This submission is made by LGB Alliance India.

« Gender theory informed approaches recognize gender as inextricably linked with social construct - that the meanings attached to sex (and other) differences are socially created. They challenge the assumption that gender identity necessarily correlates with biological sex and recognize the validity of a wide range of sexual orientations and gender identities. The recognition of gender as determined by social construct is common to many feminisms, as well as LGBT theory, as is the recognition that gender, sex and sexuality interconnect with other axes of power and identification such as race, age, ethnicity, religion, [dis]ability and health status among others. This approach provides for recognition of how race is gendered and gender is raced, as well as the many other factors which affect how one is allocated rights, privileges or deficits and limits to rights through the regulation of gender. »

We formally state herewith that we deny, denounce and refute the claim of gender identity. We formally state that gender identity is akin to the notion of the immortal soul: intangible, immune to testing and rational analysis, impossible to prove or disprove. We reject the notion of gender identity as unscientific. We reaffirm the pernicious role of gender in the continued oppression of women, girls and same-sex attracted people: lesbians, gay men and bisexuals. We affirm that gender is a toxic set of stereotypes and conventions imposed upon humans by society, and that the only solution for the harms of gender is total abolition.

We hereby state that LGB Alliance stands for the sex based rights of same sex attracted men and women without reference to gender. We state that same sex attraction is based in biological, immutable material reality, and is as such diametrically opposed to gender identity. We hereby state our objective to stand in the path of the rising tide of homophobia which is created by your gender frameworks.

We state that gender identity is a primary cause of violence and discrimination towards same-sex attracted men and women.

We will now proceed to answer your questions, inasmuch as questions are correctly formulated. If not, the lacunae will be pointed out.

1. Has the State adopted, in public policy, legislation or jurisprudence, working definitions of gender and related concepts (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming) aiming to address violence and discrimination based on sexual orientation and gender identity? If so, please give examples, with commentary as needed to explain context, scope and application.
   * + if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?
     + if that is not the case, please provide information as to the reasons.

The Transgender Persons (Protection of Rights) Act 2019 defines a transgender person as:

« A person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such a person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variation, genderqueer and person having other socio-cultural identities such as kinner, Hijra, aravani, and jogta. »

We submit that no definition of gender has been provided and that the law is incorrect in stating that gender is assigned at birth. In keeping with our previously stated position, gender is not assigned, whereas sex is observed at birth.

The same lack of clarity can be seen in NALSA v. Union of India, 2014 which grants sweeping rights on the grounds of gender identity.

We observe also that your question pairs sexual orientation and gender identity. We state that there is no link between the two. We refute any conflation of biological sex (observable, objective and immutable) with the concept of gender (undefined, immune to proof, intangible, unscientific).

We observe that you have not defined violence and discrimination based on gender identity and sexual orientation: we affirm that it is systemic violence and discrimination to force transition upon same sex couples in order to recognize their partnerships under law.

<http://cms.newindianexpress.com/states/odisha/2020/feb/08/woman-changes-gender-to-marry-girlfriend-2100707.html>

<https://www.hindustantimes.com/delhi-news/cisf-cop-who-changed-sex-for-love-gets-accepted-as-a-man/story-vcgKUFhz1oBVajV2Z4U49H.html>

1. Has the State ratified, signed, or adhered regional or international human rights treaties, declarations, programs or policies or any other international instruments aiming to address violence and discrimination based on sexual orientation and gender identity that involve the implementation of a gender framework (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming)?
   * if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?
   * if that is not the case, please provide information as to the reasons.

In NALSA vs UOI 2014, the Supreme Court of India has stated that the ‘Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity’ should be applied as a part of Indian law. However, we note that apart from the 2017 judgement decriminalizing consensual homosexual relationships, there have been no Indian laws to address violence and discrimination faced by LGB individuals (say in employment or housing access). Same-sex marriage also remains legally unrecognized in India.

On the other hand, NALSA vs UOI 2014 allows for individuals professing gender identity to identify as "third gender", neither male nor female, and the Transgender Persons (Protection of Rights) Act 2019, provides anti-discrimination measures for these persons, including in employment, education, and right of residence. No such provisions exist for same sex attracted men and women. We view with concern the attribution of altered sex markers on official documents. We state that these amount to falsification and lead, among others, to the fragilisation of statistical data, especially with reference to crime and violence against women and girls.

1. What kinds of information and data are collected by States to identify forms of violence and discrimination faced by people based on sexual orientation and gender identity? Is the data designed to capture causes and patterns of violence and discrimination against lesbians, gay men, bisexual women, bisexual men, trans women, trans men, and gender diverse persons?
   * does this data collection take an intersectional approach (for example, connecting an individual’s multiple social categories to enable more precise analysis (e.g. collecting data about LGBT persons by identities such as race, age, national status and ethnicity)?
   * does the data include information on the relationship between victims and perpetrators?

Again, we categorically reject your conflation of sexual orientation and gender identity. We affirm that violence offered to women is based on their sex. Violence offered to gay men and women is offered on the basis of their same sex attraction.

1. Is comprehensive sexuality education taught in schools?
   * if yes, please provide information as to the respective programs. Please provide examples (e.g. copies of curricula, citations to polices).
   * if not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies or programs? Also, is the State adopting any alternative measures?

Each school board defines the sexual health education to be provided to students. This is provided in the context of biological science education and is thus optional. Sexuality and sexual orientation is not taught. Gender identity, having no basis in biology, is also not taught.

<https://ncert.nic.in/ncerts/l/lebo104.pdf>

1. Are there examples where the concept of gender has been used in religious narratives or narratives of tradition, traditional values or protection of the family to hinder the adoption of legislative or policy measures aimed at addressing or eradicating violence and discrimination based on sex, gender, sexual orientation and gender identity?

Gender identity has been a means of legitimizing certain same sex marriages wherein one of the parties identifies as a member of the opposite « gender ». This is in direct contrast to the refusal of the government to countenance same sex marriage among persons who do not have or profess a subjective gender identity.

<https://www.thehindu.com/news/national/karnataka/akkai-makes-her-marriage-official/article22500756.ece>

The above case is that of a marriage of biological males, one of whom professes a gender identity.

Same gender marriages are currently only countenanced among members of the same majority Hindu religion. No provision exists for persons from religious minorities to contract valid marriages, whether or not they profess a gender identity.

<https://indianexpress.com/article/india/same-sex-marriages-legal-recognition-centre-7204303/>

The above article gives a comprehensive summary of the recent stance of the Indian legal system with respect to same sex couples who do not profess a gender identity: « societal morality », « societal morals », « cultural ethos » are all cited as bars to same sex marriage.

1. Are there examples where a concept of gender has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of persons with diverse sexual orientations or gender identity, or protects LGBT individuals from violence and discrimination as well as covering a wider range of persons (for relevant examples, see para. 3 of [the Independent Expert’s Report to the 73rd Session of the United Nations General Assembly](https://undocs.org/A/73/152))?

We state that Indian mythology has been used to legitimize gender identity as in the example of the Aravan cult in the village of Koovagam, Tamil Nadu. Other examples can be seen in many other Hindu myths. We state that mythology of any description, by its nature, has no place in secular civil society.

1. Are there examples in which narratives or “gender ideology,” “genderism” or other gender-related concepts have been used to introduce regressive measures, in particular but not limited to LGBT persons or communities?

Gender identity has been taken as a means to legitimize biological males who contest elections from seats reserved for women at all levels of government. This can only have negative impacts for women since biological males, no matter their gender identity, have no locus standi to pronounce on matters relating to female biology and female interactions with the world. Indian women are also highly underrepresented at all levels of government.

<https://www.thehindu.com/news/cities/puducherry/sahodaran-founder-appointed-head-of-national-child-and-woman-development-council/article33884396.ece>

<https://www.freepressjournal.in/mumbai/maharashtra-gram-panchayat-election-vbas-transgender-candidate-anjali-patil-wins-big-in-jalgaon>

<https://www.hindustantimes.com/india-news/mahila-congress-gets-first-transgender-general-secretary-in-apsara-reddy/story-n2KXKnJ2zEy8pG1JcYRbmO.html>

1. Are there initiatives taken by States in connection with the right to freedom of religion, belief or conscience (including the figure of conscientious objection) that have had the practical impact of limiting the enjoyment of human rights (including sexual and reproductive rights) of LGBT persons?

No.

1. Have there been public expressions or statements by political and/or religious leaders that have led to indefinite extension, modification or suppression of actions, activities, projects, public policies or application of gender frameworks?

No.

1. Who are main actors who argue that the defenders of human rights of LGBT individuals are furthering a so-called “gender ideology”? What are their main arguments? Have they been effective in regressing the human rights of LGBT individuals? Have their strategies directly or indirectly also impacted on the human rights of women and girls?

This is a bad faith question. Your question positions anyone who defends the unscientific notion of gender identity as a defender of human rights, and anyone who takes exception to gender ideology as the adversaries of such defenders of human rights. This is deeply disingenuous. Gender ideology promotes, among others:

1. The notion that one can be born in the wrong body
2. That self-ID takes precedence over biological and material reality
3. That same sex attracted people are guilty of hate crime by virtue of being exclusively same-sex attracted.
4. That same sex attracted people should not exist, instead being replaced by same-gender attracted people.
5. That biological males can access reservations and affirmative actions meant for the upliftment of biological females, an upliftment which is desperately necessary in India’s patriarchal and misogynistic culture, an upliftment which is being eroded by encroachment of biological males. Please refer to the election or nomination of biological males to women’s posts in Q7.
6. Falsification of sex markers and the consequent falsification of statistical demographical data.

We are proud to position ourselves at the vanguard of the abolition of gender ideology.

1. Can you provide examples of coalitions working together on resisting attacks on gender ideology? Please share examples of feminist and LGBT and other groups working together and with what kinds of frameworks, arguments and results?

All NGOS in India dealing with sexual minorities uphold gender identity to the detriment of same sex attracted people. For this reason LGB Alliance India has been founded.

1. What policies, programs and/or practices has the State adopted to meet Sustainable Development Goals 5 (gender equality) and 10 (reduced inequalities)? Do these rely on gender frameworks inclusive to diverse sexual orientations and gender identities and/or aiming to address violence and discrimination based on sexual orientation and gender identity? Please identify relevant examples.

In India NALSA v Union of India provides sweeping rights to persons professing gender identity to the detriment of same sex attracted persons. We affirm that not only can gender identity and sexual orientation not be clubbed together, but that gender identity actively seeks to erase and erode sexual orientation.

Submitted for LGB Alliance India

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