

Why marriage laws should replace 'husband', 'wife' with 'spouse'

A year ago today, Supreme Court passed the landmark Supriyo verdict that paved the way for LGBTQIA+ community to access a range of basic services. Lawyers at **Vidhi Centre For Legal Policy** argue further changes are needed to make laws more inclusive, for example, by updating legal definitions to recognise same-sex union

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Thanks to Supreme Court judgments, queer persons can name their partners as nominees while opening bank accounts. Protection has also been provided against discrimination in healthcare settings. But gaps still remain. In this context, Supreme Court's verdict in *Supriyo vs Union of India* ('Supriyo') presents an opportunity for the central and state govts to move a step closer towards ensuring the inclusion of queer persons within the country's legal regime. The top court noted the govt's duty to address discrimination faced by persons from the LGBTQIA+ community and directed the Union govt to set up a high-powered committee (HPC) to examine this and propose measures. While access to goods and services is being facilitated for those in same-sex relationships, there are some necessary next steps that remain to be taken:

Relationship Benefits

Marriage allows access to a bouquet of rights and entitlements. These include maintenance, inheritance, healthcare decision-making, joint loan application, and nomination for benefits such as insurance. Queer persons are denied these rights because their relationships are not recognised by law.

What Has Been Done?

➤ **Bank Accounts:** The depart-



Members of queer community in Delhi celebrate SC verdict decriminalising consensual gay sex on Sept 6, 2018

ment of financial services has issued a circular clarifying that there is no restriction on queer couples from opening joint bank accounts. Persons in a 'queer relationship' can nominate their partner to receive the balance in their account upon their death.

➤ **Ration Cards:** An advisory issued by the department of food and public distribution has clarified that persons in queer relationships will be treated as part of the same household for the purpose of ration cards. States and UTs have been directed to take measures to ensure there is no discrimination against queer couples in the issuance of ration cards.

➤ **Deed of Family Association:** The draft Tamil Nadu Gender and Sexual Minority Policy provides for the legal recognition of queer relationships

through a deed of family association. However, the legislation is yet to be enacted.

What Needs To Be Done?

➤ **Amendments To Special Marriage Act, 1954:** It was enacted to recognise inter-faith marriage of heterosexual couples. Amending it to accommodate queer relationships may be a first step towards inclusion. Provisions referring to 'husband' or 'wife' under the Act should be amended to the gender-inclusive 'spouse'. A gender-inclusive maintenance provision should be brought in, accompanied by an indicative list of factors for courts to grant maintenance, accounting for gendered factors such as the value of unpaid domestic labour.

➤ **Recognising Civil Unions:** Despite the advisories regarding joint bank accounts and

ration cards, one overarching question remains: How will the state determine who is in a 'queer relationship'? Will it be based on a self-declaration? Or will the officials concerned examine the existence of such a relationship in each case? A law recognising and regulating civil unions would provide an answer. While benefits may be extended to same-sex partners in non-marital relationships through piecemeal amendments to various beneficial laws, a holistic law would ensure smoother implementation and clarity, and would help avoid exploitation.

A law on civil unions must outline the following:

■ Who can enter into civil unions (for example, people above the age of 18, irrespective of their gender).

■ The characteristics of such civil unions (for example, living

in a shared household at some point or sharing a degree of financial interdependence).

■ A process for the registration or declaration of such unions, as well as for their dissolution.

■ Rights flowing from such a union, such as adoption and inheritance.

Countries around the world have adopted a progressive approach towards recognising queer relationships. UK allowed same-sex couples to enter civil partnerships before enactment of the Marriage (Same Sex Couples) Act, 2013. In Canada, before the nationwide recognition of same-sex marriage in 2005, different states and provinces progressively recognised and regulated civil unions.

➤ **Recognition Of Atypical Families Through Nominations:** The queer community has demanded that people should be allowed to nominate any person of their choice as their next-of-kin for purposes ranging from healthcare decision-making and bank account nominations to execution of their estate once they die. It believes that the choice of such a person should not be restricted to natal family members, marital family members, or partners in civil unions.

Atypical family structures, beyond marriage and kinship, abound in India. Some examples are *hijra gharanas* and platonic cohabitation arrangements among friends. These chosen families provide both emotional and financial support outside the bonds of marriage and biology. Provisions for nomination are a way of legally recognising these de facto structures of care.

Access To Goods, Services

Queer individuals often find themselves struggling to access basic amenities and goods, singly or as part of a relationship. This includes lack of access to housing, education, and employment. For instance, accessing rental properties is accompanied by disheartening stigma as most owners or neighbours prefer traditional families. Similarly, queer persons are generally vulnerable to extreme forms of harassment, bullying, isolation and prejudicial treatment at workplaces and educational institutions. Ensuring access to goods and services will require legislative and executive measures.

What Has Been Done?

➤ **Healthcare:** Directions to

state health departments to address the discrimination faced by queer persons in accessing healthcare.

➤ **Transgender Rights Act:** Transgender persons are covered by the Transgender Persons (Protection of Rights) Act, 2019, which prohibits discrimination in matters of education, employment, healthcare, movement, housing, holding public or private office, and accessing care or custody, and goods and services.

What Needs To Be Done?

➤ **Comprehensive Anti-Discrimination Law:** The Transgender Rights Act prohibits discrimination against only transgender persons. A comprehensive anti-discrimination law that prohibits private and public discrimination, including on the grounds of sexual orientation, is the need of the hour.

➤ **Effective Remedies:** The Transgender Rights Act does not provide for effective remedies against discrimination by private parties. This can be addressed by providing an accessible grievance redressal mechanism.

➤ **Reservations:** Affirmative action in the form of reservation corrects historical and continuing discrimination against marginalised groups. SC had directed the govt to provide reservations to transgender persons in matters of public employment and education. The Transgender Act does provide for reservations, and it is critical to introduce the same.

➤ **Education:** Educational institutions need to be safe spaces for individuals to express themselves. This can be achieved through sensitisation and a review of the educational curriculum, including National Education Policy. Not very long ago, a 16-year-old committed suicide due to bullying in school. Hence, law must expressly recognise bullying directed against queer individuals.

➤ **Old Age Homes:** There is a pressing need for queer-inclusive old-age care facilities as a lot of queer persons are rejected by their natal families and have precarious livelihoods. Implementing policies that provide for a discrimination-free environment for queer persons at old age homes can go a long way in this regard.

Part 1 of a two-part series.

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THE SUPRIYO JUDGMENT, AND THE ROAD AHEAD

In Oct 2023, SC delivered judgment in *Supriyo@Supriya Chakraborty & Anr. v. Union of India*. A Constitution bench led by CJI DY Chandrachud noted that it was the prerogative of the legislature to enable marriage equality. It directed that a high-powered committee be set up to examine measures to secure rights of persons in queer relationships.

In light of the landmark judgment, the dept of financial services issued an advisory on Aug 28, this year, clarifying, among other things, that there is no restriction on queer persons opening bank accounts jointly. The dept of social justice followed suit by releasing a list of interim measures taken by the Union govt and invited submissions from the public on further measures.

It's the first of the critical initiatives taken by govt to address discrimination faced by persons in queer relationships on account of non-recognition of their relationship.

Vidhi Centre for Legal Policy has been working extensively on queer rights since 2016 and has made detailed submissions to the expert committee set up in pursuance of the Supriyo judgment to outline how rights and protections can be realised for queer persons.