd687896860eb755a3.pdf> accessed 18th November 2024.

Benefit	Issue	Proposed Action	Implementing Authority
	Nadu, ¹⁸⁷ and Assam ¹⁸⁸ have already recognised transgender children as a part of 'children under disadvantaged groups' for entitlement to reservation under this provision.	A notification must be issued to include "transgender children" under the definition of "child belonging to disadvantaged group" in Section 2(d) of the RTE Act. This applies to public schools as well as private unaided schools.	
Reservations in public education	The Madras High Court directed the State to provide horizontal reservations in educational institutions and appointments or posts in the services under the State for transgender individuals in Tamil Nadu ¹⁸⁹ in line with the directions of the Supreme Court in <i>NALSA</i> . Affirmative action measures such as reservations are critical for transgender persons to ensure their access to education.	Two actions are envisaged: (a) Nature: Legislative Action: The Transgender Persons (Protection of Rights) Act, 2019 must provide for an enabling provision on reservation in matters of public education across all levels. (b) Nature: Executive Action: State Governments can initiate	For measure (a), the Ministry of Social Justice and Empowerment, and for measure (b) Department of Education at the State level

¹⁸⁷ Tamil Nadu State AIDS Control Society, 'Notification on OVCGOs' (10 July 2021)< <https://tnsacs.in/cmsimage/OVCGOs/10072021080737.pdf>>accessed 18th November 2024.

¹⁸⁸ Government of Assam, 'Notification on Section 12(1)(c)' <https://ssa.assam.gov.in/sites/default/files/swf_utility_folder/departments/ssam_medhassu_in_oid_5/portlet/level_1/files/govt_of_assam_notification_on_section_12_1_c.pdf>accessed 18th November2024.

¹⁸⁹ *Rakshika Raj v State of Tamil Nadu*, W.P.No.6967 of 2022 and W.M.P.No.7002 of 2022.

Benefit	Issue	Proposed Action	Implementing Authority
		policy measures to provide for reservations to transgender students in public education across all levels.	
Discrimination in Hostels	Multiple higher educational institutions lack gender-inclusive access to hostels, particularly for transgender persons. This often leads to people being forced to live in private spaces, which accrues a higher economic cost. A petition <i>Dr Trinetra Haldar Gummaraju v. State of Karnataka & Ors.</i> ¹⁹⁰ highlighted how the petitioner was denied admission to a female hostel although, she had undergone gender-affirming medical procedures. ¹⁹¹ This is violation of the <i>NALSA</i> judgement, where a person's right to chosen gender identity was upheld.	<p>Nature: Executive</p> <p>Action: The Ministry of Education and State Departments of Education must issue an order to all educational institutions to comply with Section 3(g) of the Transgender Persons (Protection of Rights) Act, 2019 and Rule 10 of the Transgender Persons (Protection of Rights) Rules, 2020 to provide transgender students with adequate and inclusive housing facilities in educational institutions.</p>	Ministry of Education; Department of Education at the State level

¹⁹⁰ *Trinetra v State Government of Karnataka*, [2021] 'WP No 19706' < https://clpr.org.in/wp-content/uploads/2022/03/WP-No-19706-of-21-Trinetra-v-State_compressed.pdf > accessed 18th November 2024

¹⁹¹ *Trinetra v State Government of Karnataka*, [2021] 'WP No 19706' < https://clpr.org.in/wp-content/uploads/2022/03/WP-No-19706-of-21-Trinetra-v-State_compressed.pdf > accessed 18th November 2024

Benefit	Issue	Proposed Action	Implementing Authority
Inclusivity in application processes to educational institutions	In a 2021, the Madras High Court mentioned the need for the use of 'transgender' persons in addition to the categories of Male and Female in gender columns in application forms for admission, competitive, and entrance exams, among others. ¹⁹²	<p>Nature: Executive</p> <p>Action: The Ministry of Education and State Departments of Education must issue a directive to include the option for 'transgender person' in addition to M and F in gender columns in application forms for admission, competitive, and entrance exams, etc.</p>	Ministry of Education. Department of Education at the State level

(b) Gendered Activities

Apart from academics, schools and colleges also provide opportunities for non-academic activities such as sports, cultural, and other extracurricular activities. However, these activities are often quite gendered, such as gender-based sports teams, which prevents transgender individuals from having a holistic educational experience and being involved in activities they want to participate in. Therefore, educational institutions should ensure that transgender persons are also able to participate in activities beyond academics.

¹⁹² Sushma v Commissioner of Police, [2021], 'W.P.No.7284 of 2021', <https://translaw.clpr.org.in/wp-content/uploads/2021/08/S_Sushma_v_Commissioner_of_Police.pdf> accessed 18th November 2024

Benefit	Issue	Proposed Action	Implementing Authority
Inclusion of transgender persons in gendered activities in accordance with their chosen gender identity	<p>The Courts in <i>Hina Haneefa V. Muhammed Ashif Alin v. State of Kerala</i> (2021)¹⁹³ and <i>Anamika v. State of Kerala</i> (2022)¹⁹⁴, following the principles laid down in the NALSA judgement, directed to allow transgender persons to participate as per their chosen gender category when competition organisers have not provided a separate category for transgender participants.</p> <p>The University of Calicut has taken steps in this regard and framed a Policy on Transgender Students for:¹⁹⁵</p> <ol style="list-style-type: none"> Inclusive academic, cultural and physical environment Grievance Redressal Gender-sensitive language 	<p>Nature: Executive</p> <p>Action: The University Grants Commission (can issue a directive to all recognised and affiliated institutions to formulate a policy for transgender students that ensures:</p> <ol style="list-style-type: none"> Modification of all application forms, documents and registers with columns to mention the chosen gender identity of students. Equal access to health-related facilities on the campus. Equal access and opportunity in admission, learning, evaluation, extracurricular activities, student unions and other bodies. Use of gender-sensitive 	University Grants Commission

¹⁹³ Hina Haneefa Muhammed Ashif Alin v State of Kerala [2021] <https://translaw.clpr.org.in/case-law/hina-haneefa-muhammed-ashif-alin-v-state-of-kerala/> accessed 19th November 2024.

¹⁹⁴ SCC Online [2022], <<https://www.sconline.com/blog/post/2022/08/01/in-absence-of-special-category-transgenders-should-be-allowed-to-participate-in-their-self-perceived-gender-category-kerala-hc-upholds-transgenders-right-to-equal-participation-in-sports/>> accessed 19th November 2024.

¹⁹⁵ University of Calicut, 'Transgender Policy' <https://dsw.uoc.ac.in/images/Transgender/TG_Policy.pdf> accessed 19th November 2024.

Benefit	Issue	Proposed Action	Implementing Authority
		<p>language (as can be seen in the Supreme Court's Handbook on Combating Gender Stereotypes) in all communication.¹⁹⁶</p> <p>e. Recognition and use of preferred names and pronouns for transgender and gender non-conforming students.</p> <p>f. Participation of transgender/intersex/gender non-conforming students in sports and extracurricular activities in teams that align with their chosen gender identity.</p>	

(c) Infrastructure: uniforms, bathrooms, gendered spaces, boarding schools

Inclusive infrastructure is critical to ensuring that queer students feel comfortable and respected within educational spaces. Schools and colleges need to move beyond binary norms in facilities like uniforms, bathrooms, and boarding accommodations by introducing gender-neutral options. Gendered spaces and activities, such as sports or cultural events, should allow

¹⁹⁶ Supreme Court of India [2023] 'Handbook on Combating Gender Stereotypes', <https://main.sci.gov.in/pdf/LU/04092023_070741.pdf>, accessed 19th November 2024.

participation based on chosen gender rather than assigned sex at birth. This shift will not only affirm the identities of queer students but also encourage their active participation in school life.

Benefit	Issue	Proposed Action	Implementing Authority
Increasing Inclusivity in Schooling Processes	The High Court of Madras, in 2024, directed the Union Ministry of Women and Child Development to implement the revised draft manual by the National Council of Educational Research and Training ('NCERT') for 'Integrating Transgender Concerns in Schooling Processes'. ¹⁹⁷	<p>Nature: Executive</p> <p>Action: Directives to all recognised schools to:</p> <ol style="list-style-type: none"> Allow students to wear uniforms that align with their self-identified gender identity; Transgender inclusive curriculum; Gender-neutral washrooms and changing facilities (in addition to existing ones). 	Ministry of Education, and Ministry of Women and Child Development; Department of Education and Department of Women and Child Development at the State level
Ensuring access to washrooms in a safe and inclusive	Toilets in schools are identified as sites of the least safe spaces for trans students and are sites of harassment and abuse. ¹⁹⁸	<p>Nature: Executive</p> <p>Action: The 'Guidelines on gender issues in sanitation' issued by the</p>	Ministry of Education; Department of Education at the State level

¹⁹⁷ S. Sushma v Commissioner of Police, [2021], 'W.P.No.7284 of 2021', <https://translaw.clpr.org.in/wp-content/uploads/2021/08/S_Sushma_v_Commissioner_of_Police.pdf> accessed 18th November 2024

¹⁹⁸ Priya M., [2024], 'Denying access to restrooms has serious health ramifications for gender nonconforming people', <<https://www.thehindu.com/sci-tech/health/denying-access-to-restrooms-has-serious-health-ramifications-for-gender-non-conforming-people/article68968229.ece>>, accessed 20th November 2024

Benefit	Issue	Proposed Action	Implementing Authority
manner	<p>Although the <i>NALSA</i> judgement upheld the preservation of fundamental rights for the transgender community, the implementation of the inclusivity procedures mentioned has remained stagnant, causing prolonged difficulty in terms of accessibility to safe washrooms. Lack of access to washrooms forces transgender people to use bathrooms that may not correspond with their gender identity. This entails the prevalence of sexual and physical harassment, which further causes psychological distress.</p> <p>The High Court of Madras in 2021,¹⁹⁹ held that schools and colleges must ensure the availability of gender-neutral restrooms for</p>	<p>Ministry of Drinking Water and Sanitation in 2017 clarified that members of the transgender community can use public toilets of the gender they wish to.²⁰⁰ Similarly, guidelines can be issued to implement the same principle in schools and colleges.</p>	

¹⁹⁹ *S. Sushma v. Commissioner of Police*, [2021], 'W.P.No.7284 of 2021', <https://translaw.clpr.org.in/wp-content/uploads/2021/08/S_Sushma_v_Commissioner_of_Police.pdf> accessed 18th November 2024

²⁰⁰ Ministry of Drinking Water and Sanitation, [2017], 'Guidelines on gender issues in sanitation', <<https://jalshakti-ddws.gov.in/sites/default/files/Guidelines%20on%20Gender%20issues%20in%20Sanitation.pdf>>, accessed 20th November 2024

Benefit	Issue	Proposed Action	Implementing Authority
	gender-non-conforming students.		

(d) Curriculum

The material of education often forms the basis of learning for students. The content taught in schools at the primary, secondary or higher levels must incorporate queer-affirmative language and present the lived realities of queer experiences. The content must be made free of stereotypes and inclusive of diverse identities, including issues of intersectionality (such as caste, disability, and class), and these interact with one's gender identity and sexual orientation. Given that the reading material at school often becomes the basis of the child's socialisation and shapes their thoughts and behaviours, it is critical that the stigma and biases are addressed appropriately and promptly.

Benefit	Issue	Proposed Action	Implementing Authority
Building an inclusive curriculum	The High Court of Madras suggested that the Central/State Ministries ensure effective change in curricula of schools and universities to educate students about the LGBTQIA+ community and conduct outreach programs in	<p>Nature: Executive</p> <p>Action: Issue of guidelines to revise curriculums in schools and universities and make them more gender inclusive, following the model given by NCERT in the training material on 'Inclusion of Transgender Children in School Education: Concerns and Roadmap'.²⁰²</p>	Ministry of Education; Department of Education at the State level

²⁰² National Council of Educational Research and Training, [2021], 'Inclusion of Transgender Children in School Education: Concerns and Roadmap', https://clpr.org.in/wp-content/uploads/2022/01/Inclusion_of_Transgender_Children_in_School_Education.pdf.

Benefit	Issue	Proposed Action	Implementing Authority
	collaboration with non-governmental organisations. ²⁰¹	<p>Some of these reforms may include:</p> <ol style="list-style-type: none"> Elimination of bias against transgender persons and queer persons, if any, from the textbooks and other teaching-learning material. Inclusion of material on queer and transgender persons in order to remove prejudices against their gender identity/sexual orientation and to create their positive image through inclusion of texts on achievements of transgender individuals and queer persons, etc. Development of textual and non-textual materials for the promotion of transgender equality, transgender persons as role models and making the curriculum transaction transgender inclusive. 	

²⁰¹ S. Sushma v. Commissioner of Police, [2021], 'W.P.No.7284 of 2021', https://www.livelaw.in/pdf_upload/madras-hc-judgment-on-lgbtqia-rights-394610.pdf.

Benefit	Issue	Proposed Action	Implementing Authority
		d. The curriculum must establish that there are diverse gender identities and sexual orientations; transgender persons also have an identity that they are born with, and that diversity needs to be respected.	
Teachers are trained to be queer-affirmative	It is important for teachers to be sensitised towards being inclusive of queer students during teacher training.	<p>Nature: Executive</p> <p>Action: The Ministry of Education can issue guidelines to include a model on equality, diversity and inclusion within the National Curricular Framework on Teacher Education, 2005 (issued by the National Council on Teacher Education).</p>	Ministry of Education; Department of Education at the State level

(e) Peer-Led Discriminatory Behaviour

Peer-led discriminatory behaviour creates a hostile and unwelcoming environment for transgender students, gender non-conforming students and students who are perceived to be queer or are queer. This behaviour often includes bullying, misgendering, exclusion from social groups, and targeted harassment, which isolates such students and undermines their

mental well-being. The lack of support from peers perpetuates a sense of alienation, discouraging participation in classroom activities and extracurricular programs. Over time, such experiences can result in higher dropout rates among such students, reinforcing systemic barriers to their educational success and perpetuating cycles of marginalization. Addressing this issue requires fostering an inclusive culture, implementing anti-discrimination policies, and educating students about the importance of respecting diverse identities.

Benefit	Issue	Proposed Action	Implementing Authority
Clarifying the ambit of ragging to also include prohibited conduct against queer individuals	The UGC Regulations on curbing the menace of Ragging in Higher Educational Institutions, 2009, while outlining prohibited conduct qualifying as ragging identifies actions which can be construed as safeguards for queer individuals on a liberal reading. ²⁰³ However, except under Regulation 3 clause (g), which prohibits 'homosexual assaults', no other regulation explicitly deals with derogatory conduct on grounds of sexual orientation and gender identity.	<p>Nature: Executive</p> <p>Action: The UGC can issue a clarification regarding the scope of Regulation 3 of 'The UGC Regulations on curbing the menace of ragging in Higher Educational institutions, 2009:</p> <ul style="list-style-type: none"> (a) Regulation 3, which defines ragging, will include all acts of ragging carried out against queer students which adversely affect them in any manner. (b) The term 'homosexual assault' must be removed from 3(g) as there is already a prohibition on 	University Grants Commission

²⁰³ University Grants Commission, [2009], 'UGC Regulation on curbing the menace of ragging in higher educational institutions', <<https://www.ugc.gov.in/oldpdf/ragging/minuterag230409.pdf>>, accessed 20th November 2024; UGC, 'Handbook on UGC Regulations', available at https://www.ugc.gov.in/e-book/UGC_Regulation/mobile/index.html#p=950

Benefit	Issue	Proposed Action	Implementing Authority
		<p>sexual assault, and earmarking a specific community as perpetrators reinforces harmful stereotypes about them.</p> <p>(c) Regulation 3, which defines ragging, will also include the conduct of the defined acts on any virtual, digital or online platform or through any means of communication.</p>	
Including transgender persons in the Student Grievance Redressal Committees	Regulation 5(ii) of the UGC (Redressal of Grievances of Students) Regulations, 2023 mandates that every Institution (as defined under Regulation 3(g) of the same regulation) shall constitute a Students Grievance Redressal Committee (SGRCs). This Committee is supposed to redress grievances of students already enrolled in any institution, as well as those seeking admission to such	<p>Nature: Executive</p> <p>Action: The UGC can issue a notification to include a requirement for at least one transgender person to be a member of the Student Grievance Redressal Committee under Regulation 5 (iii) of the University Grants Commission (Redressal of Grievances of Students) Regulations, 2023.</p> <p>The UGC can also issue a clarification</p>	University Grants Commission

Benefit	Issue	Proposed Action	Implementing Authority
	<p>institutions. The composition of the Committee currently provides for the representation of at least one woman and one person from the SC/ST/OBC category. This Committee must also have representation for transgender persons.</p> <p>Further, the definition of grievances under these Regulations pertains to unfair admissions, improper allocation of seats as per the reservation policy, discrimination against certain communities, harassment of students, etc. Regulation 3(f)(xiv) states as follows: <i>"grievance" means, and includes, complaint(s) made by an aggrieved student in respect of the following, namely</i></p> <p>(xiv) <i>complaints of alleged</i></p>	<p>that these regulations be implemented to protect the rights of transgender students. Further, it can explicitly clarify that under regulation 3(f)(xiv), transgender persons may be included explicitly as a protected category, for the purposes of anti-discrimination protections.</p>	

Benefit	Issue	Proposed Action	Implementing Authority
	<i>discrimination of students from the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Women, Minorities or persons with disabilities categories;</i>		

(f) Corporal Punishment

Students are often subjected to punishment not only for perceived behavioural issues but also for expressing their gender identity such as dress code violations, failing to conform to gender norms, or on account of their sexual orientation. This form of discipline reinforces stigmatisation, leading to feelings of shame, fear, and rejection and creates an environment of fear and distrust, discouraging these students from engaging with educators or seeking help when needed. Eliminating corporal punishment and fostering inclusive, affirming school environments is essential to ensure their safety and well-being.

Benefit	Issue	Proposed Action	Implementing Authority
Prohibiting Corporal Punishment in Schools	The Supreme Court directed the State of National Capital Territory (NCT) of Delhi to ensure that 'children are not subjected to corporal punishment in schools, and they receive education in an	<p>Nature: (a) Legislative, and (b) Executive</p> <p>Action: (a) A separate legislation to address corporal punishment should be introduced with a clear definition of</p>	Ministry of Education; Departments of Education at the State level

Benefit	Issue	Proposed Action	Implementing Authority
	<p>environment of freedom and dignity, free from fear'.²⁰⁴ In 2007, the National Commission for Protection of Child Rights (NCPCR) introduced 'Guidelines for Eliminating Corporal Punishment in Schools'.²⁰⁵ Additionally, no student can be physically punished or mentally harassed on the basis of their chosen gender identity as per Section 17 of the RTE Act.</p>	<p>corporal punishment, keeping in mind the lived experiences of children from various disadvantaged groups, including transgender children. The ambit of such legislation must also cover minority schools from pre-primary and early childhood institutional settings till completion of school education up to higher secondary level.</p> <p>(b) The Ministry of Education and State Department of Education can issue a directive to all recognised schools to implement the guidelines for eliminating corporal punishment in schools, as envisaged by the NCPCR, and that the same will apply to transgender students facing punishment due to their gender identity and clarify that the protection</p>	

²⁰⁴ *Parents Forum for Meaningful Education v. Union of India*, AIR 2001 DELHI 212.

²⁰⁵ NCPCR, 'Guidelines for Eliminating Corporal Punishments in School', available at <https://nimhanschildprotect.in/wp-content/uploads/2021/03/NCPCR-Guidelines-for-elimination-of-corporal-punishment.pdf>.

Benefit	Issue	Proposed Action	Implementing Authority
		of section 17 of the RTE Act also extends to trans persons.	

(g) School Management

Inclusive school management practices are critical to fostering an environment for queer students to feel valued and respected. Teachers must be trained in queer-affirmative pedagogy, incorporating unique and interactive methods to ensure that queer-lived realities are normalised. This pedagogy is needed to address topics of gender and sexuality in a sensitive manner so that the classroom environment is one where all students feel safe to express themselves as they are.

Further, schools must incorporate affirmative hiring practices and build diverse school management committees.

Benefit	Issue	Proposed Action	Implementing Authority
Ensuring that teachers and professionals at the school and university level are queer-affirmative	Teachers often are also sources of discrimination and harassment towards the queer community. Even if queer-affirmative pedagogy is adopted, it will not be realised until those imparting education are trained in queer-affirmative behaviour and proper language.	<p>Nature: Executive</p> <p>Action: The ministry must develop a training program for educators focused on training for inclusive classroom practices and intervening in cases of bullying and harassment.</p> <p>(a) The National Curriculum</p>	National Council for Educational and Research and Training; All India Council for Teacher Education; Ministry of Education and University Grants Commission

Benefit	Issue	Proposed Action	Implementing Authority
		<p>Framework for Teacher Education²⁰⁶ must be updated to incorporate queer-affirmative pedagogy and account for the experiences of students of the queer community.</p> <p>(b) The mandatory teacher training programs must be adopted under <i>Pandit Madan Mohan Malaviya National Mission on Teachers and Teaching Centres</i>, Central Boards of Secondary Education, and All India Council for Teacher Education.</p>	
Creating diverse school management committees to integrate the unique	School Management Committees are responsible for monitoring the working of the school and creating school development plans. A higher inclusion of heteronormative experiences	<p>Nature: Executive</p> <p>Action: Section 21 of RTE Act provides for school management committees consisting with elected representatives of local authorities,</p>	Ministry of Education; Departments of Education at the State level

²⁰⁶ NCTE, [2009], 'National Curriculum Framework for Teacher Education: Towards Preparing Professional and Humane Teachers', https://ncte.gov.in/website/PDF/NCFTE_2009.pdf.

Benefit	Issue	Proposed Action	Implementing Authority
challenges faced by members of the queer community	limits these to an echo chamber and does not allow for queer experiences to be brought to the forefront.	parents or guardians of students in schools to monitor the working of the school, prepare and recommend school development plan and others. The article also provides that proportionate representation will be given to parents or guardians of children belonging to disadvantaged or weaker sections. Further, members of the queer community must be recognised as part of these 'disadvantaged or weaker section'.	

(h) Mental healthcare

Mental healthcare already remains inaccessible due to challenges at the demand (lack of awareness, stigma, poor quality of care, high cost) and supply (lack of adequate mental health professionals and hospital beds, concentration of care in urban areas). This access becomes worse for queer persons, given there remains highly limited.

Section 29(1) of the Mental Healthcare Act, 2017 provides that there should be no discrimination in provision of mental healthcare on any basis, including sex, gender, sexual orientation, religion, culture, caste, social or political beliefs, class, or disability.

Benefit	Issue	Proposed Action	Implementing Authority
<p>Providing accessible, inclusive, and affirmative mental health services to queer individuals. These will improve health-seeking behaviour, address mental health challenges, and even suicidal ideation.</p>	<p>Queer individuals face barriers²⁰⁷ in accessing mental healthcare owing to stigma, lack of awareness and training, and limited access to care. As a result of their identity, queer persons are vulnerable to discrimination and bullying. Such behaviours lead to suicidal ideation and even instances of suicide.²⁰⁸</p>	<p>Nature: Executive</p> <p>Action: Draft comprehensive queer-affirmative guidelines for mental healthcare, which should also include:</p> <ul style="list-style-type: none"> (a) Provision of queer-affirmative mental health services at Adolescent Friendly Health Clinics ('AFHCs'). (b) Training of mental healthcare professionals in a queer-affirmative manner. (c) Mandatory sensitisation programs for mental healthcare professionals such as psychologists, psychiatrists, psychology and counsellors. <p>The development of these guidelines must happen in consultation with the queer community and headed by queer</p>	<p>Ministry of Health and Family Welfare</p>

²⁰⁷ Wandrekar J. et al., [2020], 'What do we know about LGBTQIA+ mental health in India? A review of research from 2009 to 2019', <https://journals.sagepub.com/doi/full/10.1177/2631831820918129>.

²⁰⁸ Mehra K., [2022], 'A gay student's suicide in Faridabad terrifies me. Schools are not safe for queer children', <https://theprint.in/campus-voice/a-gay-students-suicide-in-faridabad-terrifies-me-schools-are-not-safe-for-queer-children/882029/>.

Benefit	Issue	Proposed Action	Implementing Authority
		mental health professionals.	
Creation of safe spaces for queer students to express themselves and find support in a non-judgemental environment	In a study, the Boston Consulting Group, Indian Institute of Management, Ahmedabad, and Pride Circle Foundation found that in colleges with support groups, 21 percent of students were comfortable to share their identity, and this number dropped to below 14 in colleges without support groups. The study also showcases other positive behaviour in colleges with the support groups, such as calling out of discriminatory behaviour, having conversations with their parents on LGBTQIA+ issues, and higher acceptance of LGBTQIA+ persons. ²⁰⁹	<p>Nature: Executive Action</p> <p>Action:</p> <ul style="list-style-type: none"> (a) Instructions must be provided to youth clubs developed under government programs such as National Service Scheme, National Yuva Kendra Sangathan, Bharat Scouts and Guides, to be made queer-affirmative. (b) These youth groups must have programs where real-life experiences of queer students are highlighted through champion stories, plays, and interactive sessions. 	Ministry of Youth Affairs and Sports
Ensuring parents are familiarised	Parents of queer students, either out of misplaced shame or lack of	Nature: Executive	Ministry of Education; Department of Education at

²⁰⁹ BCG Group et al.[2021], 'Fostering Pride in Higher Education: The Road to Inclusion', <https://media-publications.bcg.com/India-fostering-pride-in-higher-education.pdf>.

Benefit	Issue	Proposed Action	Implementing Authority
with queer-affirmative vocabulary	awareness, contribute to discrimination against their child. It is essential to normalise queer identities and experiences and allow space for parents to express their concerns and learn from a safe environment. In a judgement from 2021, the High Court of Madras provided for sensitisation of parents on issues of LGBTQIA+ community and gender non-conforming students at PTA meetings to ensure support from families. ²¹⁰	Action: Develop and conduct sensitisation workshops at schools to foster understanding of gender identity for parents at schools.	the State Level National Council for Educational Research and Training State Council for Educational Research and Training

²¹⁰ S. Sushma v Commissioner of Police, [2021], 'W.P.No.7284 of 2021', https://translaw.clpr.org.in/wp-content/uploads/2021/08/S_Sushma_v_Commissioner_of_Police.pdf.

Part Five: Housing

Introduction

Queer persons and persons in queer relationships face wide-ranging issues in accessing housing and shelter. Where markers of queerness are evident to others, discrimination against queer persons in general manifests in discrimination in leasing or selling of housing. 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.²¹¹

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. For example, many queer persons are forced to seek shelter after leaving or being thrown out from their natal homes - unless shelter home workers are informed about these lived realities, they may unknowingly or knowingly reveal information about such queer persons to family members or relatives, exposing them to further violence or distress.

In this section, we propose steps towards affirmative and anti-discriminatory action to enhance queer persons' access to housing and shelter. This section should be read in conjunction with the section on housing loans and the proposed law on anti-discrimination for our holistic recommendations.

Benefit	Issue	Proposed Action	Implementing Authority
Renting			

²¹¹ Sudipa Das, 'Inside Indian Queer Youths' Struggle to Find Home' (2022), *The Swaddle*, available at <https://www.theswaddle.com/inside-indian-queer-youths-struggle-to-find-a-home>; Kamal Sharma and Mayuri, 'Transgender communities struggle to rent houses and offices', *IDR Online*, available at <https://idronline.org/ground-up-stories/transgender-communities-struggle-to-rent-houses-and-offices/>.

Benefit	Issue	Proposed Action	Implementing Authority
Tenancy benefits for people in non-heteronormative and atypical family structures	<p>Various rent control and tenancy laws allow for the protections available to a tenant to be applicable to other persons as well, in case the tenant dies. The category of persons to whom these benefits can pass varies in different laws.</p> <p>For example, The Delhi Rent Control Act, 1958 says that if a tenant dies, other people related to them through blood, marriage or adoption are deemed to be the tenants. This includes their spouse, their son or daughter, their parents, etc. The family member should further have been living with them at the time of the tenant's death and should have been financially dependent on them.</p> <p>In The Maharashtra Rent Control Act, 1999, this is more restricted. A family member who continues to reside in the rented premises after</p>	<p>Nature: Legislative</p> <p>Action: The definition of tenant should be changed under various tenancy laws, including the Model Tenancy Act, 2021, where required, and rent control laws to account for non-heteronormative relations. Shared residence and financial interdependence should be the tests used to determine to whom tenancy rights pass after the death of a tenant, and this should not include additional criteria such as the person being a family member. Thus, the persons should have been residing continuously for a period of time with the tenant in the premises at the time of their death.</p> <p>This will allow for the accommodation of a variety of atypical family structures.</p>	Ministry of Housing and Urban Affairs and relevant departments of housing and urban affairs at the state level

Benefit	Issue	Proposed Action	Implementing Authority
	<p>the tenant's death is deemed to be the tenant for all purposes. There is no definition of family in the Act, and this provision has been interpreted to be restricted to traditional family structures.²¹²</p> <p>The Model Tenancy Act, 2021, follows a different approach as it does not specify who a tenant is in case of the death of a tenant in the definition of tenant. Instead, the Model Act provides that in case of the death of a tenant, the rights and obligations under the tenancy agreement will be available to their successors. These successors will be determined in accordance with the applicable inheritance laws, which do not recognise atypical families and usually recognise successors based on relatedness by blood, adoption or marriage.</p>		

²¹² *Jaysen Jayant Rele v Shantaram Ganpat Gujar & Ors.*, AIR 2002 Bom 462.

Benefit	Issue	Proposed Action	Implementing Authority
Non-discrimination in access to rental houses and affordable rental housing	Persons from the queer community often face barriers in renting houses based on their identity or their perceived identity. For instance, queer couples are not able to rent houses as couples. However, no protection exists under the law to prevent identity-based discrimination in the renting market.	<p>Nature: Legislative</p> <p>Action: Enact a comprehensive anti-discrimination law that also addresses discrimination against persons from the LGBT+ community in the private renting market.²¹³</p> <p>Please see the section on a comprehensive anti-discrimination law under General Recommendations for more details.</p>	Ministry of Social Justice and Empowerment
		<p>Nature: Legislative</p> <p>Action: Anti-discrimination clauses should be added in various tenancy and</p>	Ministry of Housing and Urban Affairs and relevant departments of housing and urban affairs at the State level

²¹³ See above, the Part on a holistic anti-discrimination law.

Benefit	Issue	Proposed Action	Implementing Authority
		<p>rent control laws and in the Model Tenancy Act, 2021, that prevent landlords from discriminating on the basis of a person's identity, such as their sexual orientation or gender identity or perceived sexual orientation or gender identity, along with other grounds covered under Article 15 such as caste, sex, ethnicity, religion, etc. when renting a house.</p> <p>Such laws should also include an adequate grievance redressal mechanism to investigate and address such cases of discrimination. For example, the Model Tenancy Act, 2021, provides for the designation of Rent Courts and Rent Tribunals (as appellate bodies) in each district. Both landlords and tenants can file grievances in relation to the provisions of the Act before the</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>Rent Court and appeals before the Rent Tribunal.</p> <p>The Act also recommends the designation of an officer not below the rank of district collector as the Rent Authority in each district.</p> <p>This framework may also be utilised for dispute resolution in case of discrimination on the basis of gender identity or sexual orientation.</p>	
Joint Ownership of Houses			
Ability to take joint loans for the purpose of purchasing a house	While any adult persons can co-own property in India as per the Transfer of Property Act, 1882, queer couples and other types of queer families may not be able to apply for joint home loans as policies of banks may require the existence of some form of blood or marital relationship	<p>Nature: Executive</p> <p>Action: To ensure that financial institutions do not impose marital relation or familial relations as a mandatory requirement for availing of a joint loan the RBI can issue a circular to all Banks which</p>	Reserve Bank of India

Benefit	Issue	Proposed Action	Implementing Authority
	between the co-applicants. Such a requirement however is not prescribed by the Reserve Bank of India.	prohibit them from imposing the blanket imposition of such a requirement for access to joint-loans. Banks may pursue ordinary avenues to verify the creditworthiness of joint borrowers.	
Cooperative Housing			
	Various Cooperative Society Acts and bye-laws under them govern cooperative housing societies, the manner of their setting up, membership, etc. in different States. These Acts do not directly mention queer persons or prohibit ownership based on a person's gender identity or sexual orientation. However, these statutes sometimes contain provisions that may end up indirectly impacting queer persons or queer families.	<p>Nature: Legislative</p> <p>Action:</p> <ul style="list-style-type: none"> (a) The legal definition of "family" should be broadened in cooperative society statutes to encompass diverse family structures, including civil unions, queer couples and chosen families. (b) Further, these laws should be amended to remove provisions that may end up 	Department of Cooperation at the State level; Individual cooperative housing societies

Benefit	Issue	Proposed Action	Implementing Authority
	<p>For example, some cooperative societies laws require members from different families to set up a cooperative society. For example, in the West Bengal Cooperative Society Act, 2006 Section 16(3) of the Act stipulates that a cooperative housing society requires a minimum of eight members from different families for registration. The Act defines "family" to include husband, wife, minor sons and daughters, and other dependents, adhering to traditional family structures. This definition may not recognise queer couples or atypical family units, potentially leading to their exclusion from forming or joining cooperative housing societies.</p> <p>Some laws also give wide powers for the refusal of membership of cooperative housing societies or for expulsion of members. For example,</p>	<p>disproportionately impacting queer persons, such as expulsion of members for engaging in immoral activities – a term which is vague, unclear and can be subject to majoritarian interpretations.</p>	

Benefit	Issue	Proposed Action	Implementing Authority
	the bye-laws under the Maharashtra Cooperative Societies Act, 1961 say that a member may be expelled if they use their flat for immoral or illegal purposes habitually. Such a provision may be used to target queer persons disproportionately.		
Housing Schemes			
Queer persons as beneficiaries	Under the current framework, housing schemes are more accessible to traditional family structures centred around heterosexual marriages. Beneficiaries should include other kinds of families and community, including queer couples or transgender families	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> (a) State governments should introduce schemes that recognise diverse beneficiaries, including queer or non-normative couples and family structures. (b) For existing schemes such as PM Aawas Yojana, transgender persons should be included as an eligible 	Ministry of Housing and Urban Affairs and relevant departments of housing and urban affairs at the State level

Benefit	Issue	Proposed Action	Implementing Authority
		category (c) Horizontal reservation should be ensured for transgender persons in State housing schemes	
Affordable housing schemes for transgender persons	States like Maharashtra have introduced affordable housing schemes for transgender persons. This should be replicated throughout the country, without imposing unnecessary documentation or illegal screening requirements to prove one's identity as a transgender person	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> • More schemes should be introduced on affordable housing for transgender persons. This can also be done in pursuance of section 8 of the Transgender Persons (Protection of Rights) Act, 2019 for transgender persons specifically. • There should be clear instructions to prohibit harassment of persons to prove eligibility, in line with the NALSA judgment and 	Ministry of Housing and Urban Affairs and relevant departments of housing and urban affairs at the State level

Benefit	Issue	Proposed Action	Implementing Authority
		the Transgender Persons (Protection of Rights) Act, 2019.	
Shelter Homes			
Queer-friendly shelter homes	Shelter homes run by the government, e.g. municipalities and district administrations, are often exclusionary and violent towards queer persons, and their infrastructure is not queer-friendly.	<p>Nature: Executive</p> <p>Action: The appropriate government should issue directions on the following:</p> <ul style="list-style-type: none"> (a) Making documentation, rooms, toilets, etc. at shelter homes queer-friendly and inclusive of concerns of transgender persons. (b) Training and sensitisation of staff to be sensitive to and inclusive of queer persons, especially the violence or other circumstances that lead to 	<p>Ministry of Housing and Urban Affairs and relevant departments of housing and urban affairs at the State level</p> <p>Ministry of Social Justice and Empowerment and social justice department at the State level</p> <p>Local Level Governments such as municipalities and development authorities</p>

Benefit	Issue	Proposed Action	Implementing Authority
		many queer persons to seek shelter in government homes. This should include training for handling conflicts arising out of such crises.	
Making Garima Grehs safer and more accessible	<p>Garima grehs are a commendable initiative, but there are a few issues in the manner in which they are run:</p> <ul style="list-style-type: none"> • Limited number and inadequate funds • Inadequate security or training to protect residents from violence - either from natal families or others • Requirement of a Transgender Certificate as a 'proof of transgender identity', which leads to unfair access barriers and distress to transgender persons who have escaped their natal 	<p>Nature: Executive</p> <p>Action:</p> <p>The appropriate government should issue directions on the following:</p> <ol style="list-style-type: none"> Establishment of more <i>garima grehs</i> across the country. Removal or increase of the one-year limit for transgender persons' stay at <i>garima grehs</i>. Timely and regular disbursement of funds for covering costs for running <i>garima grehs</i>. Adequate protection, 	Ministry of Social Justice and Empowerment and social justice departments at the State level

Benefit	Issue	Proposed Action	Implementing Authority
	<p>homes, are living in homelessness, or are not open about their transgender identity</p> <ul style="list-style-type: none"> ● One-year limit to stay, which - in the absence of effective rehabilitation measures - is inadequate and causes further distress ● Non-compliance with relevant accessibility standards 	<p>security, and privacy measures to ensure safety of residents, especially from violent natal family members.</p> <p>(e) Removing requirement of a Transgender Certificate as a 'proof of transgender identity' to avail the facilities of the <i>garima greh</i>.</p> <p>(f) Ensuring compliance of <i>garima grehs</i> with relevant accessibility standards so that they are accessible to elderly residents and persons with disability.</p>	
Assisted living facilities			
Queer-friendly assisted living facilities	Elderly queer persons and queer persons with disabilities should be entitled to assisted living facilities, especially given that traditional familial or societal support systems	<p>Nature: Executive</p> <p>Action: The appropriate government should issue directions for the</p>	Ministry of Social Justice and Empowerment and social justice department at the State level

Benefit	Issue	Proposed Action	Implementing Authority
	are denied to them.	<p>following:</p> <ul style="list-style-type: none"> (a) Establishment of assisted living facilities for queer persons with disabilities or of old age, who are unable to earn a livelihood and afford housing (b) Ensuring adequate training, sensitisation, and security for making all assisted living facilities queer-inclusive, ensuring gender-sensitive living quarters, bathroom, changing rooms, etc. 	
Miscellaneous			
Adequate residential arrangements for transgender persons	The Transgender Persons (Protection of Rights) Act, 2019 provides a right to residence for transgender persons under section 12. Transgender persons have a right to reside in the house where their	<p>Nature: Legislative</p> <p>Action:</p> <ul style="list-style-type: none"> (a) The Act should be amended to include a wider range of housing rights and 	Ministry of Social Justice and Empowerment

Benefit	Issue	Proposed Action	Implementing Authority
	<p>parents or their immediate family live and to enjoy and use the facilities there in a non-discriminatory manner.</p> <p>If a parent or immediate family member is unable to care of a transgender person, they can be sent to a rehabilitation centre by court order.</p> <p>This provision suffers from several issues:</p> <ul style="list-style-type: none"> (a) The Act does not make any provision for residential rights for transgender persons apart from the natal home, which is often a site of violence. (b) The Act does not provide a third alternative apart from the family household and a rehabilitation centre. (c) It does not distinguish 	<p>protections for transgender persons, in terms of access to government shelters, affordable housing, access to government housing schemes, etc.</p> <ul style="list-style-type: none"> (b) The Act should be amended to reflect that the only resort for transgender individuals if their family is unable to take care of them should not be rehabilitation centres. Instead, the law should allow them to choose to live in other setups as well, such as the non-traditional structures often present in the transgender community which serve as sites of support and care. (c) Section 12 should be amended to distinguish between minors and adults 	

Benefit	Issue	Proposed Action	Implementing Authority
	between an adult and a minor transgender person.	and not infringe upon adults' autonomy to choose where to live. Additionally, the only scenario in which a court may order removal from the family home should not be when the family is "unable to take care" of the transgender person but should explicitly cover scenarios such as violence against the person.	

Chapter 3

Queer-Affirmative Healthcare

I. Introduction

Healthcare continues to remain inaccessible to queer persons. This is due to discriminatory practices that violate their autonomy and dignity, such as conversion therapies, inadequate access to healthcare services, and lack of inclusion in medical curricula, leading to medical professionals not being trained on queer-sensitive and affirmative care. Research suggests that access to marital rights provides financial and legal benefits to married individuals that lead to improved access to healthcare services.²¹⁴ Denial of marriage equality and linking other rights to one's marital status thus further worsens queer persons' access to healthcare.

The Supreme Court in *Supriyo* drew attention to issues faced by queer persons in healthcare and issued the following directions to the Union, State, and Union Territory Governments in this context:²¹⁵

- (i) Take suitable steps to ensure that queer and/or transgender persons are not subject to any involuntary medical or surgical treatments;
- (ii) take steps to sensitise the public about queer identity, including that it is not a mental disorder;
- (iii) ensure that “treatments” offered by doctors or other persons which aim to change gender identity or sexual orientation are ceased with immediate effect;
- (iv) ensure that intersex children are not forced to undergo operations with regard to their sex, especially at an age where they are unable to comprehend and consent to such operations fully;

²¹⁴ William C. Buffie, Public Health Implications of Same-Sex Marriage’ (2011) 101(6) American Journal of Public Health <<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2010.300112>> accessed 22 December 2024.

²¹⁵ *Supriyo*, Para 149(xi) (As per Bhat J.); Paras 339-a(iii), 339-a(vi), 339-a(vii), 339-1(viii), 340 (As per Chandrachud J.)

- (v) ensure that no person should be forced to undergo hormonal therapy or sterilisation or any other medical procedure either as a condition or prerequisite to grant legal recognition to their gender identity.
- (vi) medical professionals to consult family, next of kin, and next friend in case a person is terminally ill and does not have an Advance Directive²¹⁶. For all purposes, members in a civil union are considered next of kin.

The Court has also directed that the appropriate government under the Mental Healthcare Act, 2017, must design and implement programmes to promote mental health in the country and implement public health programmes to reduce queer suicides in India.²¹⁷

We recommend some pertinent executive and legislative steps to address discrimination, violations of the right to dignity, privacy, and autonomy, and inadequate access to healthcare.

II. Inputs at the Consultation

The consultations had a separate section for healthcare, focusing particularly on the need for an inclusive and equitable healthcare system. Participants discussed the challenges in accessing gender-affirming healthcare which forces people to seek costly and unregulated alternatives, and the need for medical education to incorporate mandatory modules on sexual health, gender identity, and LGBTQIA+ rights. To ensure that medical professionals and the medical system understand and treat queer patients with dignity, participants suggested workshops and training sessions to be conducted. Other suggestions included implementation of The Transgender Persons Act, 2019, non-discrimination of persons living with HIV, ensuring of access to services through the public sector, expanding insurance to queer persons, launch of campaigns to educate people and healthcare workers to address the stigmatisation of PLHIV. In addition to provision of services, participants mentioned the need for mechanisms for financial literacy for the manner to navigate the structures, and removing the ban on blood donation which is applicable to transgender persons, men who have sex with men, and sex workers.

²¹⁶ As laid down under *Common Cause v. Union of India*, advance directives are documents where persons can express their wishes regarding treatment when they are terminally ill and lose decision-making capacity.)

²¹⁷ *Supriyo*, Para 339(b) (As per Chandrachud J.)

III. Discriminatory practices in healthcare:

Queer persons, largely owing to their identity, are subjected to intrusive and unnecessary medical procedures, denial of services, insensitive questioning, and biased treatment from medical professionals. Despite being discredited as pseudoscientific, conversion therapies continue to be practised, especially at informal establishments, and are advertised as 'correcting' the queer person of their gender identity or sexual orientation. Similarly, medically unnecessary surgeries continue to be practised on children with intersex variations. The recommendations of the United Nations Committee for the Rights of Persons with Disabilities noted that the government must take measures to prevent "sex assignment" or "sex normalising surgeries" on intersex children. This has not been implemented in the Indian context.

Further, persons from the queer community, especially transgender persons and men who have sex with men, are not allowed to donate blood under the presumption that they have AIDS, a claim which is unscientific. The inability to access healthcare at par with the rest of the population owing to prejudice and discrimination must be addressed for queer persons to realise physical, mental, and other kinds of well-being.

Benefit	Issue	Proposed Action	Implementing Authority
Ban on conversion therapy to allow persons to live comfortably with their gender identity and/or sexual orientation	Conversion therapies are practices that claim to change or 'normalise' the sexual orientation, gender identity, or gender expression of a person. These span a broad spectrum of physical, mental, emotional, and sexual abuse in the garb of psychiatric treatment and are discredited mainly and	Nature: Legislative Action: Comprehensive anti-conversion law that considers the diverse regulated and unregulated ways in which conversion therapy takes place. Alternatively, conversion therapy can be prohibited under	Ministry of Social Justice & Empowerment and Ministry of Women and Child Development; Ministry of Health & Family Welfare and state health departments; and National Medical Commission

Benefit	Issue	Proposed Action	Implementing Authority
	<p>dangerous. The therapies in practice use psychiatric treatment, religious rituals, and electrical shocks. Minors are highly vulnerable, and conversion therapies are also likely to lead to depression, anxiety, drug use, and suicide.²¹⁸</p> <p>The Madras High Court in 2021²¹⁹ directed the National Medical Commission to classify conversion therapies as professional misconduct.</p> <p>The National Medical Commission and Indian Psychiatric Society²²⁰ have declared that treatments promising to “change” sexual orientation are unscientific, and medical practitioners offering them</p>	<p>The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.</p> <p>Nature: Executive</p> <p>Action:</p> <p><i>First</i>, executive orders and guidelines for all healthcare workers (physical and mental health) directing them to comply with a ban on conversion therapy.</p> <p><i>Second</i>, making all kinds of conversion therapy part of professional misconduct.</p> <p><i>Third</i>, clarificatory orders should be issued under the Mental</p>	

²¹⁸ HRC Foundation, ‘The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity’, <<https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>> accessed 23 December 2024.

²¹⁹ Upasana Sajeev, “Conversion Therapy” For LGBTQ+ Persons Must Be Treated as Professional Misconduct: Madras High Court Directs National Medical Commission’, *Live Law* (2022), <<https://www.livelaw.in/news-updates/madras-high-court-conversion-therapy-as-professional-misconduct-lgbtq-community-203383>> accessed 23 December 2024.

²²⁰ Order - W.P.No.7284 of 2021, available at https://www.livelaw.in/pdf_upload/wp-7284-of-2021-order-dated-02092022-433393.pdf.

Benefit	Issue	Proposed Action	Implementing Authority
	<p>would be charged with professional misconduct.</p> <p>Further, the Mental Healthcare Act, 2017 provides an optimal framework to address forms of conversion therapies that are conducted in India in registered or unregistered mental health institutions and de-addiction centres. Section 3 prohibits determination of mental illness on the basis of social or political non-conformity, or social status of a person that is not directly relevant to their mental health status. Sections 95, 96, and 97 prohibit certain kinds of procedures, restraints, and surgeries that are commonly used in conversion therapies, such as electro-convulsive therapy, physical restraints, etc.</p>	<p>Healthcare Act, 2017 specifying that conversion therapies are in violation of sections 3, 95, 96, and 97 of the Act:</p> <ul style="list-style-type: none"> Mental health institutions and de-addiction centres (and the mental health professionals performing conversion therapies) violate section 3 of the Act when they diagnose queerness as an illness that needs to be cured. This is against current medical and professional standards, and queer persons are diagnosed with an illness solely because they do not conform to dominant social, cultural, or religious norms. If procedures banned or regulated under sections 95, 96, and 97 (including 	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>electro-convulsive therapy, restraints, seclusion, etc.) are performed to “cure” or “convert” queerness, there is clear violation of these provisions.</p> <ul style="list-style-type: none"> There is violation of the precondition of informed consent for admission and treatment, under the Act as well as regulations like the Minimum Standards of Care for Centres Providing Substance Use Disorder Treatment and Rehabilitation, 2018. 	
Ban on medically unnecessary intersex surgeries	Intersex surgeries are procedures that aim to change the genital appearance or reproductive autonomy of an individual with intersex variations. Such surgeries involve reducing or repositioning a	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Executive orders banning medically unnecessary and non-consensual intersex 	Ministry of Health & Family Welfare and state health departments; ICMR, National Council of Clinical Establishments, and

Benefit	Issue	Proposed Action	Implementing Authority
	<p>clitoris (which can result in the loss of sexual sensation), creating or altering a vagina, moving a urethra that already works, and removing organs that would produce hormones (such as gonadectomy, which can result in sterilization).²²¹ These are likely to lead to complications like infertility, chronic pain, sexual dysfunction, and gender dysphoria.</p> <p>Intersex surgeries that are non-lifesaving or medically unnecessary are violative in two ways -</p> <ol style="list-style-type: none"> They are usually conducted in infancy, or while the person is still a minor, therefore there is a lack of consent and a violation of individual autonomy. They artificially enforce binaries of sex and gender. 	<p>surgery.</p> <ul style="list-style-type: none"> Guidelines on what constitutes medically necessary or life-saving intersex surgery. Terming unnecessary intersex surgery as professional misconduct as per the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002. Misconduct under these regulations would invite action from professional bodies like state medical councils and help in supporting claims of medical negligence. 	<p>professional medical associations, and National Medical Commission.</p>

²²¹ Cathren Cohen, 'Surgeries on Intersex Infants are Bad Medicine' (2021), *National Health Law Program*, <https://healthlaw.org/surgeries-on-intersex-infants-are-bad-medicine/>

Benefit	Issue	Proposed Action	Implementing Authority
	<p>The Tamil Nadu government released an order in 2019²²² banning intersex surgeries on infant children.</p> <p>The Supreme Court in <i>Gopi Shankar M. v. Union of India</i>²²³ issued a notice in a PIL raising the need for a central legislation recognising the rights of intersex children and persons.²²⁴ The PIL also sought directions to curb sex-reassignment surgery performed on inter-sex persons before they attain the age of majority.</p> <p>The Delhi Commission for Protection of Child Rights (DCPCR)</p>		

²²² Direction of Madras High Court in W.P. (MD) No. 4125/2019 and 3220/2019, <https://translaw.clpr.org.in/wp-content/uploads/2020/10/Tamil-Nadu-GO-Intersex-Surgery.pdf>

²²³ Anmol Kaur Bawa, 'Supreme Court Issues Notice on PIL Seeking to Recognize Rights Of Inter-Sex Children, Curb Sex Reassignment Surgeries' (2024) *Live Law*, <https://www.livelaw.in/top-stories/supreme-court-issues-notice-on-pil-seeking-to-recognize-rights-of-inter-sex-children-curb-sex-reassignment-surgeries-254598?from-login=502350>

²²⁴ Anmol Kaur Bawa, 'Supreme Court Issues Notice on PIL Seeking To Recognize Rights Of Inter-Sex Children, Curb Sex Reassignment Surgeries' (2024) *Live Law*, <https://www.livelaw.in/top-stories/supreme-court-issues-notice-on-pil-seeking-to-recognize-rights-of-inter-sex-children-curb-sex-reassignment-surgeries-254598>

Benefit	Issue	Proposed Action	Implementing Authority
	<p>opined that the Government of India should ban medically unnecessary sex-selective surgeries on children and infants with intersex variations, except in case of life-threatening situations.²²⁵</p> <p>However, medically unnecessary, and unethical surgeries on infants/children with intersex variations continue taking place in alarming numbers.</p>		
Removing the blanket ban on blood donations for transgender persons, men who have sex with men, and female sex workers to ensure equality and address	In 2017, National Blood Transfusion Council ('NBTC') and National Aids Control Organisation ('NACO') released the Guidelines on Blood Donor Selection and Blood Donor Referral ²²⁶ which guide blood transfusions throughout India. The criteria explicitly put a blanket ban	<p>Nature: Executive</p> <p>Action: Suitably amend clauses 12 and 51 of The Guidelines on Blood Donor Selection and Blood Donor Referral, 2017, to omit categories of 'transgender persons, men who</p>	National Blood Transfusion Council; National Aids Control Organization and Ministry of Health & Family Welfare

²²⁵ Delhi Commission for Protection of Child Rights (DCPCR), 'No.F/DCPCR/20-21/Health & Nutrition/Project File-Vil1//39912 Dated43/1 /2021' (2021) DCPCR, available at https://dcpcr.delhi.gov.in/sites/default/files/DCPCR/pdf_files/intersex_order_dispatched_2.pdf

²²⁶ National AIDS Control Organization, 'Guidelines for Blood Donor Selection and Blood Donor Referral' (2017), available at <http://naco.gov.in/sites/default/files/Letter%20reg.%20%20guidelines%20for%20blood%20donor%20selection%20%26%20referral%20-2017.pdf>

Benefit	Issue	Proposed Action	Implementing Authority
biases due to gender identity and sexual orientation	on 'transgender persons, men who have sex with men, and female sex workers' assuming that these categories will be HIV positive. This is even though all donated blood is tested for HIV. This was challenged in the Supreme Court via <i>Thangjam Santa Singh @ Santa Khurai v. Union of India & Ors</i> ²²⁷ based on the violation of Articles 14, 15, and 21. In response to the Court, the Central Government defended the ban, stating that these categories are at high risk of contracting HIV and Hepatitis B or C ²²⁸ . The guidelines violate multiple fundamental rights and the judgement of the Supreme Court in <i>NALSA v. Union of India</i> .	have sex with men, and female sex workers.	

²²⁷ Supreme Court Observer, 'Constitutionality of Blood Donation Guidelines - Thangjam Santa Singh @Santa Khurai v. Union of India & Ors' available at <https://www.scobserver.in/cases/santa-khurai-v-union-of-india-constitutionality-of-blood-donation-guidelines-case-background/>

²²⁸ The Hindu Bureau, [2023], 'Health ministry backs 2017 guidelines that exclude transgender persons, MSM, female sex workers from donating blood', available at <https://www.thehindu.com/sci-tech/health/health-ministry-supports-2017-guidelines-that-exclude-transgender-persons-msm-and-female-sex-workers-from-donating-blood/article66607022.ece>

Benefit	Issue	Proposed Action	Implementing Authority
Ensuring non-discrimination for persons living with HIV to ensure a stress-free environment when accessing healthcare	<p>Historically, owing to stigma and systemic issues in access to healthcare, the queer community has been disproportionately affected by HIV-AIDS and its impact. This has been exacerbated by the following:</p> <p>Discrimination in healthcare: Multiple healthcare professionals continue to operate on the assumption that persons living with HIV ('PLHIV') deserve their fate.²²⁹ Healthcare institutions are also known to deny admission or treat PLHIVs, with issues like involuntary testing of HIV, segregation of hospital wards, and early discharge without explanation, among others. Discrimination in healthcare settings remains a major obstacle to</p>	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> • Directions on enforcing the HIV-AIDS Act, e.g. provisions on non-discrimination in healthcare, informed consent for HIV testing, etc. • Directions to private insurance companies to amend their schemes and terms and conditions such that persons with HIV/AIDS are not automatically excluded from insurance benefits or made to pay higher premiums. Such terms can instead be tied to the 	<p>Ministry of Health and Family Welfare.</p> <p>Department of Health of State Governments, and Insurance Regulatory and Development Authority of India</p>

²²⁹ Irene Lalruaimawii, Muralidhar Varma Danturulu, Shweta Rai, U.K. Chandrashekar, and Rajesh Radhakrishnan, 'Determinants of stigma faced by people living with Human Immunodeficiency Virus: A narrative review from past and present scenario in India' (2022) Clinical Epidemiology and Global Health 17, <<https://doi.org/10.1016/j.cegh.2022.101117>>, accessed 23 December 2024.

Benefit	Issue	Proposed Action	Implementing Authority
	<p>ending the AIDS epidemic as a public health threat by 2030,²³⁰ as it undermines the ability to reach people with testing, treatment, and other necessary services.</p> <p><i>Discrimination in insurance policies:</i> While the inherent nature of private insurance implies that persons with certain health conditions may have to pay higher premiums or be excluded from certain benefits, having blanket terms for persons living with HIV/AIDS is discriminatory.</p> <p>Most healthcare policies in India cover family members. Given that the determination of family members is dependent largely on the heteronormative structure,</p>	<p>specific health condition of the person beyond their HIV status.</p> <ul style="list-style-type: none"> • Further implementation of the IRDAI circular on HIV and AIDS (Prevention and Control) Act 2017.²³¹ 	

²³⁰ National AIDS Control Organization, 'Handbook on Prevention and Management of Stigma and Discrimination Associated with HIV & AIDS', available at <https://naco.gov.in/sites/default/files/NACO%20Stigma%20Handbook.pdf>.

²³¹ Insurance Regulatory and Development Authority of India, 'IRDAI circular on HIV and AIDS (Prevention and Control) Act 2017', available at <https://irdai.gov.in/document-detail?documentId=389573>

Benefit	Issue	Proposed Action	Implementing Authority
	members of the queer community lack proper access to insurance.		

IV. Affirmative healthcare

The healthcare system must incorporate queer-affirmative structures and language into its caregiving process. This is essential, considering the lack of proper research and training on queer realities makes it difficult for people to access the best possible care. The change must happen at a structural level where an understanding of the queer communities must be considered and incorporated at different levels - from teaching to infrastructure.

Benefit	Issue	Proposed Action	Implementing Authority
Members of the queer community are provided with gender-affirming care.	<ul style="list-style-type: none"> The Transgender Persons (Protection of Rights) Act, 2019 mandates the appropriate government to take measures towards healthcare of transgender persons, especially on gender-affirming care. However, such facilities are unavailable and inaccessible in most states/UTs. There is no uniformity in the 	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Executive orders should be issued to all appropriate governments to comply with Section 15 of the Transgender Persons (Protection of Rights) Act, 2019 with detailed timelines and reporting mechanisms 	Ministry of Health & Family Welfare; Department of Health of State Governments and the National Medical Commission

Benefit	Issue	Proposed Action	Implementing Authority
	<p>guidelines, protocol, or safeguards surrounding gender-affirming care in India, and certain doctors and establishments exploit transgender persons into paying exorbitant amounts of money without following practices that are safe or effective.</p> <ul style="list-style-type: none"> Government health insurance schemes do not provide for benefits pertaining to gender-affirming care, even though such care can be lifesaving for transgender persons. 	<p>to aid the implementation of these orders.</p> <ul style="list-style-type: none"> The National Medical Commission should mobilise the issuance of professional guidelines on diverse forms of gender-affirming care. This would include genitalia surgeries, hormone therapies, and other procedures that work towards affirming the gender of a transgender person. Central and state-level health insurance schemes should expand their benefits packages to include forms of gender-affirming care The appropriate government should also consider putting in place temporary accommodation, either free-of-cost or subsidised, for 	

Benefit	Issue	Proposed Action	Implementing Authority
		transgender persons undergoing gender-affirming care procedures requiring long-term attention or regular visits. This is because, for transgender persons, the decision to undergo gender affirming procedures is often predicated on the access to housing.	
Access to queer-affirmative and affordable mental healthcare	Persons from the queer community, largely owing to their experiences, are likely to face mental health challenges such as anxiety, depression. However, these issues remain unaddressed, considering mental health professionals are not trained to be queer-affirmative and do not have a grasp on the realities of queer intimacies and	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Implement section 18 of the Transgender Persons (Protection of Rights) Act, 2019. The government, in consultation with experts in mental health and queer rights, must develop queer-affirmative guidelines and 	Ministry of Health & Family Welfare and state health departments and National Medical Commission

Benefit	Issue	Proposed Action	Implementing Authority
	experiences. ²³²	<p>sensitisation programs. These workshops must be made mandatory for professionals, including psychologists, psychiatrists, counsellors, etc., through amendments to existing regulations.</p> <ul style="list-style-type: none"> • State Medical Councils, The National Medical Commission and the Indian Nursing Council should also mandate such sensitisation. • The National Mental Health Programme and the Rashtriya Kishor Swasthya Karyakram ('RKSK') should be examined and modified to make mental health services at Adolescent Friendly Health Clinics (AFHCs) queer-inclusive and 	

²³² Anmol Arora, 'Why we need to pay attention to the mental health needs of the queer community' (2021), *Livemint*, available at <https://www.livemint.com/mint-lounge/wellness/why-we-need-to-pay-attention-to-the-mental-health-needs-of-the-queer-community-111633759926932.html>

Benefit	Issue	Proposed Action	Implementing Authority
		<p>queer-affirmative.</p> <p>The development of these guidelines must happen in consultation with the queer community and headed by queer mental health professionals.</p>	
Ensuring adolescent queer persons are provided with adequate mental healthcare	Continuous discrimination places persons from the queer community at risk of higher mental health challenges. Even in schools, reports of bullying, discrimination, and harassment make issues of anxiety and depression common ²³³ . However, accessing mental health care is associated with stigma and lack of awareness. This becomes worse in the case of queer persons given the limited resources that are queer-affirmative.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Programmes under the National Mental Health Programme such as the Rashtriya Kishor Swasthya Karyakram ('RKSK') should be examined and modified to make sex education and counselling services at Adolescent Friendly Health Clinics ('AFHCs') queer-inclusive and queer- 	Ministry of Health & Family Welfare, and Department of Health of State Governments

²³³ UNESCO, 'New study on bullying based on sexual orientation and gender identity in schools in Tamil Nadu, India', available at <https://www.unesco.org/en/articles/new-study-bullying-based-sexual-orientation-and-gender-identity-schools-tamil-nadu-india>

Benefit	Issue	Proposed Action	Implementing Authority
		affirmative.	
Access to HIV/AIDS care	Despite dedicated programmes on HIV/AIDS under the National Health Mission, access to healthcare, including prophylactic drugs and therapeutic care, remains limited. Apart from issues of access and availability, stigma and discrimination further alienate queer persons from HIV/AIDS care.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> • Directions should be issued for regular audits of healthcare establishments, including primary and community health centres, regarding the availability of preventive and curative care for HIV/AIDS. • Directions should be issued for collaborations among CSOs and frontline workers to ensure awareness and outreach programmes. • Sensitisation and training programmes for all healthcare workers regarding sensitive and non-discriminatory handling of persons living with 	Ministry of Health and Family Welfare and Departments of Health of State Government

Benefit	Issue	Proposed Action	Implementing Authority
		HIV/AIDS.	
Nomination of healthcare representative of choice	<p>In India, supported decision-making, i.e. decisions made on behalf of a person who does not have decision-making capacity by a nominee/representative chosen by that person, finds a place in law in limited contexts. A nominee, representative, or surrogate decision-maker can be chosen only in the case of persons with disabilities, mental health decisions, or end-of-life care decisions.</p> <p>For general healthcare decisions, in practice, treating teams defer to the opinions of persons related by blood or marriage. This may not be ideal in all scenarios, especially if a person has strained relationships with their family or they do not know or share their values and choices. This is particularly pertinent for queer persons, many of whom face</p>	<p>Nature: Legislative and Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Issue directions to all healthcare establishments and medical practitioners to respect a patient or healthcare user's choice of emergency contact or surrogate decision-maker to contact and consult in emergent situations or when the patient or healthcare user does not have decision-making capacity Issue directions to all healthcare establishments and medical practitioners to include non-normative families within their understanding of 'family' or 'kin', in case it is not possible 	Ministry of Health & Family Welfare and Department of Health of State Governments

Benefit	Issue	Proposed Action	Implementing Authority
	<p>violence or alienation from their families and/or may want to choose non-married partners or chosen family members for taking decisions on their behalf.</p>	<p>to ask the patient or healthcare user directly about their choice of nominee.</p> <ul style="list-style-type: none"> • Issue directions to healthcare establishments to put in place end-of-life care policies that are inclusive of non-normative partners and family/friends, in line with the 'Guidelines for End of Life Care, AIIMS, New Delhi',²³⁴ • Enforce comprehensive legislation on mental capacity to replace the current inadequate and fragmented framework. This legislation should provide for nominating any person of choice as a surrogate decision-maker for 	

²³⁴ AIIMS New Delhi, 'Guidelines for End of Life Care, AIIMS, New Delhi', available at <https://aiims.edu/images/pdf/notice/irch-9-3-20.pdf>.

Benefit	Issue	Proposed Action	Implementing Authority
		<p>healthcare decisions (as well as for other kinds of decisions) - preferably with options to nominate different people for different kinds of decisions.</p> <ul style="list-style-type: none"> Healthcare power of attorney laws, similar to those in place in the United States of America, can also be considered in the Indian context.²³⁵ These laws authorise a durable power of attorney for health care, a legal document that gives any other person the authority to make a medical decision for an individual. Issue provisions through the National Digital Health Mission for people to nominate a healthcare 	

²³⁵ Cornell Law School, 'Durable power of attorney for healthcare', available at https://www.law.cornell.edu/wex/durable_power_of_attorney_for_health_care

Benefit	Issue	Proposed Action	Implementing Authority
		power of attorney or to make a digital advance directive for all kinds of healthcare decisions.	
Queer-inclusive health research	Research and development in healthcare has historically been restricted to the concerns of privileged demographics, mostly cis-gendered men of a certain class. This ends up excluding health concerns and experiences of other categories of persons, leading to their neglect in the healthcare ecosystem.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Research guidelines of organisations such as The Indian Council of Medical Research (ICMR) should incorporate further focus on the health of queer persons. This can include incentivising research on issues disproportionately concerning queer persons, including diverse queer experiences in tests and trials, etc. Such research should also be incentivised in medical 	Ministry of Health & Family Welfare, Department of Health of State Governments, and Indian Council for Medical Research

Benefit	Issue	Proposed Action	Implementing Authority
		colleges to orient medical professionals towards important queer-centric issues without unscientific pathologisation of their identities while including queer persons as equal participants in such research.	

V. Dignity and privacy in healthcare

Members of the queer community additionally face a lack of privacy and dignity while accessing healthcare. The stigma and prejudice faced by them while accessing certain kinds of healthcare, such as HIV/AIDS care, manifests in the violation of such other rights. This is largely due to the lack of provisions in the legal system to account for the challenges faced by members of the queer community, their implementation, or provisions of adequate grievance redressal mechanisms. This leaves queer people vulnerable to such associated violations.

Benefit	Issue	Proposed Action	Implementing Authority
Protecting HIV data of persons	Existing provisions of the Information Technology Act, 2000 ('IT Act') and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('IT Rules') cannot be said to adequately protect queer persons from hate speech on digital platforms due to both structural and enforcement gaps. Firstly, Section 69 A of the IT Act, which empowers the government to block access to certain types of content, is an unreliable tool to tackle queer-phobic speech by	<p>Nature: Legislative</p> <p>Action:</p> <ul style="list-style-type: none"> Amendment to rule 3(1)(b) of the IT Rules - <ul style="list-style-type: none"> Add specific references to discrimination or hate speech against individuals or groups based on their sexual orientation and gender identity in categories of prohibited content. Broaden the definition of 'harmful' and 'harassing' to include 	Ministry of Electronics and Information Technology

Benefit	Issue	Proposed Action	Implementing Authority
	<p>virtue of not recognising the same. Secondly, Rule 3(1)(b) of the IT Rules outlines categories of prohibited content, including material that is 'harmful', 'harassing' or 'discriminatory'.</p> <p>However, these categories do not specifically recognise hate speech or discrimination based on sexual orientation or gender identity. As a result, platforms can interpret these terms narrowly, leaving out queer-phobic content unless it explicitly incites violence. Moreover, the grievance redressal mechanisms under the IT Rules are ill-equipped to handle queer-specific issues. Grievance officers often lack training on LGBTQIA+ rights and are unable to identify subtle or coded forms of queerphobia, such as derogatory memes, misgendering, or</p>	<p>subtle forms of queerphobia, such as misgendering or derogatory content.</p> <p>Nature: Executive</p> <p>Action: Structural reform through</p> <ul style="list-style-type: none"> ● Mandate the training of grievance officers on LGBTQIA+ rights and sensitization to identify queer-phobic content, including coded and indirect hate speech. ● Introduce specialised LGBTQIA+ liaisons or consultants in grievance mechanisms to ensure culturally competent handling of complaints. 	

Benefit	Issue	Proposed Action	Implementing Authority
	microaggressions. This can lead to the inconsistent application of rules.		
Ensuring protection of healthcare-related data	The Digital Personal Data Protection Act, 2023 ("DPDP Act") does not adequately protect the personal data of queer persons. It establishes a notice and consent regime, and allows for certain rights to Data Principals, and imposes duties on Data Fiduciaries. However, it does not, for instance, restrict the aggregation of information which may lead to disclosure of the sexual orientation or gender identity of a person. Unlike other data protection regimes in Europe, Canada, South Africa, Brazil, and some of the states in the United States, the Indian data protection law does not recognize sexual orientation or gender identity as a	<p>Nature: Legislative</p> <p>Action:</p> <ul style="list-style-type: none"> Amend DPDP Act to further regulate some types of processing: While the DPDP Act has explicitly dropped the categorisation of some personal data as sensitive personal data as opposed to previous proposals for data protection law in India, a legislative intervention which prohibits the processing of personal information which could reveal the gender identity or sexual orientation of an individual would protect queer persons from privacy 	Ministry of Electronics and Information Technology

Benefit	Issue	Proposed Action	Implementing Authority
	<p>specific class of 'sensitive' personal data, which requires additional protection. This also leaves queer persons open to targeted advertising by implicitly 'outing' them since there is no protection similar to Europe's Digital Services Act which has been extended in India. Particularly, since health information has not been awarded a special degree of protection either under the DPDP Act, queer persons may be further vulnerable in online spaces.</p>	<p>harms, including targeting advertising, while also retaining the legislative intent behind not recognizing a special category of data.</p> <ul style="list-style-type: none"> Amend the DPDP Act to require platforms to conduct risk-assessment specifically in the context of the gender identity and sexual orientation of persons, including an assessment of if the processing of personal data has led to discriminatory conduct based on these grounds. <p>Nature: Executive</p> <p>Action: Currently, there are no official studies undertaken by the Government of India that can explore the different ways in which</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		the privacy of queer persons is at risk in digital spaces. It is imperative that a detailed investigation be conducted to explore the different harms which queer persons encounter/can encounter as a result of the DPDP Act's existing structure and explore the need for additional legislation that strengthens the privacy of queer persons. Executive orders should be issued in this regard, along with detailed guidance, timelines, and allocation of responsibilities.	

VI. Systemic measures in healthcare

Healthcare providers often hold outdated and prejudicial views about the queer community, leading to judgemental attitudes, refusal to provide care, and improper treatment. Apart from fundamental access issues, such experiences lead to feelings of shame and even to mental health challenges such as anxiety and depression. The systemic inequality and inaccessibility of care often lead to poor health-seeking behaviour. As a result, queer persons are often forced to access healthcare from quack doctors or private establishments where the cost of healthcare is high, which is neither safe nor sustainable.

Benefit	Issue	Proposed Action	Implementing Authority
Building queer-inclusive healthcare establishments to ensure easy access to healthcare at all levels.	<i>Infrastructure:</i> Hospital establishments continue to cater primarily to heterosexual individuals. Queer bodies and identities are not reflected in hospital admission forms or other medical records.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Executive orders should be issued to all healthcare establishments to make their infrastructure transgender persons inclusive. Indian Public Health Standards (IPHS) guidelines, rules under regulatory laws like the Clinical Establishments (Registration and Regulation) Act, 2010 and accreditation standards issued by the National Accreditation Board for Hospitals & Healthcare Providers ('NABH') should include factors like transgender person inclusive forms, bathrooms, wards, changing rooms, etc., as 	Ministry of Health & Family Welfare and state health departments; Clinical establishments regulatory bodies and Accreditation authorities such as National Accreditation Board for Hospitals & Healthcare Providers

Benefit	Issue	Proposed Action	Implementing Authority
		necessary conditions for licenses and accreditation.	
Ensuring healthcare workers are queer-affirmative.	Healthcare workers are not trained to interact with queer persons, leading to discrimination, use of derogatory language, and poor health-seeking behaviour.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> ● Horizontal reservation to ensure transgender representation among medical/nursing students and healthcare workers in the public sector, in compliance with the <i>NALSA</i> judgement. ● Mandatory training and sensitisation of all hospital workers and community health workers on queer-sensitive behaviour with patients and their families/friends/partners. 	Ministry of Health and Family Welfare and Departments of Health of State Government
Modifying medical curricula	Medical education remains largely in the binary genders of male and	Nature: Executive	Ministry of Health & Family Welfare and

Benefit	Issue	Proposed Action	Implementing Authority
	<p>female. This leads to queer persons, especially persons from transgender and intersex communities, being refused treatment.</p> <p>The Transgender Persons (Protection of Rights) Act 2019 provides for the government to review the medical curriculum and research for doctors to address specific health issues of transgender persons.</p>	<p>Action:</p> <ul style="list-style-type: none"> An expert committee consisting of queer and queer-affirmative medical professionals and educators should be set up to comprehensively analyse medical curricula followed in this country to address instances of stigmatisation, unnecessary pathologization, or inadequate emphasis pertaining to identities and healthcare of queer persons. 	<p>state health departments; National Medical Commission; Under-Graduate Medical Education Board and the Post-Graduate Medical Education Board</p>

VII. Making health laws queer inclusive

The language of health laws remains largely in the binary genders, excluding concerns of transgender persons. While the protection of women is essential and required to ensure safety and equal rights, the language must be updated to incorporate queer individuals and their concerns and rights relating to healthcare.

Benefit	Issue	Proposed Action	Implementing Authority
Clarifications regarding laws like the Medical Termination of Pregnancy Act, 1971 and the Assisted Reproductive Technology (Regulation) Act, 2021, and others	Health laws in India are entrenched in traditional gender binaries. Among other issues, this reduces persons to essentialist perceptions of sex and gender - for example, transgender persons are either misgendered or find it difficult to access healthcare or rights pertaining to ovo-uterine systems.	<p>Nature: Executive</p> <p>Action:</p> <ul style="list-style-type: none"> Executive direction to clarify that references to 'woman' in these Acts would include any person who identifies as one, and 'pregnancy' and other terms pertinent to conception, pregnancy, or termination would apply to anyone who is medically able to be pregnant. This recommendation should be read in conjunction with the proposed action on parenthood in the Chapter on Relationships and Parenthood of these submissions. 	Ministry of Health & Family Welfare and Department of Health of State Governments

Chapter 4

Prevention and Prohibition of Violence

I. Introduction

Violence against queer persons at the hands of their natal family, society and the police machinery is well documented and has been noted by courts as well.²³⁶ Queer persons often feel apprehension in approaching law enforcement on account of being subject to harassment and humiliation at the police station and a refusal on their part to register complaints. Such violence often stems from deep rooted prejudice, homophobia and transphobia on part of the police, and a lack of sensitisation. Often queer couples have to approach courts in order to seek protection orders against violence and harassment.

Despite constitutional guarantees of equality and dignity, queer individuals frequently endure stigma, marginalisation, and violence that not only violates their fundamental rights but also perpetuates cycles of oppression and exclusion. This violence manifests in varied forms and intensities, often influenced by the sources from which it emanates.

Broadly, violence against queer persons can be categorised into three interrelated domains:

- (a) **State and societal violence:** This includes institutionalised discrimination, police brutality, harassment, and denial of access to public spaces, healthcare, and education. Societal violence encompasses hate crimes, bullying, and public humiliation rooted in pervasive homophobia and transphobia.

²³⁶ See, *Navtej Johar vs. Union of India* 2018 INSC 790; *Supriyo aka Supriya Chakraborty vs. Union of India* 2023 SCC OnLine SC 1348 ("Supriyo"); *NALSA vs. Union of India* 2014 INSC 275; *Sappho for Equality, Nazariya, PUCL, SAATHI, Hasrat-E-Zindagi Mamuli, 'Apnon Ka Bahut Lagta Hai: Our Own Hurt us the Most'*, available at <https://www.sapphokolkata.in/news-desk-details/our-own-hurt-us-the-most-centering-familial-violence-in-the-lives-of-queer-and-trans-persons-in-the-marriage-equality-debates>.

- (b) **Natal family violence:** For many queer individuals, the family—a space traditionally perceived as a source of security—becomes a site of coercion, emotional abuse, and physical violence. Practices such as conversion therapy, curative rape, and forced marriages are particularly harrowing manifestations of natal family violence.
- (c) **Intimate partner violence and sexual violence:** Queer individuals are not immune to violence within intimate relationships, including domestic abuse, controlling behavior, and sexual violence. The lack of legal recognition for many queer relationships exacerbates vulnerabilities and limits access to justice.

The Supreme Court of India has taken note of the violence persons from the LGBTQI+ community face. In *Supriyo*, the Supreme Court has noted that LGBTQI+ persons face violence both on account of their gender identity/sexual orientation as well as on account of being in queer relationships. Such violence can be at the hands of the natal family as well as State agents such as the police. The Court has explicitly directed that there is a duty on the State to ensure that the choice exercised by queer couples to cohabit is not interfered with and they are not subject to any violence or coercion.²³⁷ Specifically, it has directed the State to: (a) establish a hotline that queer people can contact when faced with harassment and violence, and (b) establish and publicise safe houses in all districts to provide shelter to members of the queer community who are facing violence or harassment.²³⁸ Further, the Court has issued instructions to the police machinery to not subject queer persons and queer couples to harassment, to ensure that they are not forced to return to their natal families, to extend protection to them in the event of apprehension of violence, and to carry out an inquiry to determine whether a cognisable offence is made out before registering a FIR against a queer couple or one of the partners in a queer relationship.²³⁹

This chapter seeks to build on these legal and judicial developments by proposing comprehensive measures to address violence against queer persons.

²³⁷ *Supriyo*, para 149 (xi) (per Bhat J.).

²³⁸ *Supriyo*, para 339 (a)(iv) &(v) (per Chandrachud J.).

²³⁹ *Supriyo*, Para 340 (per Chandrachud J.)

II. Inputs at Consultation

The first consultation in Delhi gave us insight into the various forms that identity-based violence can take and the systemic difficulties faced in the process of seeking redress. Participants shared wide and varied personal accounts of their experiences in interacting with State machinery, experiencing violence at the hands of natal families and police personnel, and the limitations of existing courses of redress such as the non-functioning of helpline numbers. The second consultation in Mumbai gave us particular insight into the violence existing at the intersection of queerness and other forms of marginalisation, such as caste or disability. The third consultation in Jaipur gave us insight into the need for holistic care and protection to be afforded to survivors of violence, sexual and otherwise, to enable recovery and rehabilitation.

Particular inputs from the three consultations which have been incorporated into our recommendations relating to the prevention and prohibition of violence relate to the formulation of quick response teams to holistically assist queer persons in distress or danger, operationalised helplines for easy access to support services, and the expansion of legislative protections to be inclusive of queer persons and queer relationships (such as including persons in queer relationships within the ambit of the domestic violence framework).

III. Measures to combat state violence against queer persons.

Benefit	Issue	Proposed Action	Implementing Authority
Protection against violence from state machinery	<p>Queer persons are often subjected to violence at the hands of the state machinery---be it in the form of anti-beggary laws that target transgender persons, custodial violence or instances of targeted attacks by the police.</p> <p>A study conducted by the National Institute of Epidemiology in 2016²⁴⁰ showed that the police and other law enforcement agencies are the biggest perpetrators of violence against transgender persons.</p> <p>The Supreme Court too has recognised this issue. In <i>Navtej Johar v Union of India</i>,²⁴¹ the Court directed that all government</p>	<p>Nature: Legislative</p> <p>Action: An amendment to the Police Act, 1961 and the relevant State police laws which prohibit the police from harassing persons belonging to the queer community and persons or organisations working for the welfare of the queer community. This can be framed along the lines of the Tamil Nadu Subordinate Police Officers' Conduct Rules, which prohibits harassment of LGBTQI+ persons by the state police.²⁴³</p> <p>Violation of this provision should be penalised with fines and imprisonment, like under Section 3(vii) of the Scheduled Castes and</p>	Ministry of Home Affairs; Department of Home for States

²⁴⁰ 'Police harass transgender persons most, study says', Times of India, available at <<https://timesofindia.indiatimes.com/city/chennai/police-harass-transgenders-most-says-study/articleshow/51869919.cms>>.

²⁴¹ 2018 INSC 790.

²⁴³ Amendment to the Tamil Nadu Subordinate Police Officers' Conduct Rules, available at <https://www.stationeryprinting.tn.gov.in/gazette/2022/7_III_1a.pdf>.

Benefit	Issue	Proposed Action	Implementing Authority
	officials, especially the police, should be given sensitisation and awareness training. However, this has not been enforced in reality and has not been institutionalised. Where training has been done, it has been in an ad hoc manner and at the behest of civil society organisations.	Scheduled Tribes (Prevention of Atrocities) Act, 1989.	
	Apart from this, complaints filed by queer persons are often not taken seriously and are dismissed or they are subjected to intrusive questioning and humiliation when they do end up approaching law enforcement. ²⁴² Due to this, LGBTQI+ persons are not able to utilise state machinery to address the violence perpetrated against them.	<p>Nature: Executive</p> <p>Action: An amendment to relevant State police service rules wherein non-registration of complaints by queer persons who are facing violence/harassment or threat of violence on account of their gender identity, sexual orientation or for being in a queer relationship, is deemed to be an act of deliberate negligence or misconduct which</p>	Department of Home for States

²⁴² 'India's LGBTQI+ struggle: beyond legal victories, battle for true equality remains', Centre for Justice and Peace, available at <https://cjp.org.in/indias-lgbtqia-struggle-beyond-legal-victories-battle-for-true-equality-remains/>.

Benefit	Issue	Proposed Action	Implementing Authority
		warrants appropriate departmental and disciplinary action.	
		<p>Nature: Executive</p> <p>Action: Sensitisation on issues faced by queer communities should be made part of the training curriculum for police personnel and other law enforcement agencies.</p> <p>Training workshops should be conducted with the police machinery to sensitise them about the queer community and the challenges they face. Such workshops should be mandatory</p>	Ministry of Home Affairs; Department of Home for States

Benefit	Issue	Proposed Action	Implementing Authority
		and included in the initial police training process and conducted at regular intervals. Partnerships with Civil Society Organisations that work in this sector should be considered for developing training modules as well as conducting the workshops.	
		<p>Nature: Executive</p> <p>Action: An executive order and directives should be issued to the police machinery in line with the directions in <i>Supriyo</i> and other relevant judgements such as <i>Lata Singh vs. State of UP</i>²⁴⁴ and <i>Shakti Vahini vs. Union of India</i>.²⁴⁵ These directions should include the following:</p> <p>(1) No police officer will harass</p>	Executive Magistrates; Secretaries, Department of Home for States

²⁴⁴ (2006) 5 SCC 475.

²⁴⁵ [2018] 3 S.C.R. 770.

Benefit	Issue	Proposed Action	Implementing Authority
		<p>queer persons or persons in queer relationships by summoning them to the police station or visiting their place of residence solely to interrogate them about their gender identity or sexual orientation;</p> <p>(2) No police officer will force any adult queer person to return to their natal family against their wish.</p> <p>(3) When a police complaint is filed directly by queer persons or by other persons acting in good faith alleging that the family of the queer person is restraining such person's freedom of movement, the police will, upon verifying the genuineness of the complaint, take action to ensure that the queer person's freedom is not curtailed.</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>(4) When a police complaint is filed apprehending violence from the family or otherwise, for the reason that the complainant is queer or is in a queer relationship, the police will, upon verifying the genuineness of the complaint, ensure due protection, and place such persons in shelter homes including <i>garima grehs</i> subject to their consent.</p> <p>(5) In the event of violence against queer persons on grounds of their sexual orientation and/or gender identity or on account of them being in a queer relationship, the police will ensure that effective and speedy investigation of the crime is carried out and appropriate action is taken and provide protection when necessary.</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>Nature: Executive</p> <p>Action: Designating a separate law enforcement unit for dealing with complaints relating to queer persons. This unit should comprise different levels of officials from amongst the current law enforcement officials itself. These officials will be the first responders in case of complaints that are lodged in relation to issues faced by LGBTQI+ persons. Irrespective of the source of such complaints, the members of this unit should first be tasked with handling and resolving such complaints.</p> <p>The unit should have a liaison officer between the LGBTQI+ community and the police departments, to help persons filing complaints navigate the legal system and build trust.</p>	Department of Home for States

Benefit	Issue	Proposed Action	Implementing Authority
		Ideally, queer persons must be affirmatively hired and trained for such positions.	
		<p>Nature: Executive</p> <p>Action: Trust-building with the LGBTQI+ community as well as integration of relevant civil society members with the law enforcement system should be undertaken in the following ways:</p> <p>(a) Relevant people such as social workers, counsellors, and NGOs working in the area of LGBTQI+ rights should be integrated with the law enforcement system.</p> <p>(b) Standard operating procedures that involve NGOs and mental health professionals in cases related to LGBTQI+ persons, ensuring comprehensive</p>	Department of Home for States

Benefit	Issue	Proposed Action	Implementing Authority
		support, should be laid down. (c) Joint community programs should be organised to build trust between law enforcement and queer communities, to encourage reporting of crimes without fear of discrimination.	

IV. Measures for the protection of queer couples

Benefit	Issue	Proposed Action	Implementing Authority
Proper handling of complaints against adult queer persons in consensual relationships and other forms of violence faced	Violence against queer persons by the State, the natal family, and broader society often arises after one chooses a partner of the same sex/gender, or an openly queer or transgender partner. This frequently results in acts of violence, threats of violence, wrongful confinement to prevent consensual cohabitation, or attempts at honour killing against	Nature: Executive Action: An executive order should be issued to the police machinery in line with the directions in the <i>Supriyo</i> and other relevant judgements such as <i>Lata Singh vs. State of UP</i> , <i>Shakti</i>	Executive Magistrates; Secretaries, Department of Home for States

Benefit	Issue	Proposed Action	Implementing Authority
as a couple	the couple. ²⁴⁶ The police also often tend to turn a blind eye to such violence, and also to false kidnapping or abduction charges by the natal family. ²⁴⁷ Sometimes, they force the couple to return to their natal family as well against their will. ²⁴⁸	<p><i>Vahini vs. Union of India</i>²⁴⁹, <i>S Sushma v Commissioner of Police</i>.²⁵⁰ These directions should include the following:</p> <p>(a) Prior to registration of an FIR against a queer couple or a person in a queer relationship (in the event that the FIR is sought to be registered in relation to their relationship), the police will conduct a preliminary investigation in the manner detailed below to ensure the complaint discloses a cognisable offence. The police will determine:</p> <p>a. If the person(s) against whom the complaint is filed is of age</p>	

²⁴⁶ Divya Arya, 'India LGBT couples: 'My parents were ready to kill me for their honour'', BBC News, available at <https://www.bbc.com/news/world-asia-india-66245194>.

²⁴⁷ 'India's LGBTQI+ struggle: beyond legal victories, battle for true equality remains', Centre for Justice and Peace, available at <https://cjp.org.in/indias-lgbtqia-struggle-beyond-legal-victories-battle-for-true-equality-remains/>.

²⁴⁸ 'India's LGBTQI+ struggle: beyond legal victories, battle for true equality remains', Centre for Justice and Peace, available at <https://cjp.org.in/indias-lgbtqia-struggle-beyond-legal-victories-battle-for-true-equality-remains/>.

²⁴⁹ [2018] 3 S.C.R. 770.

²⁵⁰ W.P. No. 7284 of 2021.

Benefit	Issue	Proposed Action	Implementing Authority
		<p>of majority, and</p> <p>b. If the person(s) is of age of majority and they are in the relationship consensually or have left their natal home voluntarily, then the police will close the complaint after recording a statement to this effect.</p> <p>(b) In cases where a complaint is received regarding a missing person, and subsequent investigation reveals that it involves consenting adults from the queer community, the police should promptly close the complaint after obtaining their statements, ensuring that no harassment is inflicted upon them.</p> <p>(c) The police should respect the autonomy of adult queer persons and not force them to</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>return to their families.</p> <p>(d) The police should take mandatory protective action to protect individuals who marry or live together against their families' or communities' wishes. Police protection should be provided to such couples in cases of any danger or threat being posed to their life.</p> <p>(e) Couples who are under threat of violence should be sent to shelter homes/ safe houses by the police.</p>	

V. Measures for dealing with workplace harassment.

Benefit	Issue	Proposed Action	Implementing Authority
A safe workplace and	Persons from the LGBTQI+ community overwhelmingly remain	Nature: Legislative and Executive	Ministry of Women and Child Development

Benefit	Issue	Proposed Action	Implementing Authority
effective grievance redressal mechanisms for handling sexual harassment complaints	at the receiving end of sexual harassment at the workplace. A UNESCO study on sexual orientation and gender identity based harassment, bullying and violence in Tamil Nadu found that about 43% of the participants faced sexual bullying even in primary schools on the basis of sexual orientation/gender identity. Furthermore, about half reported to have been touched inappropriately, 38% experienced having to bear unwanted sexual talk and 33% were threatened with sex without their consent. ²⁵¹ The Indian LGBT Workplace Climate Survey conducted by Mission for Indian Gay and Lesbian Empowerment in 2016 showed that at least 40% of the employees had faced some kind of sexual harassment at the	<p>Action: Amend the PoSH Act to ensure the inclusion of persons from the LGBTQI+ community, through the use of gender-inclusive language, among other things. References to “aggrieved woman” should thus be changed to references to “aggrieved person”.</p> <p>Broadly, the following changes should be made to the Act and any relevant subordinate legislation under it:</p> <p>(a) Expand the category of aggrieved persons, under Section 2(a) of the Act, who can file a complaint under the PoSH Act. This should not be restricted to just ‘women’ but should include persons of all genders.</p>	

²⁵¹ UNESCO, ‘New study on bullying based on sexual orientation and gender identity in schools in Tamil Nadu, India’, available at <https://www.unesco.org/en/articles/new-study-bullying-based-sexual-orientation-and-gender-identity-schools-tamil-nadu-india>.

Benefit	Issue	Proposed Action	Implementing Authority
	<p>workplace.²⁵² Despite this, the available protections under the law remain limited.</p> <p>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“PoSH Act”) continues to be gendered in nature. As per Section 2(a) only ‘aggrieved women’ can file complaints under the Act. As per Section 2(m), these complaints can be filed against persons of any gender, including other women. Thus, the PoSH Act can be interpreted to include instances of sexual harassment between women.</p> <p>Organisations have the option of building on the framework laid down in the Act and tailoring it to</p>	<p>(b) Similarly, the definition of ‘domestic worker’ under Section 2(e) should be amended to include persons of all genders.</p> <p>(c) The definition of sexual harassment should be amended to include “identity-based violence and harassment”. This should mean violence and harassment directed at persons because of their sexual orientation or gender identity or their “perceived” sexual orientation or gender identity, or affecting persons of a particular sexual orientation or gender identity disproportionately. Examples of harassment particular to persons from the LGBTQI+ community should be added, such as:</p> <p>i. outing people at the workplace</p>	

²⁵² Mission for Gay and Lesbian Empowerment, ‘The Indian LGBT Workplace Climate Survey’, available at <https://vartagensex.org/wp-content/uploads/2019/10/1559396942000-mingle-lgbt-wrkplc-climt-srvy-2016.pdf>.

Benefit	Issue	Proposed Action	Implementing Authority
	<p>the organisation. This includes allowing persons of other genders to file complaints as per the workplace's internal policies. The result is that the PoSH policies of companies in India are a mixed bag of results with some of them being gender inclusive, i.e., granting protection to all employees irrespective of gender against sexual harassment. At the same time, some organisations have PoSH policies for the protection of women employees exclusively.</p> <p>In other contexts, such as marriage, the term 'woman' has been interpreted by the court to include transgender women as well.²⁵³ While no court seems to have formally ruled on this in relation to sexual harassment at the workplace, "aggrieved woman" under the Act</p>	<p>or in the course of any activity related to the workplace or to any person related to the workplace, without the concerned person's consent or knowledge;</p> <p>ii. derogatory language aimed at a person's sexual orientation or gender identity;</p> <p>iii. sexually coloured remarks, advances, actions or implications towards a person's gender identity or sexual orientation, including but not limited to fetishisation of queer identities or relationships;</p> <p>iii. threats or attempts to use sexual advances or violence to "fix" someone's gender identity or sexual orientation.</p> <p>(d) Section 3 should be amended to use gender-inclusive language,</p>	

²⁵³ Arun Kumar v Inspector General of Registration, W. P. (MD) No. 4125 of 2019.

Benefit	Issue	Proposed Action	Implementing Authority
	<p>could be interpreted to include transgender women as well. After the passage of the Transgender Persons (Protection of Rights) Act 2019, it is unclear whether this would include all transgender women based on self-declaration or only transgender women who have undergone some kind of gender-affirming medical intervention.</p> <p>Transgender persons can also file complaints against workplace harassment under Section 18 of the Transgender Persons (Protection of Rights) Act 2019. The procedure is also different in these cases as a person cannot file a complaint with the IC set up by an organisation. This also makes remedies that have specifically been tailored to the workplace unavailable to transgender persons. Section 11 provides for every organisation</p>	<p>to specify that “no person shall be subjected to sexual harassment at any workplace”.</p> <p>(e) Section 4 should be amended to require representation of persons from the LGBTQI+ community as far as practicable, or people who have worked in the area of LGBTQI+ rights. For example, sub-sections can be added requiring the inclusion of members from among employees committed to the cause of persons from the LGBTQI+ community, in line with Section 4(b). Similarly, a sub-section can be added requiring the inclusion of a member from an NGO or association committed to the cause of LGBTQI+ persons.</p> <p>(f) Similar amendments should be</p>	

Benefit	Issue	Proposed Action	Implementing Authority
	designating a complaints officer, but most organisations have not designated such an officer yet and there are no guidelines on the functioning of the complaints officer.	<p>made to Section 7 of the Act, which deals with the constitution of the Local Committee for organisations with fewer than 10 employees and for complaints from the unorganised sector.</p> <p>(g) Subsequent sections, such as Sections 9, 10, 11, 12, 13, etc. should be amended to use gender-inclusive language. References to an “aggrieved woman” should be replaced with references to an “aggrieved person”.</p> <p>(h) Rule 13 of the PoSH Rules, 2013 specifies the manner of conducting workshops. Apart from the things already provided for under the Rules, the following should be included:</p> <p>i. Training sessions should be conducted for those in a</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>managerial position in the organisation and those who may be first responders in relation to a complaint of sexual harassment. First responders are those who become aware of an incident of sexual harassment. In a workplace, this could be anybody from HR team members to supervisors to any person of influence within the organisation.</p> <p>ii. There must be a focus on bystander training in PoSH workshops. This aims to train other employees to intervene when they witness incidents of workplace harassment.</p> <p>iii. Issues relating to the LGBTQI+ community should necessarily be a part of these sessions.</p> <p>(i) Under Section 21 of the PoSH</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>Act, the Internal Committee and the Local Committee are required to prepare Annual Reports and forward them to the employer and the District Officer. As per rule 14 of the PoSH Rules, such a Report should include the number of complaints received in a year, number of complaints disposed of, nature of action taken by the employer, etc. The Rules should be amended to require the Report to focus on preventive measures as well. For example, employers should have to include details of the workshops and sensitisation sessions conducted by them as well as measures taken as per rule 13(a) of the PoSH Rules to formulate an internal policy or charter for prevention and redressal of workplace harassment. They</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>should also be required to include details of active steps taken to create gender-sensitive workplaces and removing factors that lead towards a hostile work environment.</p> <p>(j) The PoSH Rules should be amended to require District Officers to conduct periodic inspections/audits of workplaces to monitor compliance with the provisions of the PoSH Act.</p> <p>(k) Workplaces should be required to conduct annual audits to assess the following:</p> <ol style="list-style-type: none"> Their compliance with the provisions of the PoSH Act and the PoSH Rules; Workplace culture, to see that the workplace is gender-sensitive and the work environment is not hostile, 	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>especially for women and persons from the LGBTQI+ community;</p> <p>iii. Effectiveness of reporting and grievance redressal mechanisms. Details of such audits should be included in the Annual Report submitted to the District Officer.</p>	
Redress against workplace sexual harassment for transgender persons under existing laws	The Transgender Persons (Protection of Rights) Act, 2019 puts an obligation on establishments to not discriminate against transgender persons in relation to employment and termination. It further penalises individuals and extends protections from various forms of abuse: sexual, emotional, economic, verbal and physical. However, these provisions only tangentially apply to situations of sexual harassment and lack teeth. The maximum punishment for inflicting such abuse is two years.	<p>Nature: Legislative and Executive</p> <p>Action: The 2019 Act should be amended to incorporate the following changes:</p> <p>(a) Sexual harassment has not been recognised as a separate category of violence under the 2019 Act. Workplace sexual harassment should be recognised as a specific offence under the Act and a definition should be included in line with the definition under the PoSH</p>	Ministry of Social Justice and Empowerment

Benefit	Issue	Proposed Action	Implementing Authority
	<p>Moreover, the 2020 rules are vague in allowing the appropriate government to determine the police or administrative preventive measures for provisions for non-discrimination. Similarly, establishments are required to provide for a safe working environment, without the requirement of having an adequate redressal mechanisms in place. For instance, they are required to designate complaints officers mandatorily, but very few organisations have done so.</p> <p>Similarly, rule 13 of the 2020 Rules requires the appropriate government to set up a grievance redressal procedure to ensure proper implementation of the 2019 Act. However, governments have not created such mechanisms.</p>	<p>Act, 2013. This should include “identity-based violence and harassment”, i.e., violence and harassment directed at persons because of their gender identity or their “perceived” gender identity. Remedies akin to those available under the PoSH Act can be provided in the 2019 Act as well for the resolution of complaints.</p> <p>(b) A mechanism should be laid down for dealing with workplace sexual harassment complaints under the Act. The complaints officer required to be designated under section 11 can serve as the liaison officer between the complainant and the Internal Committee or the Local Committee, as the case may be, for these complaints to be filed and redressed. The complaint</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>should be dealt with under the PoSH Act post this.</p> <p>(c) Alternatively, in case a separate grievance redressal mechanism is prescribed for dealing with workplace harassment complaints under the 2019 Act, it can take the following form:</p> <p>As per rule 13(5) of the Transgender Persons (Protection of Rights) Rules, 2020, the appropriate government is obligated to set up grievance redressal mechanisms operating through outreach centres and helplines to redress complaints under the Act. This grievance redressal mechanism can take the form of an employment tribunal, similar to the tribunal recommended in the Report of the Committee on Amendments to Criminal Law, headed by Justice Verma. The</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>tribunal was proposed to comprise:</p> <ul style="list-style-type: none"> i. two retired judges, one being a woman ii. two sociologists iii. one social activist with experience in the field of gender-based discrimination. <p>It was recommended that the tribunal would follow a summary procedure for the disposal of complaints so as to expedite the resolution of disputes.</p> <p>A similar mechanism may be considered for dealing with workplace-related complaints for transgender persons, including complaints of workplace harassment. Remedies similar to those under the PoSH Act, such as payment of compensation, should be provided for in the Act.</p>	

VI. Protection against domestic violence

(a) Intimate partner violence

While considerable research has been done on intimate partner violence in heterosexual relationships, primarily, violence inflicted by male partners on their female partners, the literature around the experience of violence in queer relationships remains limited. However, anecdotal evidence points to the existence of intimate partner violence in queer relationships.²⁵⁴ Since queer relationships are not recognised, legally and often also socially, the violence between queer partners is often not seen as a domestic violence issue.

The Protection of Women from Domestic Violence Act, 2005 (“DV Act”) extends protection only to women within its definition of “aggrieved person”. Moreover, while the scope of a “domestic relationship” has been extended to “a relationship in the nature of marriage”, there remains no statutory recognition of domestic violence in queer relationships. Although judgments have granted police protection to same-sex couples facing threats from their families, little has been done to protect against domestic violence in queer relationships.

In *Hiral Harsora v Kusum Harsora*²⁵⁵, the Supreme Court held that female relatives can also independently be respondents under this Act, without a simultaneous complaint against the woman’s male partner. The Act was supposedly interpreted this way by the Court to allow aggrieved women to be able to file complaints against female perpetrators or enablers of violence in their marital family, such as the mother-in-law or sister-in-law. The Act could possibly, thus be interpreted to deal with cases of intimate partner violence in lesbian relationships.

In *Vithal Manik Khatri v. Sagar Sanjay Kamble @ Sakshi Vithal Khatri and Anr.*²⁵⁶, the Bombay High Court held that a transgender woman who has undergone sex reassignment surgery can be an “aggrieved person” under the DV Act and thus has the right

²⁵⁴ Sunil Mohan, ‘Towards Gender Inclusivity: A Study on Contemporary Concerns Around Gender’, (Alternative Law Forum 2013).

²⁵⁵ CIVIL APPEAL NO. 10084 of 2016.

²⁵⁶ 2023 LiveLaw (Bom) 175.

to seek interim maintenance in a domestic violence case. The court said that the term 'aggrieved person' under Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 has to be given a broad interpretation as the purpose of the Act is to protect women from domestic violence.

Thus, the protection available to queer persons in relationships remains patchy.

Consequently, there have been demands for the inclusion of queer persons in domestic violence frameworks. In *Shafin Jahan v. Asokan K.M*²⁵⁷, the Supreme Court too underscored the need to view individual rights broadly, emphasising a progressive approach to gender and relationship rights that could inform applications under the DV Act to recognize same-sex or queer relationships.

(b) Some specific characteristics of violence in queer relationships

Traditional gender-based assumptions about power, often tied to physical strength or patriarchal and economic privilege, may not apply or may manifest differently in queer relationships. Abuse may include emotional, psychological, or sexual violence that doesn't fit traditional narratives.

In heterosexual relationships, the partner who is facing the violence (typically the woman) attempts to leave their partner multiple times, ranging from 5 to 7 times. Similarly, in queer relationships, multiple accounts have been shared by queer persons about the many attempts made by them to leave their abusive partner, ranging from a period of a minimum of 6 months post the first violent act up to 4 years.²⁵⁸

²⁵⁷ AIR 2018 SC 357.

²⁵⁸ Anisha Das & Anwesha Chatterjee, 'Intimate Partner Violence in Queer Relationships: Voices from Urban Queer India', available at <https://feminisminindia.com/2023/04/07/intimate-partner-violence-in-queer-relationships-voices-from-urban-queer-india/>.

Economic forms of violence, in heterosexual relationships are often higher than in queer relationships, as shared by some. However, if one of the partners is a student or is not earning, it increases the vulnerability to economic forms of violence.²⁵⁹

Queer persons are also in many cases disowned by family, which leaves them with no safety net and thus unable to escape that violence. Abusers may also exploit the lack of acceptance from the victim's family or community, further isolating them by discouraging connections with LGBTQI+ support groups or friends.²⁶⁰

In case of relationships between transgender persons or those where one person is transgender, identity-based violence is also a reality, which centers on a person's gender identity or sexuality. For instance, this may take the form of abusers threatening to disclose their partner's sexual orientation or gender identity to family, employers, or the community, often as a means of control.²⁶¹ Abusers might also use stereotypes, such as accusing a transgender partner of being "deceptive" or invalidating their gender identity. People's specific vulnerabilities may also be targeted, such as forcibly outing a transgender partner by removing gender-affirming items (e.g., wigs or binders).

(c) Natal family violence

The family unit is often a site of violence for queer persons, which may take many forms: different types of mental, physical or emotional harassment; conversion therapy; forced marriages; corrective rape; gender-normalising surgeries, etc.²⁶² The minority opinion too took note of this pervasive issue in *Supriyo*.²⁶³

²⁵⁹ Anisha Das & Anwesha Chatterjee, 'Intimate Partner Violence in Queer Relationships: Voices from Urban Queer India', available at <https://feminisminindia.com/2023/04/07/intimate-partner-violence-in-queer-relationships-voices-from-urban-queer-india/>.

²⁶⁰ Sunil Mohan, 'Towards Gender Inclusivity: A Study on Contemporary Concerns Around Gender' (Alternative Law Forum 2013).

²⁶¹ Sarah Petzmeier et al., 'The transgender-specific intimate partner violence scale for research and practice: Validation in a sample of transgender women' (2021) Soc Sci Med.

²⁶² Sappho for Equality, Nazariya, PUCL, SAATHI, Hasrat-E-Zindagi Mamuli, 'Apon Ka Bahut Lagta Hai: Our Own Hurt us the Most', available at <https://www.sapphokolkata.in/news-desk-details/our-own-hurt-us-the-most-centering-familial-violence-in-the-lives-of-queer-and-trans-persons-in-the-marriage-equality-debates>

²⁶³ *Supriyo* (per Chandrachud J).

The “outing” of queer persons’ identities results in natal family violence including physical abuse, emotional harm, forced contracting of heterosexual marriage, etc. The breach of privacy and outing of a person’s identity is often on social media, with little action being taken by social media intermediaries.

The DV Act addresses instances of violence not just in a “romantic” partnership such as a marriage or a relationship in the nature of marriage but also addresses violence against women by any male member with whom a woman is in a domestic relationship. One of the reasons for its enactment was to include within its fold relations like mothers, daughters and sisters who face violence due to the patriarchy-induced power imbalance in relationships. For this, the two concerned people need to have lived in a shared household at any given time. They need to be related in some way - whether it is through marriage, relationship by blood, or adoption, or whether they are family members living together as a joint family. However, the remedy under this Act remains available to only aggrieved ‘women’.

(i) Basic components of a protection from domestic violence framework for persons from the queer community

(a) Who can file a complaint and whom can a complaint be filed against?

A domestic violence framework for queer persons should make provisions for both intimate partner violence and natal family violence. Thus, there should be a gender-inclusive provision that allows persons of all genders to file cases against their partners and against natal family members. The defining characteristic should be a “domestic relationship” like under the DV Act. People should be allowed to file a complaint of violence against anybody that they are in a domestic relationship with, to whom they may be related in any of the following ways:

- (i) by marriage;
- (ii) through being in a civil union;

- (iii) through being in a relation in the nature of a marriage/ a *de facto* civil union which has not been registered or notified to the state;
- (iv) through blood;
- (v) through adoption;
- (vi) by having lived in a shared household: at any given point of time, in a familial setup, irrespective of relatedness in terms of blood or marriage (this will include setups such as *hijra gharanas* or polyamorous relationships).

De facto civil unions should be defined in the law and should not just depend on judicial interpretation. These factors can reflect the ones set out in Chapter 2 on Relationships.

Similarly, many queer persons live in chosen family setups, which are different from joint families. The current definition of domestic relationship under the DV Act recognises that people may live in a shared household as a family without being related through marriage, blood or adoption. However, this is restricted to people living together as a joint family, since intimate partner violence in heterosexual relationships is often perpetrated in this setup. The definition should be suitably modified to make space for chosen families.

This framework should be age-agnostic. Thus, a person should not need to be an adult to file a complaint. However, the respondents under such a framework should be restricted to adult persons.

(b) What counts as violence, and violence specific to the queer community?

While violence against members of the community takes the form of physical, sexual and emotional abuse in the same way as in heterosexual relationships and for cisgender heterosexual persons, there are some forms of violence that are particular to queer persons. Some forms of this violence include:

- (i) forcing persons into a marriage, against their wishes;
- (ii) deliberate, continued misgendering;
- (iii) outing or threatening to 'out' a queer person's gender identity or sexual orientation;
- (iv) forced changes to a person's appearance, to make them conform to their gender identity, for example forced cutting of hair;
- (v) conversion therapy, which can even the form of corrective rape;
- (vi) 'gender-normalising' surgeries performed without free and informed consent;
- (vii) derogatory remarks or other forms of humiliation targeting a person's gender identity or sexual orientation;
- (viii) confinement and restriction of movement; or,
- (ix) unwanted sexually coloured remarks or gestures fetishising queer identities.

Any definition of violence under a domestic violence framework for queer persons should account for these forms of violence particular to queer persons.

(c) Procedure for filing complaints

Considering that complainants under such a framework can also be filed by or on behalf of minors, requisite guidelines should be put in place for how such complaints will be recorded and addressed. For instance, the Protection of Children from Sexual Offences Act (POCSO Act), 2012, lays down a procedure for recording of the statement of the child by the police in section 24 and by a Magistrate in section 25. Similarly, section 27 lays down protocols for the medical examination of a child. Section 39 provides for the assistance of experts such as psychologists, social workers and those working in the area of child development. Comprehensive model guidelines have also been issued under section 39, recognising the need for multi-sectoral intervention in cases of child abuse.²⁶⁴

²⁶⁴ Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012, available at https://www.ncpcr.gov.in/uploads/172422913166c5a60bbfda7_final-guidelines-on-section-39-of-pocso-act-2012-dated-18032024-1-33.pdf.

The police are also cast in the role of child protectors in the POCSO Act and are thus required to obtain emergency medical treatment for the child and place them in a shelter home, where required. They are further required to report the matter to the Child Welfare Committee which then makes further arrangements for the safety and security of the child.

Similar safeguards and procedures should also be provided in a domestic violence framework that covers minors.

(d) Rehabilitative measures

Studies as well as anecdotal evidence suggest that the immediate concerns for many persons from the queer community post facing violence in a domestic setting, especially natal family violence is a safe space and financial support. Thus, civil remedies of the sort provided for under the DV Act are appropriate in this scenario. The DV Act does not just focus on punishing the perpetrator but provides civil remedies through criminal law procedures. It is geared towards also providing a safe space for women and some security, whether in the form of maintenance or the right to continue living in the residential house they occupy. The Act also speaks about the appointment of Protection Officers to aid the aggrieved woman with filing of complaint, availing legal aid, finding a safe shelter home if required, assisting the magistrate, and overall ensuring that the measures provided in the Act are adequately followed.

Some measures especially pertinent for queer persons that should be a part of such a domestic violence framework are:

- (a) protective measures outlined under Section 5 of the DV Act, such as issuance of protection orders, monetary relief orders, residence orders, and compensation orders;
- (b) appointment of protection officers as under Section 7;

- (c) registration of service providers as under Section 10;
- (d) duties of the Government under Section 11;
- (e) right to reside in a shared household as under Section 17 and corresponding orders under Section 19. The focus while providing persons with a right to residence must be on maintaining survivor agency. Thus, the survivor should be allowed to stay in the residential household if they desire. However, if they desire to leave the household due to the continued threat of violence, alternative living arrangements should be made for them, including placing them in a shelter home or ordering the respondent to make comparable living arrangements for the complainant.
- (f) passing of protection orders as under Section 18.

Additionally, relevant persons such as social workers, legal aid personnel, and counsellors should be integrated at each stage of the process. The quick response team recommended in the miscellaneous section below should also come to the aid of survivors under the DV Act. The need for multi-sectoral intervention in domestic violence cases, due to the emotional, physical, mental, and financial trauma undergone by survivors should be recognised while putting in place rehabilitative measures under such a law.

The DV Act, in section 14, provides that the magistrate may require couples to undergo counselling, together or separately, at any stage in the proceeding. While the aim of this section is multifaceted, to provide for the rehabilitation of survivors through counselling, addressing abusive behaviour in perpetrators through counselling and not just punitive measures, and restoration of the relationship. However, this section has sometimes been misused to bypass survivor agency and impose mandatory mediation conditions even prior to filing the complaint.

In a domestic violence framework for queer persons, a provision for separate counselling of the perpetrator and the survivor should be retained. However, the requirement for a couple undergoing counselling should not be retained due to the potential for abuse and the inordinate focus on restoration of relationships.

(d) Protection against sexual violence

Benefit	Issue	Proposed Action	Implementing Authority
Equal protection against rape and other sexual offences under general criminal legislation	<p>After being partially struck down by the SC, section 377 has been deleted in entirety from the Bharatiya Nyaya Sanhita, 2023 ("BNS") which effectively decriminalises bestiality and also non-consensual same-sex intercourse. Protections against sexual violence remain limited under current criminal laws.</p> <p>The existing general criminal law framework provides for individuals to file complaints for offences such as use of criminal force (Section 129 of the BNS) and grievous hurt (Section 116 of the BNS). Criminal law provisions relating to assault (S. 130, 131), grievous hurt (S. 116, 117), endangerment of life or personal safety (S. 125), criminal intimidation and so on may also be relied on for the purpose of filing a</p>	<p>Nature: Legislative</p> <p>Action:</p> <p>(a) An amendment to section 63 of the BNS is necessary to make it <u>gender neutral as regards only the victim</u>. Certain behaviours defined as rape under Section 63 (for instance, non-consensual anal penetration) may be perpetuated against persons across sexes and genders and must be recognised and punished accordingly.</p> <p>(b) Alternatively, the BNS must be amended to partially re-introduce Section 377 of the earlier Indian Penal Code, 1860, which</p>	Ministry of Home Affairs

	<p>complaint or FIR. However, these are deeply inadequate for the purpose of addressing sexual violence which is not cis-normative and heteronormative, for these general offences are specifically defined in manners which either are not always applicable to sexual violence, or which do not address the gravity of the same.</p>	<p>criminalised “carnal intercourse against the order of nature with any man, woman or animal”. Provision for criminalising non-consensual same-sex intercourse must be reintroduced, while retaining the decriminalisation of consensual same-sex intercourse.</p> <p>(c) non-consensual same-sex intercourse must be reintroduced, while retaining the decriminalisation of consensual same-sex intercourse.</p> <p>(d) Furthermore, the recognition of penetration or application of mouth must be expanded beyond</p>	
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		<p>that into the “vagina, mouth, urethra or anus” to account for sex characteristics that don't fit the typical definitions of male or female (such as in intersex persons, or persons having undergone partial gender-affirming surgery).</p> <p>The definition of rape must also be expanded to account for other instances of sexual violation, such as those committed by a male on a male, for instance through including application of mouth to a penis. The current definition only accounts for scenarios where a man rapes a woman.</p>	
Gender neutrality (either complete or partial) in	The BNS sought to make various offences gender inclusive as compared to the earlier Indian	<p>Nature: Legislative</p> <p>Action:</p>	Ministry of Home Affairs

<p>sexual offences defined and punished in general criminal law</p>	<p>Penal Code, 1860 which routinely employed gendered language in its descriptions of various offences and the parties involved. However, various sexual offences under the Act still retain gendered language, which limits the protections available to queer persons under the law.</p>	<p>(a) An amendment to Section 70 of the BNS is necessary to make it gender neutral as regards only the victim. The offence of gang rape, similar to that of rape, may be committed against any person irrespective of their sex. This amendment would particularly protect gay men, transgender persons, among others, who are targeted victims of gang rape owing to their identity or sexual orientation.</p> <p>(b) An amendment to Section 68 of the BNS is necessary to make it gender neutral as regards only the victim in terms of offence of sexual intercourse by a person in authority. The offence of abusing one's position of authority or fiduciary relationship to seduce a</p>	
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		<p>person in one's custody or under one's charge may be committed to have sexual intercourse may be committed against any person, because such power imbalance may exist irrespective of the sex of the vulnerable party.</p> <p>(c) An amendment to Section 75(1)(iii) of the BNS is necessary to make it gender neutral as regards only the victim. Sexual harassment may be perpetuated against any person irrespective of their sex by showing pornography against their will.</p> <p>(d) An amendment to Section 77 of the BNS must make the offence of voyeurism wholly gender neutral, as it</p>	
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		<p>may be perpetuated by any person(s) against any other(s) regardless of the sex or identity of either the victim or the offender.</p> <p>(e) An amendment to Section 78 of the BNS must make the offence of stalking wholly gender neutral, as it may be perpetuated by any person(s) against any other(s) regardless of the sex or identity of either the victim or the offender. Queer persons may be particularly susceptible to being stalked, followed or monitored either physically or electronically by persons of the same sex, and the scope of the offense must account for the same.</p>	
Equal treatment of offences against	Section 18 of The Transgender Persons (Protection of Rights) Act, 2019 recognises a host of	<p>Nature: Legislative</p> <p>Action: Amend section 18 of The</p>	Ministry of Social Justice and Empowerment

transgender persons	offences perpetrated against transgender persons. These inter alia include bonded labour, denial of access to public places and passage, physical abuse, sexual abuse, and economic abuse. However, such offences are with imprisonment for a mere term of six months to two years. This is disproportionate to the severity of many of these offences, and also unaligned with the treatment of the same offences in general criminal law.	Transgender Persons (Protection of Rights) Act, 2019 and rationalise the punishment prescribed therein. Punishment prescribed for offences under this section to be made proportionate to the severity of the offence(s). Offences committed against transgender persons must be dealt with and punished in a manner congruent to offences against cisgender persons.	
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(e) Issues specific to the Transgender Persons (Protection of Rights) Act, 2019

<i>Benefit</i>	<i>Issue</i>	<i>Proposed Action</i>	<i>Implementing Authority</i>
Adequate protection from different types of violence under the 2019 Act	Section 18 of the Transgender Persons (Protection of Rights) Act, 2019 specifies various offences against transgender persons and provides for punishment with imprisonment up to 2 years and with fine. However, the section does not define the ingredients of the offence. For instance, it does not	<p>Nature: Legislative</p> <p>Action:</p> <p>(a) The section should be amended to specify the ingredients of these offences. For example, sexual abuse should be defined under the Act. The kinds of violence specifically</p>	Ministry of Social Justice and Empowerment

Benefit	Issue	Proposed Action	Implementing Authority
	<p>define sexual abuse or make provision for workplace harassment.</p> <p>The section also does not adequately recognise violence or abuse committed not just based on a person's gender identity but also their perceived gender identity.</p>	<p>perpetrated against transgender persons should be accounted for, such as the use of transphobic slurs or derogatory language and identity-based hate crimes. A separate definition should be included for workplace harassment, as proposed in the section above.</p> <p>(b) The section should account for violence perpetrated against individuals based on their perceived identity as a transgender person.</p>	
Easier access to legal recourse	<p>It has been reported that transgender persons face difficulties in accessing legal recourse under the 2019 Act without possessing a transgender ID certificate.²⁶⁵ This is despite the fact that the 2019 Act does not make it mandatory for persons to obtain a card to file complaints under the Act.</p>	<p>Nature: Executive</p> <p>Action:</p> <p>A circular should be issued by the Ministry, clarifying that a transgender ID card is not mandatory under the 2019 Act and should not be a precondition for people to be able to file complaints.</p> <p>The Secretary should further issue an order to all law enforcement officials within their territories clarifying the same.</p>	<p>Ministry of Social Justice and Empowerment; Secretary of the Department of Home for States</p>

²⁶⁵ Vandana Bansal, 'Why Only 236 Trans Person Victims Of Crimes Were Recorded In India In 2020', Indiaspend, available at <<https://www.indiaspend.com/gendercheck/why-only-236-trans-person-victims-of-crimes-were-recorded-in-india-in-2020-823034>>.

Benefit	Issue	Proposed Action	Implementing Authority
Accessible grievance redressal and support services	Existing queer support helplines are run by private organisations and NGOs with limited capital. Anecdotal evidence has indicated that most helplines are defunct, or do not get answered. Even when helplines do get answered, they are inadequately equipped to provide queer persons in distress with the required support.	<p>Nature: Executive</p> <p>Action: Queer support helplines must be set up and operationalised by the State, to offer 24/7 assistance to queer persons subject to a variety of difficulties. The helpline operators must be trained to be queer-affirmative, and along with provisions to undergo periodical refresher courses and sensitivity training. They must be equipped to redirect callers to quick response teams in the fields of medical aid, legal aid, safety (such as in a shelter home), psychological aid, and so on. These helplines must also relate to the liaison officer for queer persons and the separate law enforcement unit for issues relating to queer persons recommended above.</p> <p>Information regarding the availability and</p>	Ministry of Social Justice and Empowerment; Department of Home for States

Benefit	Issue	Proposed Action	Implementing Authority
		functionality of such helplines, how to contact them, and measures taken to ensure safety and confidentiality must be published widely and, in every language, listed in the Eighth Schedule of the Indian Constitution.	
Adequate safe spaces for protection from violence and rehabilitation	<p>Currently there exist only 12 <i>garima grehs</i> across the country.²⁶⁶ Capacity is extremely limited, and shelter available only to transgender persons, that too for a time bound period. Moreover, many <i>garima grehs</i> are on the verge of being shut down due to a lack of funds.²⁶⁷</p> <p>The current Garima Greh scheme also fails to provide the facility for co-habitation of queer couples, especially those facing violence or the threat of violence from their natal families, and</p>	<p>Nature: Executive</p> <p>Action: The framework for shelter homes must be reworked in a manner that ensures the following :</p> <ul style="list-style-type: none"> i. <i>Garima grehs</i> to be set up in every State and Union Territory across India. ii. Adequate funds must be earmarked and transferred to <i>garima grehs</i> for their proper functioning. iii. Existing <i>garima grehs</i> to be made more inclusive and safe. This must include adequate healthcare and mental healthcare facilities, provision of 	Ministry of Social Justice and Empowerment; Ministry of Women and Child Development

²⁶⁶ Smile Garima Greh: Shelter Homes for Transgender Persons <<https://transgender.dosje.gov.in/Applicant/Registration/DisplayForm5>>.

²⁶⁷ Ashna Butani and Satvika Mahajan, 'Homes for transgender people: A safe space, threatened', The Hindu, available at <<https://www.thehindu.com/news/national/homes-for-transgender-people-a-safe-space-threatened/article68924408.ece>>.

Benefit	Issue	Proposed Action	Implementing Authority
	discrimination or systemic exclusion from society.	<p>vocational training, assistance in seeking gainful employment, and holistic protection from all forms of violence or the threat of violence.</p> <p>iv. Reconsider, remove, or increase the one-year limit for transgender persons to stay at <i>garima grehs</i>. Anecdotes shared at the consultations reveal that the duration of one year is not sufficient to ensure that transgender persons become self-sufficient and are able to find alternative accommodation.</p> <p>v. Set up new shelter homes, similar to <i>garima grehs</i>, for non-transgender members of the LGBTQI+ community who need protection, shelter or assistance. Shelter homes must be set up for different categories of LGBTQI+ persons.</p> <p>vi. Existing shelter homes for other marginalised sections of society, such as children's shelters, and one-stop centres for survivors of domestic violence, are to</p>	

Benefit	Issue	Proposed Action	Implementing Authority
		<p>actively be made queer-inclusive. Assisted living facilities, such as for the elderly or for PWDs, must also be queer-inclusive.</p> <p>vii. Family shelter homes must be set up with provisions similar to <i>garima grehs</i> to allow LGBTQIA+ individuals to cohabit with their partners or persons with whom they share a relationship in the nature of chosen family.</p>	

Annexure

Minutes of Consultations

The Keshav Suri Foundation ('KSF') and the Vidhi Centre for Legal Policy ('Vidhi') jointly hosted **three public-hybrid consultations** as follows: November 16, 2024, at the LaLit Hotel, New Delhi; December 15, 2024, at the LaLit Hotel Mumbai, and December 22, 2024, at the LaLit Hotel, Jaipur.

The objective of these consultation was to solicit feedback and inputs from the queer community, queer civil society, lawyers, law students, and other interested members of the public in informing submissions to the High-Powered Committee ('Supriyo Committee') set up by the Central Government in pursuance of the Supreme Court's ('Court') decision in the marriage equality matter, namely, *Supriyo vs. Union of India* ('Supriyo'). The consultation was organised across five broad themes where the Court had identified the need for State intervention to address the discrimination that the queer community and queer individuals face on account of their gender identity/sexual orientation and/or non-recognition of their relationships.

This document outlines the minutes of the consultation held in these three cities across these five themes, namely: recognition of queer relationships, queer parenthood and families, access to goods and services, healthcare, and violence. The details of each session are as follows:

- (a) **Recognition of Queer Relationships:** This session dealt with the various legal avenues for recognition of queer relationships. It discussed amendments to secular family laws (specifically marriage and succession), introduction of a new law on civil unions, and finally a potential legislation which enables nominating persons (of one's choice) for access to benefits for recognition of atypical families.

- (b) **Queer Parenthood and Families:** This session dealt with the various legal avenues for recognition of queer parenthood. It discussed amendments to secular adoption laws, laws on surrogacy, and assisted reproductive technology. It also discussed how laws on guardianship can be amended to recognise queer parenthood.
- (c) **Access to Goods and Services:** This session dealt with the theme of access to goods and services, broadly from the perspective of discrimination. It discussed reforms in the form of a comprehensive anti-discrimination law and better enforcement of the Transgender Persons (Protection of Rights) Act, 2019. It also discussed sector-specific measures covering financial services, education, labour benefits, and housing.
- (d) **Healthcare:** This session dealt with the importance of the community to have access to inclusive healthcare. The session touched on topics such as the lack of gender-affirming care for transgender individuals, the lack of inclusive health education and medical education that is given to healthcare providers - which has a direct impact on the quality of medical care. The session also focussed on the lack of redress available in instances of medical negligence and even medical malpractice due to the inadequacy of the regulatory framework. In addition, some lived experiences were shared about the discrimination and lack of care that was offered to persons living with HIV, primarily due to lack of awareness and grass-root level support. Finally, a very interesting point of discussion involved the lack of adequate legal frameworks to protect the privacy of queer individuals especially in relation to sensitive personal data such as health records, hospital records, etc.
- (e) **Violence:** The final session focussed on violence against the queer community - be it by the State, within one's natal family, or sexual violence. The narrative-led discussion revealed a gamut of lived experiences and highlighted the glaring failures in *status quo* to prevent and protect from identity-based violence against gender and sexual minority groups.

We hope these detailed minutes serve as a critical resource in informing law and policy reform as centering lived experiences of queer persons and communities is key to a democratic law reform process.

Minutes of Consultation, New Delhi

Session One: Recognition of Queer Relationships

I. Marriage and Concomitant Rights

A. Discussion Points

- The potential of considering a new standalone framework for recognition of queer relationships was proposed to avoid conflict with personal laws. However, amendments only to secular laws such as the Special Marriage Act, 1954 (“SMA”) and concomitant amendments to the Indian Succession Act, 1925 (“ISA”) were also considered.
- It was recommended that incremental steps towards recognition of queer intimacies through executive measures such as access to joint bank accounts and joint insurance could be considered as a starting step, given the social resistance of broadening marriage beyond the heterosexual family unit.
- The challenges with provisions such as public notice and objection [under the SMA] were pointed as an issue that would disproportionately impact queer couples as it would render them visible to societal scrutiny.
- It was pointed out that grounds of divorce such as non-consummation of the relationship would raise challenges for asexual persons who may want to access the institution of marriage.
- Challenges with un-gendering provisions such as those in relation to maintenance were pointed out. Such provisions are gendered (and favour women) given the reality of patriarchy within heterosexual unions. The manner in which this would be addressed in the event of amendments to the SMA was raised.
- It was recommended that the marital rape exception must be abolished.
- Safety concerns in relation to resistance from orthodox religious communities and issues in relation to privacy were floated.

- B. Potential Consensus:** There was consensus that a mere “add and stir” approach for inclusion of queer persons within the institution of marriage would not be appropriate. While marriage rights must be recognised at par for queer persons, marriage laws must be comprehensively re-evaluated to address pressing issues such as concerns with the notice and objection regime, legal and practical barriers to entry and exit, the universalisation of consummation as key to a valid marriage, safeguarding privacy, etc.

II. Civil Unions

A. Discussion Points

- It was emphasised that civil unions should not be considered secondary in status to marriage. It was critical that both the option of marriage and civil unions must be made available to all persons. A progressive legislation on civil unions must be accessible to persons of all genders and sexual orientations, and not exclusively to queer persons.
- It was recommended that while a legislation on civil unions could play a part in an incremental approach towards ensuring inclusivity, such a legislation must clearly define the rights and responsibilities of parties and have robust safeguards (such as privacy of parties, maintenance) in place for persons in the union.
- A query was raised concerning the model of civil unions namely, would it be a *de-facto* model where the Court would have to recognise the relationship when it is adjudicating rights and benefits between the parties, or should it be an opt-in model where a legislation explicitly outlines conditions for entry, rights, benefits, and a process for dissolution. It was noted by the speaker that an opt-in model may be a better fit for resolution of ambiguities concerning the status of the parties.
- Concepts such as communion of assets and equal property rights were proposed. It was pointed out that the Goan Civil Code introduces a progressive community property regime, under which all marital property is equally shared between spouses, ensuring financial equity within marriages. Such concepts could be considered for a new legislation on civil unions.

- There was a discussion regarding the merit of proposing amendments to the SMA vis-a-vis proposing a stand-alone legislation on civil unions. It was pointed out that while a stand-alone legislation helps avoid the challenges raised by conflicting family laws (including personal laws), and strategically aligns with an incremental pathway to reform, the SMA must also be amended to ensure queer persons who want to marry have rights under marriage laws.
- It was recommended that legislation on civil unions must also account for privacy and safety concerns of parties who seek to enter such unions.

B. Potential Consensus: There was consensus that a stand-alone modern legislation on civil unions is a welcome measure. However, such a legislation must not relegate unions as secondary to marriage and must provide for robust safeguards for parties.

III. Nominations

A. Discussion Points

- Concerns were raised about how a law on nominations, specifically one which allows a person to nominate anyone of their choice for benefits, would interact with family laws, particularly personal laws. A concern was raised about whether personal laws would override individual nominations.
- While a legislation on nominations was welcome as making space for atypical intimacies, it was recommended that strong safeguards to ensure their priority and enforceability be introduced to ensure family laws don't override the nomination and thus open a door for legal disputes between natal families and the nominee.
- It was pointed out that the law must establish mechanisms for relationship registration for nomination-based systems, ensuring that individuals can access rights and benefits without rigid dependency on traditional family models.

- Relationship contracts (such as *maitri karars* in Gujarat which were used by queer partners to extend sanctity to their relationship) were also pitched as a possible alternative to traditional family laws. Such a contract would allow parties to mutually set out the terms and conditions of their relationship.
- Tamil Nadu's approach towards recognising queer relationships via a Deed of Family Association ('DFA') was also proposed as a possible route for recognition.
- It was recommended that creating enabling laws which are flexible and allow for the law to adapt to non-traditional and evolving family structures be considered for recognition of the varied intimacies within queer communities.

B. Potential Consensus: While there was no consensus on the form of a law which would recognise atypical intimacies, there was agreement that laws need to account for non-normative intimacies.

IV. Other Key Issues

A. Recognition of Polyamorous Relationships: A key point that came out in the consultation was regarding recognition of polyamorous relationships. It was pointed out that the discussion at the consultation focused solely on dyadic conceptualisation of intimacies and it was critical to make room for non-dyadic relationships. In response, concerns were raised about the law's ability to justly allocate rights, responsibilities, benefits, and decision-making powers in such relationships.

B. Broader Reforms: In addition to recognition of queer relationships, recommendations were made for broader law reform such as those in relation to property, labour, and social security.

Session Two: Queer Parenthood and Families

I. Key Issues:

A. Discussion Points:

- The lack of recognition and protection to chosen families was raised in the course of this session. The discussion particularly acknowledged households which are composed of persons who are subject to discrimination, such as transgender households and families of sex workers. The need to address such discrimination was emphasised.
- An issue that arose for discussion during the consultation was the rights of single parents, including single queer parents, and the discrimination that they are subject to. In light of this, extending similar rights and protections to single parent families was emphasised.
- Concerns were raised in relation to laws such as the Maternity Benefit Act, 1961 which applies only to cisgendered women. The need for reforming such laws to account for queer family formations was pointed out.
- The discrimination that queer parents, single parents, and parents marginalised on account of their status (such as sex workers) was discussed. It was pointed out that often officers within the State recognised adoption regime (such as adoption under the Juvenile Justice (Care and Protection of Children) Act, 2015) are often prejudiced and discriminate in their assessment of who is a 'fit parent'. There is a need to address such discriminatory practices.
- Adoption guidelines which prohibit non-marital partners from jointly adopting, and which prohibit opposite gender adoption by men, were seen as areas which required reconsideration.
- It was noted that the principle of the 'best interest of the child' or the 'welfare of the child' which is the essence of laws in relation to decisions regarding children can be misused by decision makers and deployed

in a discriminatory manner against non-normative family formations, including queer families. It was thus recommended that the principle of 'best interest of the child' may be codified in law to avoid prejudice in its application.

- The need for a custody regime that applies to non-marital parents and non-traditional family formations was pointed out.

B. Potential Consensus: There was consensus that laws on parenthood across guardianship, adoption, surrogacy and ART must be made inclusive of single parents, queer parents and non-marital parents.

Session Three: Access to Goods and Services

I. Key Issues:

A. Discussion Points:

- **General:** It was pointed out that even in the presence of laws that prohibit discrimination, sensitisation is critical for effective implementation of these laws. Often it is the State that discriminates through entities such as law enforcement, State authorities, and officers.
- **The Transgender Persons (Protection of Rights) Act, 2019:** The 2019 Act was critiqued for its failure to address discrimination. *First*, it was pointed out that despite the Act, most establishments have not set up a complaints officer as required. *Second*, multiple people echoed concerns about the process for acquiring a Transgender Identity card. The process was long-winded, required proof of medical intervention for applying for binary M/F categories, and was plagued by red-tape and bureaucratic hurdles.
- **Gender and Name Change:** It was pointed out that changing one's gender *and* name across identity documents proves to be a very arduous process. This in turn impacts the ability of transgender persons to access goods and services such as financial inclusion, and welfare benefits earmarked for transgender persons. Recommendations included streamlining and expediting the process to access identity cards. It was also proposed that all government bodies should adopt a standardised approach for handling gender-related documentation, with clear deadlines and accountability in case of delay.
- **Corporate Inclusion:** It was recommended that mandating DEI within corporations would be a welcome move.
- **Sexual Harassment:** The need to make the Sexual Harassment of Women *at* Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('**PoSH Act**') gender-inclusive was brought up. Further, expanding the ambit of the Committee under the PoSH Act to address discrimination based on gender identity and sexual orientation was also noted. To this effect, expanding representation on the Committee was recommended.

- **Education:** It was pointed out that schools are often sites of *discrimination* and indoctrination, and there was a need to ensure systemic reforms in the sector. *First*, queer inclusive curricula across all levels of education. *Second*, mandating anti-bullying and anti-ragging policies at educational institutions. *Third*, grievance redressal forums at educational institutions in the event of discrimination. *Fourth*, a mandate for gender-inclusive policies. *Fifth*, penalties for homophobic or transphobic behaviour. *Sixth*, penalties in the event of non-compliance with mandates.
 - **Labour Benefits:** It was recommended that benefits that are available to *heterosexual* family units under labour laws must be expanded to other family formations including civil unions and chosen families.
 - **Sensitisation and Training:** The need for State mandated training for all *State* officials and State actors such as law enforcement was recommended. Such training must be for both urban and rural areas, and there must be accountability mechanisms in place in case the State discriminates against queer persons.
 - **Documentation:** The need to comprehensively document the everyday discrimination that the queer community faces to inform evidence-based law and policy measures was also recommended.
- B. **Potential Consensus:** (a) A review of the 2019 Act and better enforcement/implementation; (b) Seamless process of acquiring a transgender card and name and gender change; (c) effective grievance redressal for State discrimination; (d) comprehensive and sector-specific reform to address discrimination, coupled with effective grievance redressal to ensure compliance; (e) systematic reform of the educational sector and space.

Session Four: Healthcare

I. Inadequacies in the Healthcare Framework:

A. Discussion Points:

- **Conversion therapies:** Queer persons are forced into conversion therapies at healthcare establishments but also in other settings such as at home, religious sites, de-addiction centres, quack doctors' clinics, and counselling centres.
- **Intersex surgeries:** Infants with intersex variations are operated on regardless of medical necessity, denying them bodily autonomy.
- **Discrimination in blood donation:** There is a blanket ban on blood donation by 'men who have sex with men', transgender persons, and sex workers. This is not just inherently discriminatory, but also affects queer persons' choice to donate blood for their loved ones - including their queer families who may not have other support systems during health crises.
- **Lack of Gender-Affirming Care for Transgender Individuals:**
 - Transgender individuals often face unique healthcare challenges, including the need for gender-affirming care, access to hormone treatments, and post-transition health services. However, many healthcare professionals are not trained to address these needs. This gap in medical education often results in poor healthcare experiences for transgender people, ranging from misgendering to refusal of necessary treatments.

- The current legal framework is not sufficient to address healthcare needs for queer persons, especially transgender persons.
- ***Lack of gender-sensitive and gender inclusive Health Education and Medical Curriculum:***
 - Many healthcare professionals in India are not adequately trained on gender-affirming care, with medical curricula often ignoring queer-specific health needs, particularly in relation to transgender individuals.
 - This lack of education often leads to substandard care, discrimination, and sometimes outright refusal of care for transgender persons.
- ***Lack of medical care for Gender-Affirming Surgery and Medical Negligence***
 - Gender-affirming surgeries are crucial for many transgender individuals as they help align their physical appearance with their gender identity. However, they are often viewed as cosmetic procedures by the medical community which leads to refusal of care, substandard care, and potential for exploitation by unethical practitioners.
 - Lack of a regulatory framework and established guidelines for gender-affirming surgeries leading to inconsistent standards of care, which also makes modes of seeking legal redress for medical malpractice difficult.
- ***Making laws/policies relating to organ transplant and reproduction queer-inclusive***
 - There is a need to analyse laws such as the Medical Termination of Pregnancy Act, 1971 and the Assisted Reproductive Technology (Regulation) Act, 2021 to ensure that terms and understandings of pregnancy, woman, etc. are trans-inclusive.

B. Potential Consensus:

- **Ban on conversion therapy:** Overarching law on banning conversion therapies of all kinds in regulated and unregulated establishments or settings. This should be accompanied by extensive executive orders and training/sensitisation.
- **Ban on medically unnecessary intersex surgery:** Instructions on banning surgeries on non-consenting individuals to “correct” intersex variations unless such surgery is lifesaving or medically necessary.
- **Removal of blanket bans on blood donation:** Removal of blanket ban, while ensuring relevant tests on every donor as appropriate.
- **Broader Inclusion in Health Research:** Increase funding and research focused on queer bodies, ensuring that the health needs of transgender, intersex, and queer individuals are understood and addressed in medical practices.
- **Insurance Coverage:** Ensure that both government and private health insurance plans explicitly cover gender-affirming care including surgeries, hormone therapy, mental health support, and HIV treatment.
- **Accessible and Inclusive Healthcare Services:** Establish healthcare systems that are not only equipped to provide gender-affirming care but also ensure that services, such as HIV treatment, are accessible to all queer persons. This would include proper training for healthcare professionals to provide non-discriminatory and inclusive care.
- **Incorporate Queer-Inclusive Education in Medical Curricula:** Medical schools should update their curricula to include comprehensive modules on queer health, with a focus on transgender health and gender-affirming care. This education should cover issues such as hormone therapy, gender dysphoria, sexual health, and mental health support for transgender individuals.
- **Regulatory Framework for Healthcare Providers:** A regulatory framework should be developed to ensure that healthcare providers performing gender-affirming surgeries are qualified and adhere to established protocols. This includes accreditation for surgeons and medical institutions offering these services, ensuring that they meet the required medical standards and ethical practices.
- **Acceptable and up-to-date standards for gender-affirmative surgeries and post-operative care:** Establishment of evidence and research-based standard operating protocols and guidelines that must be followed by

medical professionals while conducting gender-affirming surgeries to ensure that they meet accepted standards of care. This would include pre-surgical evaluations, post-surgical follow-up, and informed consent procedures. These guidelines should be created in consultation with medical professionals, transgender advocacy groups, and legal experts to ensure that they reflect the specific needs of transgender individuals.

- **Gender Sensitivity Training through CME Programs:** Continuing Medical Education (CME) programs should be mandatory for healthcare professionals, with a focus on gender sensitivity and the specific healthcare needs of transgender and queer individuals. These programs should emphasise culturally competent care and the importance of using appropriate language, avoiding discrimination, and providing inclusive services.
- **Model Programs for Training and Follow-Up:** Successful programs, like those in Tamil Nadu which have trained doctors and nurses on gender sensitivity, should be expanded nationwide. These programs should include regular follow-up sessions to assess progress, gather feedback, and ensure that the knowledge gained during CME sessions is applied in real-world settings.
- **Accountability for Medical Malpractice:** Specific legal provisions should be introduced to hold healthcare providers accountable for negligence in the performance of gender-affirming surgeries. Patients who suffer due to substandard care should have clear legal recourse to seek compensation and redress. Additionally, an independent body could be established to monitor and investigate complaints of medical negligence in gender-affirming surgeries.
- **Training for Medical Professionals:** Surgeons and healthcare professionals involved in gender-affirming surgeries should undergo specialized training to ensure they are equipped with the knowledge and skills required to perform these procedures safely. This training should also include an understanding of the psychological and emotional aspects of transgender healthcare to ensure that patients are treated with dignity and respect.

II. Mental and Physical Health concerns of persons living with HIV

A. Discussion Points:

- **Aggravated discrimination in healthcare settings:** People living with HIV often face discrimination in healthcare settings due to the personal biases of healthcare professionals. This results in denial of HIV care, which impedes equitable access to treatment and exacerbates health inequalities. This discrimination can manifest as denial of treatment, substandard care, and breaches of confidentiality. Without specific, binding guidelines that address and rectify these biases, people living with HIV remain vulnerable to mistreatment, hindering their access to life-saving HIV care.
- **Compounded mental health challenges among people living with HIV:** People living with HIV often experience compounded mental health challenges in addition to their physical health issues. These psychological struggles, such as depression, anxiety, and trauma, are frequently worsened by the stigma surrounding HIV. This is exacerbated when the persons living with HIV also identify as queer due to additional discrimination faced in healthcare settings.
- **Insufficient mental health support for persons living with HIV:** Healthcare providers often lack the necessary training to handle the complex intersection of queer and HIV identities, which leads to discriminatory practices and inadequate care. There is a call for better integration of mental health support within existing national health missions and more focused training for healthcare workers to address these unique needs.

B. Potential Consensus:

- **Comprehensive Healthcare Access and access to other factors necessary for living:** Ensure that persons living with HIV not only receive proper medical treatment but also have access to broader support, including housing, employment, and social services. This integrated approach would improve the quality of life for PLHIV and reduce the systemic barriers they face.
- **Integrate Mental Health Support:** Include comprehensive mental health services in national health programs like RKSK, which already targets adolescent health. These services should be tailored to address the psychological impact of HIV, providing counselling, therapy, and crisis intervention.
- **Training and Sensitisation of Healthcare Workers:** Healthcare professionals must undergo mandatory training to understand and respect the intersectionality of queer and HIV identities. This training should focus on reducing

stigma, addressing biases, and providing culturally competent care to people living with HIV and queer individuals.

- **Confidential and Inclusive Healthcare Services:** Establish confidential and supportive healthcare environments where individuals feel safe to disclose both their HIV and queer identities.
- **Clear Anti-Discrimination Guidelines:** Enforce clear guidelines and codes of conduct for healthcare professionals to prevent the denial of care based on HIV status. This should include compulsory sensitivity training for healthcare workers to address and reduce biases and prioritise inclusivity.
- **Community Awareness and Sensitisation Programs:** Expand successful models like those in Coimbatore, which have effectively reduced stigma and improved access to care. Local initiatives that promote awareness about HIV and its treatment, including the rights of persons living with HIV can help shift societal attitudes and encourage better healthcare practices.

III. Protection of the Privacy of Queer Individuals in Healthcare:

A. Discussion Points:

- Queer individuals, especially those undergoing gender-affirming care or living with HIV, often require the disclosure of highly sensitive information related to their health, identity, and treatment history.
- In a society where queer persons already face discrimination and stigma, any breach of privacy can exacerbate these challenges. Without adequate protection, personal data related to sexual orientation, gender identity, and health conditions may be exposed to parties without a legitimate need to know, leading to potential harm such as exclusion from healthcare services, workplace discrimination, or violence.
- There is flagrant violation of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017. Discrimination on the basis of HIV status is present in insurance agreements (higher premiums for persons with HIV) and at healthcare establishments.

B. Potential Consensus:

- **Specific Safeguards for Queer Individuals' Data:**
The Digital Personal Data Protection Act, 2023 should include specific provisions that recognise the vulnerabilities of queer persons, particularly those who are transgender or living with HIV. It should mandate explicit consent for the collection, processing, and sharing of sensitive personal data related to sexual orientation, gender identity, and health conditions. Additionally, healthcare providers should be required to store this data in a manner that is both secure and confidential.
- **Clear Guidelines for Data Usage and Sharing:**
Legal frameworks should establish clear guidelines on how queer individuals' health data can be used and shared, ensuring that it is done only for legitimate purposes such as medical treatment or research. Any unauthorised sharing of personal data—whether with employers, insurance companies, or other third parties—should be prohibited without the individual's informed consent. The data should only be accessible to those with a direct need to know.
- **Transparency and Accountability in Data Handling:**
Healthcare providers and organisations handling sensitive data should be transparent about their data protection practices and accountable for any breaches. This includes providing clear and accessible information about data privacy policies, outlining how data is stored, protected, and used. There should be regular audits and reviews of these practices to ensure compliance with privacy laws.
- **Protection Against Discrimination Due to Data Disclosure:**
The law should explicitly protect queer individuals from discrimination arising from the unauthorised use or disclosure of their personal data. **For** instance, an individual's sexual orientation or gender identity should not be shared without their consent, and healthcare providers should be prohibited from using this information to deny services or discriminate against queer persons in employment, insurance, or housing.
- **Empowerment and Control over Personal Data for Queer Individuals:**
Queer persons should have the right to access, correct, and delete their personal health data, with the ability to control who can access it. Empowering individuals to manage their own information will build trust in the system and prevent the exploitation of sensitive data.



- ***Incorporation of Data Protection measures in Medical Training:***
Medical and healthcare professionals should be trained in the importance of privacy and data protection, with an emphasis on the specific needs of queer patients. This training should include best ***practices*** for handling sensitive data and understanding the potential risks of data breaches, particularly for transgender and queer individuals.

Session Five: Violence

I. State Violence

A. Discussion Points:

- It was acknowledged that queer individuals are subject to violence and atrocities at the hands of State actors including police personnel and executive representatives.
- Concerns were raised regarding the inherent power dynamics between citizens and police, with attention to instances of police violence against queer individuals. This highlighted the need to limit the expansion of police powers and to establish alternative remedies that prioritize immediate safety, accountability, and compensation for affected individuals.
- Real-world examples of police brutality and systemic failures were shared, highlighting the urgency for reform and suggesting the necessity of a blend of disciplinary measures, comprehensive sensitisation programs, and non-criminal interventions like social worker support.
- Attention was drawn to the lack of complete protection from State violence even in *garima grehs* aimed specifically at providing shelter and safety to transgender persons. Lived experiences were shared regarding police raids in *garima grehs*, suggesting a systemic failure of existing measures set in place to protect queer persons from violence.
- The discussion highlighted the lack of inclusive jail cells for trans individuals, raising significant concerns about their safety, mistreatment, and procedural neglect within prison settings. A proposal was raised to conduct audits to assess the effectiveness of NGO interventions and reforms in prisons.
- Comprehensive grievance redressal mechanisms at both local and national levels were called for, aiming to reduce reliance on law enforcement bodies perceived as perpetrators and instead focus on creating safe spaces for addressing grievances. Additionally, the idea of creating sensitized courts or specialized committees within government frameworks was discussed.

- B. Potential Consensus:** There was consensus that the letter of the law is inadequate in protecting against State violence, when the spirit of equality is not imbued in representatives of the State. The need for safeguards and protective measures against atrocities by State actors was spoken of in terms of a blend of disciplinary measures, comprehensive sensitisation programs, and non-criminal interventions like social worker support. The necessity of implementing sensitivity training for police and government officials was emphasized, alongside the need for systemic changes to address issues such as bias, accountability, and community distrust of law enforcement.

II. Natal Family Violence

A. Discussion Points:

- There was a call to explicitly define forms of violence specific to the queer community, such as "corrective rape" and conversion therapy, to ensure these acts are legally recognized and appropriately addressed. Complexities surrounding age and consent in cases involving minors and adults were also discussed, particularly regarding their implications in protective measures and relevant legal nuances.
- There was a call to recognise "outing" as a form of violence, especially when done by one's natal family as a means to shame queer identities. The same was discussed as relevant for a range of legal areas including domestic violence, anti-discrimination laws, or even criminal law in cases involving blackmail or extortion.
- Issues of privacy violations, such as the publication of violent content targeting queer individuals online, were also highlighted, including recommendations to strengthen intermediary liability guidelines and to introduce platform sensitization to protect the community's digital rights and security. Social media "outing" was linked to natal family violence.
- There was an acknowledgment of false "kidnapping/abduction" accusations being levied against adults who had left their natal homes to be in mutually consensual queer relationships. Lived experiences were shared regarding how familial violence based on queerness in identity resulted in suicide cases, with no support from the criminal justice machinery.

- It was revealed that existing mechanisms to extend support to queer victims of violence in their natal families, are non-functional. Examples included helpline numbers not existing or being non-operational.

B. Potential Consensus:

While no targeted implementation-based consensus was achieved in regard to violence against natal families, there was consensus that holistic socio-legal measures are necessary to safeguard queer persons from natal family violence, especially in situations of dependence, both financial and otherwise. There was also consensus regarding the need to remove cultural barriers to accessing justice.

III. Sexual Violence

A. Discussion Points:

- The possibility of expanding the scope of the Protection of Women from Domestic Violence Act, 2005 to queer persons in relationships in the nature of marriage. Similarly, the call to include queer persons within the ambit of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH') was expressed with the view to broaden the scope and address the unique challenges and experiences faced by queer individuals, particularly gig workers and those employed in the informal sector.
- The discussion also raised the need to balance gender neutrality with acknowledging power dynamics, especially in laws such as the POCSO Act and the Domestic Violence (DV) Act. Caution was raised against expanding criminal law categories without ensuring the existence of adequate remedies.
- The legal framework at present contains a lacuna as far as providing protections to trans individuals are concerned. This was specifically pointed out in the context of persons who are either transitioning, or who have not yet completed transition surgeries.
- The lowered penalties for sexual assault under the Transgender Persons (Protection of Rights) Act, 2019 as compared to criminal laws which apply to women was pointed out as an area of concern.



- B. Potential Consensus:** Expansions of protections and provisions were proposed to thoughtfully include queer individuals, recognising the intersectional concerns they face. A holistic legal framework should be developed to address both subtle and overt forms of violence and discrimination that queer and trans persons face in everyday life, including in the family, workplace, within intimate partner relationships, and in public spaces.

Minutes of Consultation, Mumbai

Session One: Recognition of Queer Relationships and Families

I. Key Issues in Recognition of Queer Relationships

A. Power Imbalances in Queer Relationships

- Vulnerabilities in queer relationships, especially in cases where one partner may have significant financial and social dependency, were highlighted as areas of concern. These dynamics could lead to exploitative or unequal situations, especially in cases where there are power imbalances between partners. These imbalances make it difficult for dependent partners to exit unhealthy relationships without facing severe social or financial consequences.
- It was emphasised that legal frameworks must include provisions for assessing vulnerabilities in queer relationships. These assessments would help identify at-risk individuals and ensure that their needs are met by appropriate legal safeguards. Specifically, there was a call for legal mechanisms to provide for protection for individuals in relationships marked by significant dependency, ensuring they have avenues for support if they need to exit such situations.
- The need for counselling services tailored to individuals in dependent relationships was discussed. Counselling could serve as an essential tool in empowering individuals to recognize unhealthy patterns, while also guiding them through options for legal recourse. Additionally, robust legal support systems were recommended for those exiting abusive or exploitative relationships, ensuring that queer individuals were not further marginalized in the process.

B. Nomination and Succession Rights

- A key issue raised was the lack of legal recognition for queer partners in areas like pensions, inheritance, and medical decisions. Currently, in many jurisdictions, queer individuals are unable to designate their partners as beneficiaries in legal documents, making it difficult for them to access the same rights and benefits as heterosexual married couples.

- The session proposed amending succession laws to explicitly recognise non-traditional family structures, including queer partnerships. This would ensure that queer individuals have the right to designate their partners as nominees in financial, health, and legal matters, including inheritance and pension benefits. The immediate need for administrative reforms was emphasized, with a focus on streamlining processes to allow queer individuals to access the same legal rights as their heterosexual counterparts.

C. Non-Monogamous and Polyamorous Relationships

- A significant portion of the session was dedicated to exploring the recognition of non-monogamous and polyamorous relationships. While there is increasing social acceptance of diverse relationship structures, the legal system has largely been slow to recognize these forms of intimacy and commitment. The feasibility of recognising polyamorous relationships in the legal framework was debated, with suggestions for exploring legal agreements within polyamorous families that address responsibilities, inheritance, and financial protections.
- It was suggested that pilot studies be conducted to assess the social and legal impact of recognising polyamorous relationships in India. These studies would help identify potential challenges and inform the development of legal reforms to better accommodate non-traditional relationship structures.

D. Healthcare Rights and Social Welfare under Civil Unions

- Civil unions for queer couples were discussed as an essential mechanism for securing healthcare rights, including spousal healthcare and caregiving benefits. Legal recognition of civil unions would ensure that queer partners have access to the same healthcare benefits as married heterosexual couples, without discrimination based on their relationship structure.
- The session also recommended extending legal recognition to non-traditional familial setups, such as chosen families within the queer community. These families, which may include close friends or partners, often play vital roles in providing social and economic support. Recognizing these families under the law would ensure that members of queer communities have equal access to social welfare benefits, even when they do not fit within the traditional family framework.

- It was highlighted that the recognition of relationships should be based on lived experiences and socio-economic interdependence, rather than being restricted to traditional definitions of marriage or blood ties. This would ensure that individuals in diverse relationships, including queer and non-monogamous ones, have equal access to legal recognition and protections.

E. Potential Consensus:

There was consensus on the need for legal and policy reforms to recognise and protect diverse forms of relationships, including queer, polyamorous, and non-binary relationships. There was widespread agreement on the importance of including queer individuals in legal frameworks governing succession, healthcare, and social welfare benefits, thereby extending the same rights and protections available to traditional families. The session also underscored the necessity of vulnerability assessments within queer relationships, particularly those involving significant financial or caregiving dependencies, to prevent exploitation and unequal power dynamics. Additionally, participants agreed on the urgency of addressing intersectional concerns, such as ableism, caste, class, and rural-urban disparities, within legal protections for marginalized queer individuals. Overall, the consensus emphasised the need for reforms that reflect the diverse realities of relationships, offering legal recognition and support to those outside traditional familial norms.

Session Two: Queer Parenthood and Families

I. Key Issues in the Recognition of Queer Parenthood

A. Recognition of rights within Laws on Parenthood

- Explored the neutral wording of the existing laws, including S. 57 [Eligibility of prospective adoptive parents] and the definition clauses of S. 2(31) [guardian] and 2(35) [juvenile] of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- It was pointed out that while the laws on adoption are not discriminatory, the system in place for the process of adoption is inadequate. Leaving it to a social worker to decide the “fitness” of a couple, without understanding the nuances, or overcoming the inherent heteronormative biases attached with the idea of “fitness”, needs to be changed.
- It was suggested that the legal phrase “best interest of the child” or the “welfare principle” needs to be codified, instead of leaving it to the subjective discretion of the court or the social worker.
- It was proposed that a “foster-family setup for trans/intersex minors” must be legally recognised, as well as implemented.
- The idea that intersex persons must not be confused with transgender persons, was also deliberated upon. It was recognised that the rights, needs and care required by the two categories of persons are completely different and must be taken into consideration while framing or implementing laws regarding this.
- The idea of queer parenthood was also tied back to the idea of recognising queer relationships. Since the law only recognises the right of “married persons” to adopt children or become parents, it is essential first, to detach the idea of relationship with parenthood/family status.
- Rights of a child post the conclusion of a queer relationship must also be codified. There must be safeguards in place to ensure that the child does not suffer due to the lack of divorce/separation/custody laws for queer parents.

B. Discrimination by the Laws on Parenthood

- Most of the laws on parenthood are binary, and guardianship laws explicitly discriminate against women as well as single people. With regards to sex discrimination, it was proposed to abolish the provision assigning the father as the legal guardian, and the mother as a custodian of the adopted child and make both parents joint guardians.
- The way in which a person is appointed as a guardian of a child by the court was also argued to be patriarchal. The court, while applying its discretion on a per-case basis, allows the decision to be biased due to its prejudices. In this regard, it is important to have certain overarching codified principles for the appointment of guardians.

C. Alternatives to heteronormative familial setups

- Firstly, the parenthood rights of asexual people must be recognised. The law must detach relationships, intimacy and consummation from parenthood. In this regard, friends or a platonic couple wanting to become parents must also be recognised as such.
- Parenthood by multiple partners, or polyamorous parents must also be recognised.
- There must be a clear demarcation between foster-family and parenthood. The law must clearly recognise the choice of a couple to give care or foster children, while respecting their choice to not become “parents”. It is also important to recognise that support given to queer children from queer couples is also essential, and sometimes more important than the support given by their natal families.

D. Potential Consensus:

Since queer families have not used the neutral wording of the existing law in their favour to adopt as a couple and instead adopt as single parents, with the other partner becoming a de facto parent, it was recognised that alternatives to this process must be explored. There was consensus that the law needs to envisage a better system for the adoption of a child, and further, the legal phrase “best interest of the child” or the “welfare principle” needs to be codified. The discretion of a social worker in this regard must be very limited. The legal recognition of different forms of families, apart from heterosexual ones, is imperative.

Session Three: Access to Goods and Services

I. Key Issues

A. Finance and Banking

- Transgender individuals often face challenges accessing financial products and services, including difficulties in obtaining loans, insurance, and opening bank accounts due to identity and documentation issues. Financial institutions may require documents that do not align with the individual's gender identity, leading to discrimination or exclusion.
- Inconsistent policies across different financial institutions create confusion and obstacles for transgender people trying to access financial services. There is a need for standardised procedures across banks and financial institutions to ensure equal access for all individuals, regardless of gender identity.
- A lack of awareness and understanding of issues pertaining to transgender individuals within financial institutions contributes to systemic exclusion. Financial literacy programs tailored for marginalised communities, including transgender individuals, were proposed to address this gap.
- The importance of inclusive financial products that do not discriminate based on gender identity was highlighted. This includes offering loans, insurance policies, and savings products with inclusive terms that ensure no one is excluded due to their gender.
- The role of government regulation and financial oversight was discussed, with a suggestion that policies should mandate financial institutions to adopt inclusive practices and hold them accountable for discriminatory behaviour.
- There was support for the creation of specialised financial services or institutions that cater specifically to the needs of marginalised communities, including transgender people, to ensure that they have access to financial independence and security.

Potential Consensus: There was a consensus on the need for inclusive financial systems that recognize the unique barriers faced by trans individuals. Key recommendations included the standardisation of policies across financial institutions, improved financial literacy programs, and the introduction of inclusive financial products. Additionally, stronger regulatory frameworks and government oversight were seen as essential to ensure financial institutions do not discriminate against transgender individuals. Specialised financial services for marginalised communities were also considered a viable solution to address these disparities.

B. Labour and Employment

- Transgender individuals face challenges in having their qualifications recognised by employers, especially in case of distance learning courses. These credentials are often dismissed, leading to barriers in career progression and professional growth.
- Even when transgender individuals are employed, they are frequently relegated to lower-status roles, perpetuating stereotypes and hindering career advancement. This highlights a broader societal issue requiring legal and cultural reform.
- The Maharashtra government's classification of transgender persons as either men or women and the denial of reservations for marginalised caste transgender individuals points to systemic issues. Legal changes alone are insufficient; there needs to be a shift in societal and governmental attitudes.
- A lack of awareness and resistance towards reform from both the public and the private sectors impede the effective implementation of progressive laws. Penalties for non-compliance with laws protecting transgender individuals and awareness campaigns are necessary to change mindsets.
- Education sponsorship for transgender individuals was highlighted as a potential way to overcome systemic barriers, ensuring equal access to education and socio-economic mobility.
- Legal frameworks and social policies need to ensure that transgender individuals and their relationships are treated equally in personal matters such as healthcare benefits, insurance, and social security.
- The need for gender-neutral language in labour laws, including provisions for leave, sick pay, and benefits, was emphasised to ensure that all individuals, regardless of gender identity, have equal access to benefits.

- The introduction of horizontal reservations for marginalised groups, including transgender individuals, was proposed as a solution to address systemic barriers in education and employment.

Potential Consensus: There was a shared agreement on the need for systemic reforms to ensure equal opportunities for transgender individuals in employment and education. Recommendations included broad legal frameworks, gender-neutral policies, and the recognition of diverse relationship structures. Horizontal reservations and education sponsorship were seen as key measures to improve access and socio-economic mobility for marginalised groups, including the transgender community.

C. Education

- Anti-Bullying Measures and Queer-Affirmative Education were proposed. Suggestions to strengthen anti-bullying frameworks to protect LGBTQIA+ students and to incorporate child psychologists and experts to support students exploring their identity.
- It was proposed that sensitisation sessions must be mandatory for teachers and the school staff as well. It should not be discretionary, and should target not just the students, but should encompass the school ecology as a whole. Faculty and non-teaching staff must be sensitised to handle disclosures and foster safe spaces.
- There must be infrastructure and curriculum changes, such as introduction of gender-neutral washrooms and open sports categories in schools. The law must ensure that the university course outlines, faculty training, and speech development programs are queer-sensitive.
- Therapy sessions must be implemented within schools. There must be an introduction of round-table conversations, or peer support groups, to create open channels of discussion among students facing similar issues.

D. Housing

- The shortcomings of current shelter homes were highlighted. Government shelter homes are currently poorly implemented and often limited to six months of accommodation with restrictive rules (e.g., curfews). Further, the shelters often fail to provide comprehensive employment and upskilling opportunities. In this regard, there was a

proposal to move beyond the temporary nature of shelter homes, and to provide enough legal and financial support to make it a more permanent and reliable way of living. Participants focused on the “sustainability” of shelter homes and *Garima Grehs*.

- Discrimination within housing was deliberated upon specifically where LGBTQIA+ individuals face higher rents and frequent rejection in housing markets. Same-sex/gender couples also face challenges in jointly purchasing or renting homes due to lack of legal recognition.
- There was a proposal to implement horizontal reservation for the queer community in housing policies.
- There must be an integration of non-local transgender individuals as well. The law must ensure that shelter homes accommodate transgender persons from different geographical locations, eliminating dependency on NGOs with arbitrary regulations.

Session Four: Violence

I. Key Issues

A. Identity Based Violence

- The inclusion of slurs, hate speech, online bullying and harassment against the LGBTQIA+ in existing protective laws was deliberated upon.
- It was suggested that just as there is a specific law for the protection of people belonging to the SC/ST community against hate speech and slurs, a similar law must be implemented for the protection of the LGBTQIA+ community against similar verbal abuse and violence.
- It was suggested that a crime record bureau, similar to the NCRB be set up, solely for collecting data on violence against the LGBTQIA+ community.
- It was proposed that there must be guidelines similar to POSH/DV Act specifically dedicated to the protection of queer people.
- Sexual violence against queer persons must also have special guidelines of their own, similar to rape and harassment laws, which presently only protect women.
- Further, there must be clear guidelines for healthcare and medical professionals to treat queer persons suffering from STDs as a result of sexual violence being perpetrated on them. This includes adequate mental health support, as well as a quick response team and an escalation programme.
- Integrating queer protections into larger policies, such as central government schemes, disaster management frameworks, and media reporting guidelines, was also proposed. This also extends to ensuring that shelter homes and child protection services are queer-inclusive and addressing gaps in education, healthcare (e.g., for STDs and mental health),
- Addiction services for queer minors, who fall into the traps of self-harming drugs, etc., must also be legalised. This includes accessible queer helplines and rapid response teams dedicated to drug abuse within queer minors.

B. State Perpetrated Violence

- It was proposed that active sensitisation of social workers and police officers must be conducted in order to ensure that there is no violence against the LGBTQIA+ community at the hands of police personnel, or by other persons. Moreover, the state officials and executives must also be mindful of the language they adopt while interacting with or referring to such persons, ensuring that it is queer-affirmative.
- A tie-up system was proposed– where a local/domestic NGO would take on the task of sensitising the police station or executive officers in that region. This is also necessary for the recognition and prevention of harassment against the queer community by the personnel.

C. Inter-Community Violence

- There is a need to talk about the violence perpetrated by people within the community on other vulnerable people. In this regard, it was recognised that while the community wants to show solidarity, and present a united front, it is necessary to have legal protection against harassment and violence perpetrated by queer persons on other queer persons.
- Further, the idea that there must be an Internal Complaints Committee (ICC), as mandated by POSH, within NGOs as well, was proposed. They must not be exempted from implementing safeguards and preventing harassment that might happen under their roof.
- Guidelines for the protection of violence against persons within foster homes, Garima Grehs, or other queer-affirmative or queer-protective spaces must be implemented.

D. Potential Consensus:

Participants agreed that consolidating queer protection within existing laws (such as POSH, DV Act, or Transgender Act) is insufficient. Instead, a separate legal framework targeting the specific needs and challenges of the queer community is necessary. This should address gaps such as domestic and sexual violence within queer relationships, and discrimination in law enforcement (such as filing of FIR, etc.). There was consensus on expanding Garima Grehs



and establishing dedicated shelter homes for queer individuals beyond the transgender community. Binding directions to police authorities to prevent harassment and discrimination against queer persons was a point of consensus. This includes disciplinary actions against violators and state-level police reforms including mandated sensitivity training for law enforcement. Participants highlighted the need for specialised law enforcement units for the protection of queer community.

Session Five: Healthcare

I. Key Issues

A. Sensitisation and Training in Medical Education

- There was a strong push for medical education to include mandatory modules on sexual health, gender identity, and LGBTQI+ rights. This would help healthcare providers better understand and address the unique health challenges faced by queer individuals, thereby reducing stigma and creating a more inclusive environment.
- Regular workshops and sensitivity training sessions for doctors, nurses, and other medical staff were recommended to ensure that they are equipped to interact respectfully with queer patients. These training programs should focus on addressing biases, enhancing cultural competence, and fostering empathy towards individuals from the LGBTQI+ community.

B. Discrimination and Stigmatisation in Healthcare Settings

- Discrimination against LGBTQIA+ individuals, especially transgender persons, was identified as a major barrier to healthcare access. Recommendations included the establishment of robust legal frameworks to protect queer patients from discrimination in healthcare settings. This includes the strict implementation of the Transgender Protection Act, which offers legal protections to transgender individuals, including in healthcare contexts.
- Healthcare providers were urged to follow clear, standardized guidelines for treating LGBTQI+ patients. This includes non-discriminatory practices for transgender individuals and people living with HIV. Regular monitoring and accountability mechanisms were suggested to ensure adherence to these guidelines for reducing the risk of stigmatization or mistreatment during medical care.

C. Barriers to Accessing Gender-Affirming Care

- The high costs associated with gender-affirming surgeries was identified as a significant barrier to accessing gender-affirmative care. Recommendations included improving access to these services through public healthcare systems and regulating pricing in private hospitals to make them more affordable.
- There was a call for gender-affirming surgeries and treatments to be recognized as medically necessary procedures rather than being viewed as cosmetic. This would help facilitate access to insurance coverage and public healthcare resources.
- Expanding both public and private insurance coverage to include gender-affirming surgeries was seen as essential for ensuring access to care. Moreover, integrating pre- and post-surgery counselling, along with psychological support, was recommended to provide comprehensive care to individuals undergoing gender-affirming procedures.

D. Lack of Knowledge on HIV Care and Prevention

- It was suggested that awareness campaigns be launched to educate both the public and healthcare workers about HIV transmission and prevention. This includes dispelling harmful myths, such as the misconception that engaging with transgender individuals can cure HIV.
- The availability of preventative treatments like Pre-Exposure Prophylaxis (PrEP) was highlighted as an important step to protect individuals at higher risk of HIV. The expansion of these treatments, especially in rural areas where healthcare access is limited, was emphasized.
- Recommendations included providing comprehensive education on HIV care and treatment, with an emphasis on antiretroviral therapy (ART) and HIV kits. This would ensure that individuals living with HIV have access to the treatment they need, and that healthcare professionals are equipped to provide adequate care without discrimination.

E. Addressing Health Risks Linked to Surgeries

- Ensuring the safety of gender-affirming surgeries through strict standards of hygiene and sterilisation was identified as crucial to prevent infections like HIV.
- It was also recommended that post-surgery counselling be provided to individuals who undergo gender-affirming surgeries, not only for physical recovery but also to address the mental and emotional aspects of recovery.

- The issue of untrained or inadequately trained medical professionals performing gender-affirming surgeries was raised. There were calls for specific training programs to ensure that medical staff are properly equipped to perform these surgeries safely and effectively.

F. Access to Resources and Financial Knowledge

- To help LGBTQ+ individuals navigate insurance and savings, financial literacy programs tailored to their unique needs were recommended. These programs would address the barriers LGBTQ+ individuals face, when accessing financial services, ensuring that they are informed about available options.
- Expanding awareness campaigns regarding health insurance coverage for people living with HIV was proposed. Healthcare providers should comply with existing laws that require them to offer coverage to individuals living with HIV, and LGBTQ+ individuals should be made aware of these rights.
- The introduction of community-based education programs was recommended to address financial knowledge gaps, particularly in marginalized LGBTQ+ communities. These programs could teach individuals how to access necessary resources and navigate financial systems.

G. Legal and Policy Reform on Blood Donation

- Blood donation policies were identified as a source of discrimination against MSM (men who have sex with men), transgender individuals, and sex workers, with restrictions based on sexual orientation and gender identity. Recommendations included revising these policies to allow these groups to donate blood, provided they are HIV-negative, to eliminate discrimination while ensuring safe blood supplies.
- Regular HIV and syphilis testing for all potential blood donors was recommended to maintain safe blood supplies while ensuring that individuals are not excluded from donation due to their sexual orientation or gender identity.

H. Role of Rural Medical Practitioners (RMPs) and ASHA Workers

- It was recommended that Rural Medical Practitioners (RMPs) receive specific training on sexual health, gender sensitivity, and LGBTQI+ rights. This training would help reduce stigma and improve healthcare access for marginalized communities, particularly in rural areas.
- ASHA workers, who are community-based healthcare workers in rural areas, should be equipped with the knowledge and resources to address LGBTQI+ rights, sexual health, and mental health issues. This would ensure that they are able to provide accurate information and support to marginalized individuals in their communities.

I. Research on Queer Health

- It was proposed that the government increase funding for research on health challenges specific to the queer community. Areas of focus could include STIs, HIV, mental health issues, and the overall healthcare needs of LGBTQI+ individuals.
- Facilitating collaborations between government bodies, medical institutions, and LGBTQI+ organizations was suggested to ensure that research frameworks are developed in consultation with queer individuals and adequately address their unique health needs.

J. Potential Consensus:

There was consensus on the need to integrate LGBTQI+ health issues into medical education and professional training to address discrimination and improve care. Legal frameworks to protect against healthcare discrimination and access to gender-affirming care were universally supported. Expanding insurance coverage for gender-affirming surgeries and improving financial literacy for LGBTQ+ individuals were key points of agreement. The need for more research on queer health and enhanced support systems for rural medical practitioners and ASHA workers was also broadly endorsed. Key priorities included improving access to healthcare and addressing stigmas within the system, as well as ensuring that healthcare policies and practices are inclusive of all marginalized communities.

Minutes of Consultation, Jaipur

Session One: Recognition of Queer Relationships

I. Recognition of Queer Relationships

A. Key Issues

- Participants detailed the absence of formal recognition for queer partnerships, including marriage and civil unions. Without such recognition, queer couples face legal vulnerabilities in areas such as medical emergencies, succession, property disputes, and parental rights.
- **Special Marriage Act:** The Act's language and provisions were critiqued for being inherently heteronormative, such as requiring consummation for validity and binary terms like "husband" and "wife." Suggestions included replacing binary terms with inclusive ones like "partner" or "spouse" and allowing gender-neutral unions and equitable responsibilities in both marriage and civil unions.
- Participants advocated for the recognition of various non-traditional relationships, as envisioned in the judgement, which would lead to benefits like-
 - Accessing healthcare services where one partner can make decisions on behalf of the other.
 - Financial matters like joint bank accounts and the ability to designate nominees.
 - Labour laws allowing for the nomination of a partner for workplace benefits.

B. Civil Unions as an Alternative Framework:

- To address the limitations of existing marriage laws, participants proposed introducing a separate **civil union framework**. Key recommendations included:
 - Clear definitions of civil unions, including eligibility criteria (e.g., age, previous marital status).

- o Simplified processes for dissolution while ensuring equitable division of responsibilities and rights.
 - o Provisions for shared decision-making in areas like healthcare, finances, and child custody.
 - o Legal mechanisms to regulate parental rights and custody in civil unions involving children.
- The framework would cater to diverse relationship models, including platonic partnerships and caregiving arrangements.

C. Impact of Stigma:

- Persistent societal stigma against queer relationships exacerbates the challenges of legal exclusion. Participants shared personal stories of familial rejection, workplace discrimination, and public ostracism, highlighting the psychological and financial toll of such stigma.

D. Legal Protections and Anti-Discrimination Measures:

- Proposals included comprehensive anti-discrimination laws to protect queer couples and ensure equal access to rights like inheritance, shared tax benefits, healthcare decision-making, and spousal privileges.
- Participants emphasized the importance of mechanisms to address systemic biases when queer couples approach institutions for benefits. These could include:
 - o Training programs for legal and law enforcement professionals.
 - o Enforcing accountability for discriminatory practices in institutions like banks, healthcare facilities, and workplaces.

Potential Consensus

- **Legislative Reforms:** Participants broadly agreed on the need for reforms that formally recognise queer relationships, whether through marriage, civil unions, or alternative frameworks. These reforms would address critical legal gaps while challenging societal biases against LGBTQIA+ individuals.

- **Public Awareness and Education:** Campaigns featuring diverse narratives of queer partnerships were recommended to normalize queer identities and relationships. Educational initiatives aimed at dismantling stereotypes and fostering inclusivity were emphasized.
- **Broader Advocacy Strategies:** Initiatives such as pride marches, inclusive workplace policies, and storytelling events were highlighted as effective tools for promoting visibility and acceptance. Participants recommended scaling these efforts and engaging media platforms to achieve systemic societal change.

Session Two: Queer Parenthood and Families

A. Adoption and Surrogacy

- Current surrogacy and adoption laws were critiqued for excluding queer couples and transgender individuals.
- Recommendations included:
 - Removing gender- and marital-status-based restrictions in adoption laws.
 - Explicitly granting queer individuals and couples' access to surrogacy services.
- Examples from countries with inclusive family policies demonstrated how recognizing diverse parenthood models fosters stability and equality.

B. Custody and Parental Rights

- Discussions focused on the lack of legal recognition for non-biological parents in queer families, particularly in custody disputes.
- The absence of equitable legal mechanisms often leaves one parent without standing, disproportionately affecting queer families and their children.
- Proposed reforms included:
 - Amending laws to use neutral terms like "parent" instead of "mother" or "father."

- o Ensuring parental rights are assigned based on care and commitment rather than biological connection only.

C. Supportive Frameworks

- The session stressed the need for broader societal and institutional support.
- Key suggestions included:
 - o Implementing inclusive school policies to support children from queer families.
 - o Launching public campaigns to normalize queer parenthood and combat stigma.
 - o Training healthcare providers to offer affirming and tailored care to queer families, including mental health counselling and fertility services.

Potential Consensus: Participants strongly advocated for urgent legal reforms to ensure that adoption, surrogacy, and custody laws are inclusive and accessible to all, regardless of sexual orientation or gender identity. Non-legal recommendations were centred on conducting multimedia campaigns showcasing positive stories of queer parenthood and developing inclusive educational curricula to foster acceptance from a young age. Community dialogue sessions, storytelling events, and partnerships with supportive healthcare institutions were identified as effective strategies for changing societal perceptions.

Session Three: Access to Goods and Services

I. Key Issues

A. Comprehensive Anti-Discrimination Laws:

- Participants critiqued the absence of broad anti-discrimination laws that explicitly protect LGBTQIA+ individuals in employment, education, and housing. Existing policies were described as fragmented and inadequately enforced.
- Suggestions included drafting legislation with clear definitions of sexual orientation and gender identity to ensure uniform protections.

B. Accountability Mechanisms:

- Recommendations emphasised the creation of independent bodies to monitor compliance with anti-discrimination laws and address grievances effectively.
- Public institutions were urged to adopt regular inclusivity audits and implement mandatory sensitivity training programs.

C. Data Collection and Policy Development:

- The lack of comprehensive data on LGBTQIA+ populations was identified as a major barrier to evidence-based policymaking. Participants advocated for anonymized data collection initiatives to better understand community needs.



D. Potential Consensus:

Participants strongly supported enacting comprehensive anti-discrimination legislation, paired with rigorous enforcement measures to ensure accountability. The establishment of oversight bodies to address complaints and promote inclusivity was widely endorsed as a practical solution. The value of data-driven policymaking was universally acknowledged, with calls for ethical approaches to collecting and utilizing LGBTQIA+ demographic data. The session concluded with a shared commitment to advancing systemic reforms through collaborative efforts amongst government, civil society, and community organisations.

Session Four: Violence

I. Key Issues

A. Law Enforcement Reforms

- Stricter police protocols are recommended, mandating a preliminary inquiry when families file complaints against queer couples. This would ensure that individuals are consenting adults, preventing the misuse of legal processes against LGBTQI+ individuals.
- Stringent disciplinary measures should be implemented against law enforcement personnel involved in harassment or violence targeting queer individuals. These measures aim to hold offenders accountable and deter future misconduct.
- Establishing a dedicated law enforcement unit focused on LGBTQI+ issues is proposed. This unit would receive specialised training to address the unique concerns and challenges faced by the community effectively.

B. Affirmative Measures

- Establishing more *Garima Grehs* (shelter homes for transgender individuals) across the country is recommended, ensuring every state and union territory has at least one such facility to address the current shortage of safe spaces.
- Enhancing the services provided in existing *Garima Grehs* was emphasised, with the inclusion of skills training programs and medical assistance to empower residents to lead independent and fulfilling lives.
- The creation of safe houses specifically designed for individuals experiencing violence and harassment due to their sexual orientation or gender identity is proposed, with a particular focus on supporting men who are often forced out of their homes after disclosing their sexual orientation.
- Making all shelters, including those for children and orphans, queer-friendly is seen as critical to ensuring protection from violence and discrimination for residents regardless of their sexual orientation or gender identity.

- Inadequacies in existing helplines, often run by resource-limited private organisations, are highlighted, and the establishment of a centralised, government-run helpline is proposed to provide consistent support, connecting individuals with medical and legal assistance as well as appropriate shelters like Garima Grihas.
- Recognizing the financial and informational barriers to legal recourse, the proposal includes making legal aid free and accessible for LGBTQI+ individuals facing discrimination and violence. Mandating the Legal Services Authorities Act to include provisions for such assistance would empower individuals to assert their rights and seek justice.

C. Legal Reforms

- The session advocates for a significant expansion of the Domestic Violence Act to include all individuals in relationships, regardless of gender or sexual orientation. This amendment would close a critical gap in the law, ensuring that individuals in same-sex relationships have equal access to legal protections against domestic violence.
- Amending the Sexual Harassment at the Workplace Act is proposed to explicitly address discrimination, violence, and sexual remarks based on sexual orientation and gender identity. This reform would strengthen protections for queer individuals, fostering safer and more inclusive workplaces.
- To address the limitations of India's current rape law, which recognises rape only as an act committed by a man against a woman, the speakers argue for incorporating "victim neutrality." This change would acknowledge that rape can be perpetrated against any individual, regardless of gender, and extend legal protection to all victims of sexual violence, including LGBTQI+ individuals.
- Strengthening the Transgender Persons (Protection of Rights) Act, 2019 is recommended to ensure that penalties for crimes against transgender individuals are equal to those for similar crimes under the country's general laws. This would eliminate the disparity in legal protection, providing transgender individuals with equal safeguards against physical, verbal, and economic abuse.

D. Potential Consensus:

There was consensus on the urgent need for comprehensive reforms and interventions across law enforcement, social services, and legal frameworks to combat violence and discrimination against LGBTQI+ individuals. Strengthening accountability mechanisms within law enforcement to address harassment and ensure justice was universally supported. Enhancing social services to provide safe spaces, mental health support, and resources for LGBTQI+ individuals was broadly agreed upon. Legal reforms to ensure equal protection under the law, including addressing gaps in existing legislation, were highlighted as critical. Key priorities included fostering a culture of inclusivity, eradicating systemic biases, and ensuring that all interventions promote safety, equality, and justice for marginalized communities.

Session Five: Healthcare

I. Key Issues

A. Access to Inclusive Healthcare:

- Participants highlighted the scarcity of queer-affirmative healthcare providers, particularly in rural areas. Personal accounts revealed discrimination during routine medical visits and the lack of access to specialised services such as gender-affirming care.
- The session emphasized the need for mandatory training programs for healthcare professionals to ensure respectful and informed care.

B. Structural Barriers:

- Systemic obstacles, such as inadequate privacy during medical procedures and refusal of services to transgender patients, were discussed. Participants advocated for policies that enforce equal treatment and enhance facility inclusivity.
- Financial barriers to accessing hormonal therapies and gender-affirming surgeries were identified as critical challenges, prompting calls for government subsidies and insurance coverage.

C. Mental Health Services:

- The session underscored significant gaps in mental health support for LGBTQIA+ individuals, citing elevated rates of depression and anxiety stemming from societal discrimination.
- Proposals included establishing crisis helplines, expanding access to queer-affirmative therapists, and integrating mental health support within community health programs.



D. Potential Consensus:

Participants advocated for a national policy requiring inclusive healthcare practices, supported by robust mechanisms to address patient grievances. Public health campaigns to reduce stigma and increase awareness of LGBTQIA+ healthcare needs were widely endorsed. Finally, a consensus was reached on the importance of expanding access to affordable mental health and gender-affirming resources, with participants calling for collaborative efforts between government and community organizations.



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