**F. No. 6/62/2019- Coord.
NATIONAL HUMAN RIGHTS COMMISSION
(Coordination Section)**

**Sub: IE SOGI– Call for inputs on protection against violence and discrimination based on sexual orientation and gender identity**

1. Gender is a social construct whereas sex is the biological make-up of
male and female bodies. The conceptual perspectives on Gender, its interpretation and negotiation in social realities constitutes of how gender identities are actually constituted in social realm. The process of socialization facilitates the children to learn and internalise the norms and values of the family, community and society and learn to perform their respective roles.
2. In India as a developing country, the gender parity in education, land inheritance, political participation, the share of women in wage employment are the major acknowledged contributors for the achievement of Sustainable Development Goal (SDG-5) on *Gender Equality* that promises to stop discrimination and violence against women in public and private spaces and undertake the reforms that would provide an equal rights to women. So as to adopt and strengthen sound policies and enforceable legislations for the promotion of gender equality in India, the Ministry of Women and Child Development ( MWCD) is the nodal ministry. Along with this various other ministries, such as Ministry of Rural Development (MoRD, Department of Land Resources), Ministry of Housing and Urban Affairs (MoUD), Ministry of Housing and Urban Poverty Alleviation (MHUPA), Ministry of Social Justice and Empowerment (MSJE), Ministry of Electronics and Information Technology (MeitY), among others have also been identified as playing important roles in achieving gender-related Targets.
3. As a part of social fact, the male and female gender faces much lesser discrimination than the LGBTI people. In India, there is a prolonged struggle to gain the identity as a Lesbian Gay, Bisexual and Transgender. The legal reservations pertaining to each identity are yet to be achieved same as the Transgender is recognised as a legal category today, which will ensure the life of dignity and an equal treatment of gender minorities in society. ‘In the case of India, in particular, on application of an international law with the Yogyakarta Principles which reasoned repealing of section 377 of the Indian Penal Code (IPC). The Government decriminalised homosexuality and ensured that the violations against the fundamental rights of the LGBTQ community were removed. The Supreme court upheld the pre-eminence of constitutional morality by observing that equality before the constitutional law (as promised under the Article 14 of the Indian Constitution) cannot be denied by giving priority to public-ethnic or even religious morality. As observed by the Supreme Court that homosexuality is not exclusive to humans which intrinsically dispels the prejudice and discrimination against any gender identity.
4. Historically, the Indian constitution from the core of fundamental rights guarantees the Right to Privacy and the protection of sexual orientation by Article 14 (Equality before Law), Article 15 (Prohibition of discrimination on the basis of race, religion, caste, sex, place of birth), Article 21 (Protection of life and liberty) and Article 19 (Freedom of expression) of the Constitution. The sexual orientation and gender identity are an essential part of human rights which were also outlined in 2006 in Yogyakarta Principles, introduced in Indonesia by a distinguished group of International Human Right experts. The principals gave authoritative guidance on the human rights of gay, lesbian, bisexual, transgender and intersex persons and the obligations of States to promote and protect these rights, ensure full equality and address discrimination. The plight of sexual minorities was distinctly dealt by landmark judgements like **Naz Foundation vs. Govt. of NCT of Delhi (2009), Suresh Kumar Koushal Case (2013) and Justice K.S. Puttaswamy vs. Union of India (2017) and lastly, Navtej Singh Johar vs. Union Of India (2018) that** decriminalised homosexuality and dismissed the position taken by SC in Suresh Kumar Koushal case (2013) which entailed in brief that the LGBTQ community constitute a minuscule minority and so there was no need to decriminalise homosexual sex.
5. However, the impact of decriminalising Homosexuality makes the sexual minorities in India atleast one step closer to living with dignity. Secondly, LGBTQ Community will be able to come out in the open with their sexual preferences without fear of discrimination, non-acceptance in employment, reservation etc. The discrimination faced by them in accessing health and their harassment by Police will cease. These judgments have brought to light the issues faced by sexual minorities in India that began the wider debate.
6. The way forward of these judgements and even the Transgender Persons (Protection of Rights) Bill, 2019 which consists of absolute clarifications related to prohibition against discrimination, recognition of identity of the Transgender persons, Welfare measures and obligations of establishments and other persons and lastly, education, health and social security of the Transgender Persons will hopefully go a long way in removing the stigma attached with the Transgender community; there is a need for a multi pronged approach to deal with issue of prejudice and discrimination prevalent in society against them.
7. So as to combat the legal commitments, the proactive measures, dilution of gender equality. We are required to keep the policies related to gender and sexual orientation compacted in terms of duties when diluted at all governmental and individual levels that ensures that a gender lens is used by all sectors. Lastly, new modalities are also needed to give civil society groups working on gender equality, adequate resources and capacity strengthening support to facilitate their representation in policy dialogues. Also, innovative approaches are also needed to raise the awareness of the private sector on gender issues. Where gendered minorities itself along with the Government bodies organize awareness camps in villages and urban spaces especially related to their social issues, health, discrimination. The controlling authorities in jails and police stations also needs to be sensitised and made aware about the changed position of law to ensure that no gender is denied public services or harassed for their sexual orientation.