Input for the Report of The Independent Expert on Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity

On

**Impact of Covid-19 on the human rights of LGBT+ persons, communities and/or populations**

Prepared by



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In Collaboration with

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#### **Introduction**

The YP Foundation[[1]](#footnote-1) (TYPF) is a youth leadership development organisation based in New Delhi, India. TYPF facilitaties young people’s feminist and rights based leadership on issues of gender justice and sexuality rights through direct programmes, public engagement and policy advocacy at all levels.This report has been drafted with inputs from queer activists and queer led, rights based orgnaisations working at the national and sub national levels across India, including Brindaalakshmi K, Anirudh G, Safe Access, Nazariya: A Queer Feminist Resource Group, and Solidarity Foundation.

TYPF is the global focal point for SDG 5 under UN MGCY and the country lead of the adolescent and youth constituency of PMNCH at the WHO. TYPF anchors a network of young leaders who are active on health, gender and wellbeing issues and engage with health policy at the state and national level across india and also part of various coalitions of youth led and youth serving organisations including those who specifically work on SOGIESC and queer rights issues.

This submission highlights specific challenges faced by LGBT+ persons in dealing with the COVID-19 crisis situation, response and relief operations in India. It points out specific needs of vulnerable and marginalised groups and the gaps in government responses to deal with the crisis between March and June 2020. It also highlights LGBT+ youth and adolescents as a separate category while also prioritising the needs of transgeder persons who face multiple barriers to accessing relief systems and stigma and violence in public spaces.

The submission situates the condition of LGBT+ persons within the overall context of diminished rights access and support mechanisms despite recent legal provisions, to highlight the heightened impact of exclusion and apathy within disaster response.

**About the Collaborators**

**Brindaalakshmi. K** is a communications professional, researcher and peer supporter working at the intersection of identities, human rights, public health and technology. Apart from her engagement with different communities as an activist, she is also a peer supporter working with the LGBTIQA+ community in Chennai, India. She also leads workshops on consent, intersectionality and digital security. She is authoring the study, Gendering of Development Data in India: Beyond the Binary for the Centre for Internet & Society, India as part of the Big Data for Development Network led by five global south organisations and supported by International Development Research Centre (IDRC), Canada.

**Anirudh G** is a young activist who has been working on issues of gender and sexuality since 2016. They have been involved in the work against the Transgender Persons (Protection of Rights) Act 2019, the Citizenship Amendment Act, 2019, and the 124th Constitutional Amendment Act, 2019. The focus area of their work has been Bangalore, where they have worked with local communities of queer people and queer youth to propagate inclusivity and to facilitate inclusive safe spaces.

**Safe Access[[2]](#footnote-2)** is a community-led initiative under Qequal Foundation, a section 8 registered Not-for-Profit organization working towards enabling equitable healthcare for the LGBTQ+ community in India.

**Nazariya[[3]](#footnote-3)** is a Delhi-based queer feminist resource group working on issues of gender and sexuality with a focus on queer women and trans\* persons.

**Solidarity Foundation[[4]](#footnote-4)** is a registered trust based in India supporting sex workers and gender/sexual minorities. They do this through leadership building, livelihood initiatives, spotlighting overlooked issues, as well as through fellowships and grants. They are unique because they are part of the movements that they now support. Their work focuses on issues of sexuality that currently receives little focus from funders. They complement the work of individual donors and large foundations by reaching out to grassroots organisations and activists and offering them close support to develop their campaigns and projects.

#### **Covid-19 Situation in India**

On 30th January 2020, Director-General WHO declared the outbreak of novel coronavirus as a Public Health Emergency of International Concern[[5]](#footnote-5). On the same day, India reported its first case in Thrissur, in Kerala.[[6]](#footnote-6) On the evening of 24th March 2020, the government responded to the deprecatory situation and announced a 21-day nation-wide lockdown to combat Covid-19.

The focus of the lockdown was on closure of all activities except essential services such as hospitals, telecom, pharmacy, provision stores; urging people to stay home, enforcing public led social distancing interventions. While the lockdown appeared to be an appropriate and necessary measure, restriction on mobility led to an awry of challenges.

Eventually, the health emergency mandated the lockdown to be extended till 31st May 2020, spread across four phases. Currently, in the 5th phase of the lockdown the government issued guidelines on a gradual unlock for reopening of activities outside containment zones[[7]](#footnote-7).

Other countries that enforced less restrictive lockdowns than India tended to see an initial spike in cases followed by a peak after which the number of new cases reduced. But worryingly, the lockdown has not led to a downward trend in the number of new cases in India[[8]](#footnote-8). As on 14th June 2020, 308,993 Confirmed Cases and 8,884 Total Deaths were reported in India[[9]](#footnote-9).

#### **Status of LGBT+ rights in India**

1. The supreme court of India decriminalised same sex relations in its verdict of *Navtej Singh Johar & Ors. versus Union of India thr secretary ministry of law and justice* on 6th September 2018.[[10]](#footnote-10)

The Court found the provision to be arbitrary and violative of Article 14 of the Constitution (right to equality) since it distinguished between heterosexual and homosexual adults, solely on the basis of their sexual orientation. The Court further stated that the provision violates the right to dignity, privacy, and sexual autonomy guaranteed to homosexual persons under Article 21 of the Constitution (right to life). The Court also found the provision to violate Article 19(1)(a) of the Constitution (freedom of speech and expression).[[11]](#footnote-11)[[12]](#footnote-12)

1. While the victory in this decade long battle for decriminalisation of same sex relations is a major milestone for LGBT+ rights in India, the fight for civic, social, and political equality is far from over. People belonging to gender and sexual minorities continue to face discrimination, harassment, and violence in all spheres of life which further gets compounded as a result of other intersecting identities including caste, class, and religion.[[13]](#footnote-13)[[14]](#footnote-14)[[15]](#footnote-15)[[16]](#footnote-16)[[17]](#footnote-17)[[18]](#footnote-18)
2. The Indian government has continued to avoid addressing the concerns of its LGBT+ population and has remained apathetic to their realities despite the 2018 judgment. This is evident from its failure to implement the Supreme Court’s guidelines to sensitise the public, and government officers in order to eliminate social stigma and structural discrimination against LGBT+ persons[[19]](#footnote-19); abstaining from voting for the renewal of the mandate of IE on SOGI during the 41st Session of the Human Rights Council[[20]](#footnote-20); and the most recent passing of the *The Transgender Persons (Protection of Rights) Act, 2019*[[21]](#footnote-21) which was widely criticised by transgender persons, trans\* rights activists, students, and lawyers, and was also in violation of the 2014 NALSA judgement by the Supreme Court. [[22]](#footnote-22)[[23]](#footnote-23)[[24]](#footnote-24)[[25]](#footnote-25)[[26]](#footnote-26)
3. This continued erasure of LGBT+ realities by the government endangers several lives of people belonging to sexual and gender minority groups, especially in humanitarian settings like Kashmir[[27]](#footnote-27), where restricted access to the internet[[28]](#footnote-28), the lack of non-discrimination laws of welfare schemes, and the restrictions on mobility and ability to earn since the abrogation of Article 370 have hit transgender persons the hardest.

#### **Impact of Covid-19 on LGBT+ persons**

The Covid-19 pandemic and the nationwide lockdown that followed has been detrimental to the lives of LGBT+ persons on multiple fronts -

1. LGBT+ individuals are often subjected to high degrees of emotional and physical abuse from family members and close relatives. Most of these cases however go undocumented due to the limited avenues present for LGBT+ individuals to reach out for support and the manner in which these stories are reported in the media. This has become much worse as a result of the stringent lockdown guidelines due to which LGBT+ individuals are being forced to stay at home with their abusers and perpetrators of mental and physical violence.[[29]](#footnote-29)
2. Restrictions on mobility and access to peer support groups has adversely affected the mental health of LGBT+ individuals with growing feelings of anxiety and isolation. For some LGBT+ individuals who have access to mobile phones and internet, accessing telephonic and video-based counselling sessions is still an option; however, these options are also mostly limited to LGBT+ community run peer counseling sessions as professional mental health services are very expensive and most mental health professionals are ill-equipped and non-sensitised to deal with mental health concerns of LGBT+ individuals.
3. There have been reports of individual cases of LGBT+ persons being forced to get married despite revealing their sexual orientation to their families during lockdown and their inability to escape and go to a safe space. One such story that did receive media attention was the death of two women in Tamil Nadu by suicide[[30]](#footnote-30). As per the report, the cause of death is speculated to be the pressure from the family of one of the victims to get married to a man.
4. There is a lack of institutional spaces for LGBT+ persons who need to escape from violent family homes as well as a complete lack of mobility due to stigma around sexuality and the need to furnish clear reasons to the police or other authorities to be able to leave homes or be in public during stringent phases of the lockdown or in containment zones. Informal networks of activists that provide safe houses are not equipped to ensure testing or take responsibility for infection risk in cases for persons who need safety but have been unable to maintain physical distancing or other safety protocol while escaping violent and stressful situations.
5. There have been multiple calls from LGBT+ activists in the past for sensitisation of healthcare professionals across the country based on several reports and articles that speak to the horrifying experiences of LGBT+ individuals while accessing healthcare services in the country, particularly the public health services. The situation has become bleaker as a result of the Covid-19 crisis as delivery of services considered “non-essential” are being deprioritised to deal with rising Covid-19 cases. As a result, LGBT+ individuals are facing major challenges in accessing SRHR services, especially ART and HRT medication which are not deemed as essential by the state.[[31]](#footnote-31)
6. LGBT+ individuals already have a high rate of unemployment due to structural discrimination. With massive layoffs occurring due to economic losses incurred as a result of Covid-19 crisis, LGBT+ individuals who do have jobs are at a higher risk of losing their stable sources of income.
7. A number of LGBT+ individuals are forced into poverty and/or homelessness with no support systems as a result of social stigma and discrimination. For such individuals it will be impossible to get diagnosed and receive treatment even if they do get infected with Coronavirus. Additionally, those who rely on sex work and soliciting to fulfil their basic needs, might continue to take up clients even during the pandemic, putting themselves and others at risk of contacting the virus.
8. Since a large number of LGBT+ persons do not have proper government ID documents, they are facing extreme difficulties in accessing relief care packages and services being provided by the state.[[32]](#footnote-32)
9. Additionally, it is impossible to understand the impact of Covid-19 on LGBT+ persons in India without taking into account their multiple and intersecting identities such as age, gender, class, caste, disability, and religion which determine the degree of harassment, discrimination, and marginalisation an individual might be subjected to. Therefore, any holistic assessment of the impact should take into account the multiple narratives of other marginalized and oppressed groups that LGBT+ persons are a part of. Notably so, amongst others is the impact of Covid-19 on children[[33]](#footnote-33), women[[34]](#footnote-34), elderly people[[35]](#footnote-35), migrant workers[[36]](#footnote-36), and sex workers[[37]](#footnote-37).

**Impact on Adolescent and Young LGBT+ Persons**

Owing to a lack of agency and autonomy over their own bodies and lives by virtue of their age, there are certain challenges that are unique to adolescent and young LGBT+ people in the context of the Covid-19 pandemic -

1. In a culture where conversations around puberty and adolescent sexuality are still highly stigmatised, the pandemic can be an extremely stressful time for adolescents. For trans\* and non-binary individuals who experience gender dysphoria, experiences of bodily changes during puberty without avenues for seeking accurate and rights affirming information can be a traumatic experience.
2. Adolescent and young LGBT+ people who are beginning to or are in the process of exploring their sexuality might experience severe mental health crises and feelings of isolation due to restricted access to rights affirming information and LGBT+ support networks. Lack of private spaces within homes, non-access to mobile phones and internet, and restrictions on mobility have further exacerbated the situation.
3. Young LGBT+ people are at a higher risk of facing violence and abuse from their unaccepting family members and relatives.[[38]](#footnote-38) One such incident was reported from Goa[[39]](#footnote-39), where a 21 year old student was found dead under suspicious circumstances after being forced into conversion therapy by her parents.

**Impact on Transgender Communities**

1. In a 2017 study conducted by the Kerala Development Society on behalf of the National Human Rights commission of India it was found that 96% of transgender persons are denied jobs and are forced to take up low paying or undignified work for livelihood such as badhai (ritual blessing), sex work, and begging.[[40]](#footnote-40)[[41]](#footnote-41) The nationwide lockdown and physical distancing restrictions due to Covid-19 has subsequently rendered trangender communities jobless in most parts of the country and further pushed them to the margins with no access to funds to support basic necessities like food, housing, and healthcare (particularly ART medication).[[42]](#footnote-42)[[43]](#footnote-43)[[44]](#footnote-44)[[45]](#footnote-45)
2. Due to a lack of proper identification documents like PAN card, Aadhar Card, and Ration card etc. trans\* people are unable to access social security schemes and government relief care packages which require some form of government identification document or linking Aadhar, the biometric ID, to bank accounts as a precondition to receiving financial aid.[[46]](#footnote-46)[[47]](#footnote-47)
3. Some trans\* people are also hesitant to access public spaces and seek relief benefits due to a growing fear of harassment by police officials[[48]](#footnote-48) as cases of police brutality[[49]](#footnote-49)continue to rise in order to enforce the stringent lockdown guidelines.
4. Amidst the nationwide lockdown, the government also released the draft rules for *The Transgender Persons (Protection of Rights) Act, 2019* on 18th April 2020 with a 12-day deadline to submit any relevant inputs[[50]](#footnote-50). This is inconsistent with the Pre-Legislative Consultation Policy, 2014[[51]](#footnote-51) which specifies that such information should be kept in public domain for a minimum of 30 days. The deadline was later extended to 18th May 2020 (still within the lockdown period) after criticism from various trans\* rights groups and human rights activists across the country.[[52]](#footnote-52) It should be noted that the draft rules were released online, and only in English,[[53]](#footnote-53) making the process of submitting feedback and inputs extremely difficult for a large number of transgender people in the country who do not have access to internet and are not fluent in English.
5. One of the very few measures of the government for transgender community was the issuance of an allowance of Rs 1500 from the National Institute of Social Defense. According to various trans\* activists and media reports[[54]](#footnote-54), this allowance reached only about 4500 transgender persons, roughly 1% of the total transgender population as per the 2011 census.[[55]](#footnote-55)

#### **State Measures to avoid discrimination on the basis of SOGIESC**

1. The Indian state has done very little to ensure the protection of vulnerable groups including LGBT+ persons during the COVID-19 pandemic and the ensuing lockdowns. The lack of access to vital services and information has been a challenge for most of India’s populace, but this challenge has been compounded for LGBT+ Indians.
2. While the Indian government has attempted to provide economic relief packages, transportation services and ration to vulnerable groups, these efforts have yielded mixed results. There have been several reports of relief and welfare benefit credit failures in the poorest states like Jharkhand[[56]](#footnote-56), Bihar[[57]](#footnote-57), resulting in starvation deaths[[58]](#footnote-58)in several states in the country. Most importantly, none of these efforts make mention of or take into consideration the hurdles faced by LGBT+ individuals for accessing such services.
3. The state government of West Bengal has reserved 10 beds for the transgender community members at the government’s Covid-19 hospital named MR Bangur Hospital (MRBH) in Kolkata.[[59]](#footnote-59)
4. On 21st May 2020, The department of social welfare, government of Manipur opened its first transgender quarantine centre in Imphal to accommodate its transgender population who were coming into the city from different parts of the country.[[60]](#footnote-60)
5. The state government of Kerala came out in support of the transgender community by providing ration kits[[61]](#footnote-61) during the Covid-19 lockdown, in addition to the shelter home for transgender men that was established in 2019[[62]](#footnote-62).

#### **Support from Judiciary**

High Courts in Bihar[[63]](#footnote-63), Karnataka[[64]](#footnote-64), Telangana[[65]](#footnote-65), and Jharkhand[[66]](#footnote-66) have ordered state governments to take cognisance of the issues being faced by the transgender community in their respective states in accessing relief packages and ensure that immediate support is provided.

The High Court in Delhi however declined to even entertain a plea to provide welfare measures to sex workers and members of the LGBTQIA+ community[[67]](#footnote-67). The court did not provide detailed reasoning behind its rejection of the plea, which sought direction from the central and Delhi governments to provide sex workers and queer individuals with food, accommodation and other resources. The plea also sought to create a dedicated helpline for queer individuals’ experiences of mental health crises.

#### **Good Practices : Civil Society Organisations**

In order to mitigate the effect of the nation-wide lockdown and the Covid-19 crisis on LGBT+ communities, civil society undertook several actions through which good practices could be identified -

1. Increasing Trans\* persons access to resources[[68]](#footnote-68) :

i) CSOs, informal groups and collectives, and LGBT+ individuals have initiated online campaigns and donation drives to raise funds in order to ensure access to food and ration for the most marginalised within the LGBT+ community. These funds have also been used to provide wage assistance to address the loss of livelihood for daily wagers.

ii) CSOs, NGOs and Self-Help Groups have set up opportunities for trans\* persons to either be employed in corporate jobs or have avenues to attain self-employment, so as to enable the community to sustain itself through the period of the lockdown and beyond.[[69]](#footnote-69)

iii) Financial assistance to for specific and relevant needs such as home rent, as well as the cost of basic utilities like LPG and Internet data by queer persons and organsiations/groups has filled a critical gap in relief response.

iv) In the absence of any action undertaken by the state to ensure that LGBT+ communities had access to internationally recognised and mandated personal protective gear like face masks and hand sanitisers, CSOs and informal groups/collectives also supplied queer communities with medical supplies and other hygiene related and sanitary products.[[70]](#footnote-70)

v) Since the lockdown also interrupted access to critical HIV medication for many sex workers and members of the LGBT+ community living with HIV-AIDS, CSOs and informal groups/collectives also assisted these PLHIVs in obtaining ART medication by facilitating transportation to hospitals, as well as compelling local medical stores and pharmacists to stock this medication to ensure sustainable means of access.

1. Setting up concentrated efforts to provide relief to the most marginalised amongst the LGBT+ community:

i) Many efforts of CSOs and informal groups and collectives were concentrated towards not only identifying the most vulnerable and marginalised populations within the LGBT+ communities, but also identifying the areas within their respective states which were the worst hit in the crisis, and directing their resources towards the populations residing within these areas.

ii) Moreover, the CSOs and groups/collectives were cognisant that most trans\* persons do not have documents like Aadhar Cards or Ration Cards through which they could avail welfare relief organised by state and central governments, and thereby required support free of the need to provide identification documents.

iii) These CSOs and groups/collectives also identified the particular needs of queer persons rooted in the context of the nation-wide lockdown, and undertook efforts to address them. For instance, the lockdown resulted in hindering queer persons’ access to the networks on which they relied heavily for providing a sense of community and significant mental health support.[[71]](#footnote-71) This was addressed by activating and enhancing multilingual helplines, and increasing access to online support groups by organising and promoting informal discussions and conversations on social media.[[72]](#footnote-72)

iv) These CSOs and groups/collectives also established effective communication between them, so as to coordinate and optimise their work and efforts.
2. Employing an intersectional lens in carrying out relief work:

i) There was an active effort on the part of CSOs and informal groups and collectives in ensuring that their work was geared towards identifying and extending help to those marginalised because of their queerness, but also because of their caste as well as ability.

ii) Grace Banu, a Dalit trans\* rights activist led the relief efforts especially directed towards helping Dalit-trans\* communities in rural areas of Thoothukudi in Tamil Nadu.[[73]](#footnote-73)

iii) Similarly, Kiran Nayak B, working on disability as well as Adivasi rights and issues, as part of Karnataka Vikalchetanara Samasthe (KVS), provided relief to socially and economically marginalised communities in neighbouring states of Karnataka, including Telangana and Maharashtra.[[74]](#footnote-74)

1. Undertaking advocacy efforts to galvanise support for LGBT+ persons:

i ) Prominent members of the trans\* community came together to write an appeal to the Home, Finance and Social Justice Ministries in India, alerting them to the pandemic related needs of the trans\* community and asking for a sufficient government sponsored package which could extend financial assistance and support to trans\* people during the nationwide lockdown. Appeals were also made to Chief Ministers of State and Union Territories, National Disaster Management Authority and Health Ministers of States and Union Territories of India in order to ensure that trans\* communities are protected from the detrimental and devastating effects of the Covid-19 crisis. [[75]](#footnote-75)

ii) Utthan in Jharkhand, Centre for Law and Policy Research in Telangana, Ondede in Karnataka and Human Rights Law Network in Bihar filed petitions in the high courts of the respective states bringing the attention of the judiciary to the effects of the nationwide lockdown and covid-19 crisis on trans\* and queer communities. These petitions propelled the courts to take cognisance of the lived realities of trans\* and queer communities, leading to directions issued by the courts to the state governments to ensure trans\* and queer persons’ unfettered access to food, ration, medicines and other resources through the period of the lockdown. The petitions also resulted in the Telangana and Patna courts recognising that many trans\* and queer persons do not have social security documents, thereby resulting in the courts’ dismissal of the need for trans\* and queer persons to produce ration cards in order to access social welfare benefits.[[76]](#footnote-76)[[77]](#footnote-77)[[78]](#footnote-78)

iii) Many CSOs and informal groups and collectives also organised online campaigns across different social media platforms, especially Twitter, to generate awareness and galvanise support around the pandemic related needs and issues of queer persons.

iv) These online campaigns were geared towards garnering the attention of national media which had the potential to put pressure on central and state governments to take cognisance of the effect of the lockdown and the covid-19 crisis on trans\* and queer communities.

#### **Recommendations**

As the report makes evident, there are several fronts on which a shift in the perspective on LGBT+ persons’ citizenship and rights could ensure that the effects of the Covid-19 crisis can be mitigated by the state -

1. Engaging with CSOs working on LGBTQ+ issues and rights to properly assess the situation of trans\* and queer persons, and taking stock of the potential needs of the LGBTQ+ community in the context of a crisis could ensure that relief efforts are formulated well in advance, and implementation is similarly coordinated and streamlined with the existing efforts of the CSOs working on ground.

2. Establishing nationwide safe houses and queer affirming mental-health helplines in different regional languages to ensure that the detrimental effect of being under lockdown with implicitly and/or explicitly violent and queer phobic families, and the subsequent loss of support networks and distance from chosen families, could be mitigated for trans\* and queer persons across the country.

3. Recognising ART and HRT as essential medical health services, and facilitating LGBT+ persons’ access to these services through district and local hospitals and medical health centres and sensitising medical health care professionals to the particular needs of the LGBT+ community in order to combat discrimination and stigma.

4. Implementing the Supreme Court’s guidelines issued as accompaniments to the Navtej Singh Johar v. Union of India judgement reading down Section 377 of the IPC to sensitise the public and government officers and eliminate social stigma and structural discrimination against LGBT+ persons.

5. Ensuring that LGBT+ persons’ access to social security benefits in times of crises is dislodged from the need of the state to procure or assess ID documents like ration cards or Aadhar cards which LGBT+ persons often find difficult to acquire and produce, and which might lead to LGBT+ persons’ curtailed access to the state’s social welfare schemes and benefits.

1. <http://www.theypfoundation.org> [↑](#footnote-ref-1)
2. <https://safeaccess.co.in> [↑](#footnote-ref-2)
3. <https://nazariyaqfrg.wordpress.com> [↑](#footnote-ref-3)
4. <http://www.solidarityfoundation.in> [↑](#footnote-ref-4)
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<https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf> [↑](#footnote-ref-19)
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