



Corporate Social Responsibility and Sexual and Gender Minorities: Building the Bridge

A Study of the Status of CSR in India for LGBTQ+ Initiatives

About Pacta

Pacta is a Bengaluru (India) based boutique law and policy think tank dedicated to supporting civil society organizations, universities, and non-profit initiatives. It has an unflinching commitment to provide legal and policy consulting support for public service delivery. Acknowledging the crucial role of research and scholarship for social development, Pacta engages in law and policy research through self-driven and collaborative projects.

Authors:

Nivedita Krishna, Founder, Pacta

Deepanshi Sharma, Legal Associate – Research & Policy, Pacta

Geetanjali Bisht, Legal Associate – Research & Policy, Pacta

Hemant Shivakumar, Research Consultant, Pacta

This study was supported by the Solidarity Foundation.

Published in India

Reproduction of this publication for educational or other non-commercial purposes is authorized, without prior written permission, provided the source is fully acknowledged.

Table of Contents

Executive Summary.....	4
Introduction	4
Corporate Social Responsibility and Welfare Initiatives for Sexual and Gender Minorities	5
Introduction: Sexual and Gender Minorities and Discrimination	7
Law and Practice	7
A. International Legal Recognition	7
B. Legal Position in India - Recognition of ‘Third Gender’ and Decriminalization of Consensual Same-Sex Relationship.....	9
C. Mismatched Law & Social Reality.....	10
Socio-Economic Status of the LGBTQIA+ Community	13
A. Economic Exclusion.....	13
B. Social Exclusion.....	14
Policy Responses for the Welfare of Sexual Minorities	16
Corporate Social Responsibility and Sexual and Gender Minorities.....	18
What is CSR?.....	18
Mapping LGBTQ Welfare & CSR	19
Parallels between CSR, Schedule VII and the SDG in relation to LGBTQ	20
CSR and Initiatives for Sexual and Gender Minorities	21
What Influences CSR Funds?.....	24
1. Central Government Policy Influences CSR Funding.....	24
2. Industrial Character of States Impacts CSR Funds.....	25
3. Physical Presence of the Firm and Convenience Impacts CSR Funds.....	25
4. Conservative Forces Impact CSR Funds Available to Progressive Initiatives	26
5. Risk Perception Impacts CSR Fund Allocation.....	26
Recommendations to Bridge the Gap Between CSR Funds and the Need of the LGBTQIA sector	28
Recommendations to Corporate Actors	28
1. Supporting organisations engaged in SGM welfare through direct CSR contributions.....	28
2. Supporting SGM through general CSR contributions.....	29

3. Differentiated targets, measurement, and reporting of CSR impact.....	30
4. Supporting research and empirical studies to identify the needs of the community.....	30
5. Supporting change in social perception and improving social inclusion through self-driven initiatives	30
Conclusion.....	32

Corporate Social Responsibility and Sexual and Gender Minorities: Building the Bridge

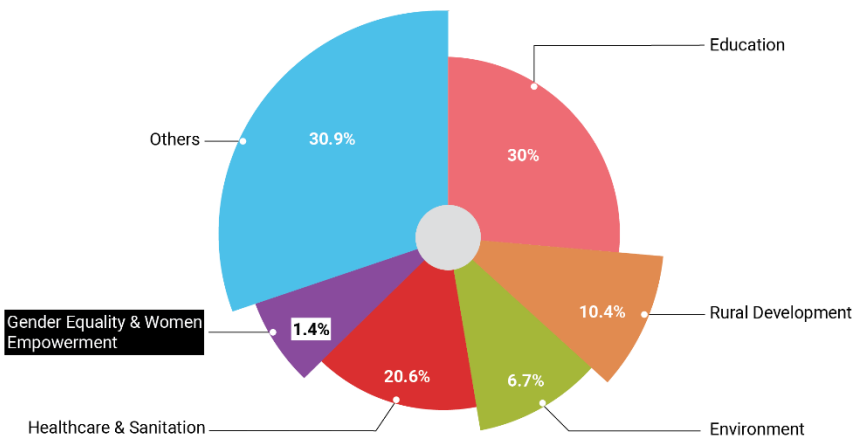
A Study of the Status of CSR in India for LGBTQ+ Initiatives

Executive Summary

Introduction

Individuals from the Sexual and Gender Minority community undergo pervasive economic and social discrimination due to their unique and non-traditional identities. Due to this, in India, individuals from the community face inability to truly enjoy some of the very basic human rights - including right to life, right to non-discrimination, right to education, right to adequate healthcare and right to privacy and family life - which are guaranteed to all by the Universal Declaration of Human Rights. A result of legal oblivion in some instances and a gap between progressive law and social reality in others, the discrimination faced by the community pervades all spheres of life.

With the Indian private sector witnessing substantial growth after the 1991 liberalisation and privatisation, for-profit organisations have the capacity to make significant and meaningful contributions to support a progressive development of the society. However, the contributions from the corporate sector have been disproportionate in favour of certain social causes, such as education, public health and livelihoods, than it has been to others. Further, it is also influenced by various factors such as the politics of the cause, the impact measurability, risk perceptions and existing legal and policy frameworks. This raises questions regarding the relationship between financial needs of various non-profit organisations and sectors, including those for SGM welfare, and allocation of CSR funds towards it.



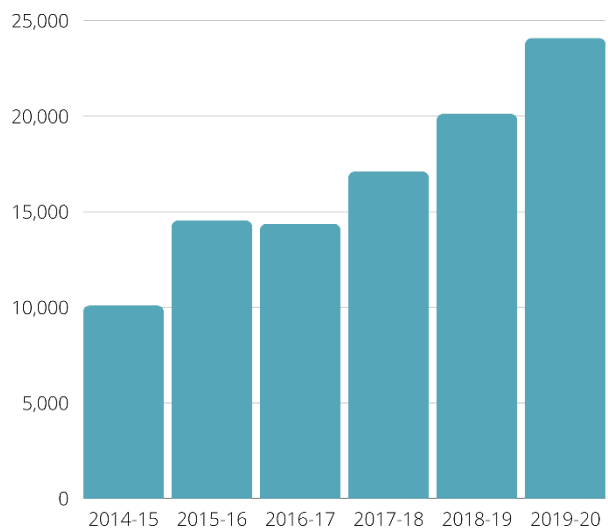
Source: National CSR Data Portal

Corporate Social Responsibility and Welfare Initiatives for Sexual and Gender Minorities

There exists a paucity of reliable data and literature which may facilitate an analysis of CSR contributions towards initiatives for sexual and gender minorities (SGM). From existing CSR reports, it is difficult to discern the funds which have been utilized for programs or initiatives for SGM welfare or whether individuals from the community have benefitted from general initiatives funded by CSR contributions. Further, reporting and classification complications in government estimates of CSR spending fails to provide much support for such an analysis. This paper aims to overcome this lag by understanding the factors which influence CSR spending and why such factors are lacking in the field of gender equality, particularly for the SGM individuals.

The overall quantum of Corporate Social Responsibility spending has significantly increased since 2014. Listed companies and other firms have increased attempts to meet the mandatory 2% target under CSR laws. The sectors which received majority of the CSR funds between 2014-15 and 2019-20 include Health and Sanitation, Education, Inequality Reduction, Rural Development, and Environment. During this period, spending towards gender equality and women empowerment failed to garner much traction.

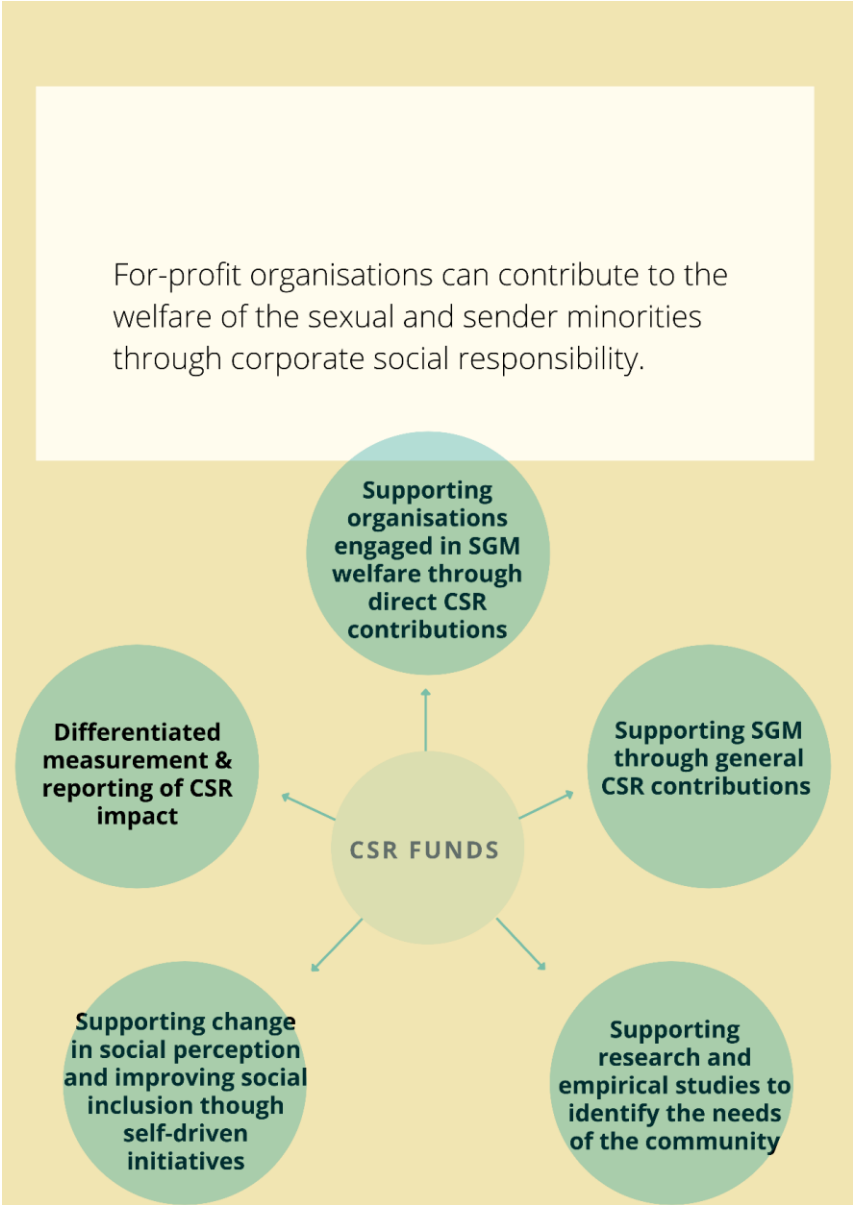
Total Amount Spent on CSR in INR (Crores)



Source: National CSR Data Portal

CSR spending towards the welfare of Sexual and Gender Minorities remains negligible in comparison to the needs of the community.

This can be explained through a plausible correlation between the presence of governmental policies which explicitly mention “development requirements” or “need-based support” for a specific concern and the direction of CSR flows towards that area. CSR is also found to be influenced by the nature of the city and society, physical presence of the corporation, and political nature of initiatives which may invite legal costs and profit losses. Consequently, with governmental recognition and subsequent public policy support towards sexual and gender minorities, both key factors influencing CSR flows, the potential of a rise in such contributions is very likely.



Introduction: Sexual and Gender Minorities and Discrimination

Sexual and Gender Minorities (SGM) is a group of individuals that refuses to identify with the traditional social categories of man and woman or male and female.¹ Colloquially, they are referred to as the "LGBT" community which stands for, and includes, Lesbian, Gay, Bisexual, and Transgender individuals.² In addition to these, the community includes intersex and gender non-conforming individuals as well as individuals who identify with the terms *Hijras*, *Kinner*, *Aravani*, *Kothi*, *Jogappas*, *Thirumabis*, *Nupi Maanbi*, *Nupi Maanba* or other terms which arose from different indigenous cultural contexts. The phrase 'Sexual and Gender Minorities', as used in this brief, includes all those individuals whose biological sex, sexuality, gender identity and/or gender expression depart from the majority norms of man/woman and male/female.

Due to their non-traditional sexual orientation, gender identity, and/or sexual characteristics, individuals from the SGM community face severe social marginalization and oppression worldwide. They are often the victims, or survivors, of physical and verbal abuse, discriminatory criminal laws, discriminatory restrictions of civil liberties and oppressive social sanctions.³ In India, sexual and gender minorities face inability to enjoy some of the very basic human rights afforded to all - including right to life, right to non-discrimination, right to education, right to adequate healthcare and right to privacy and family life.⁴

Law and Practice

A. International Legal Recognition

As a response to the widespread oppression, the international community has recognized the discrimination and oppression faced by sexual and gender minorities. In 2011, the Office of the United Nations High Commissioner for Human Rights affirmed the protection of sexual minorities under the United Declaration of Human Rights.⁵ The Human Rights

¹ While 'Gender' is used to refer to one's internal self/identity, 'Sexuality' is a narrow term which is often used to describe a one's sexual inclination.

² The acronym "LGBT" has undergone changes with increasing awareness regarding more variations in sexual and gender identities. Thus, the addition of the alphabet "Q" for the Queer individuals, "I" for Intersex individuals, "A" for asexual individuals, as well as ethnic additions such as "H" for Hijra, is noticed. To ensure inclusion, the phrase "LGBTQ+" is often used.

³ "International Human Rights Law and Sexual Orientation & Gender Identity". United Nations Human Rights Office of High Commission. Accessed at: www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf.

⁴ United Nations "United Declaration of Human Rights" 1948.

⁵ In 2011, the United Nations Human Rights Council expressed serious concern at violence and discrimination faced by sexual minorities and passed Resolution 17/19 as a mark of commitment to alleviate the same. The

Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has also held discrimination based on “sexual orientation” as against the said treaty.⁶

Additionally, adoptions like the UNHRC’s *Elimination of Discrimination Against Women and Girls in Sport*, The Resolution on Human Rights, Sexual Orientation and Gender Identity (2011),⁷ the Resolution on Human Rights, Sexual Orientation and Gender Identity (2014),⁸ Resolution on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity⁹¹⁰ specifically recognise the discrimination against sexual and gender minorities.¹¹ Several reports on the matter followed these resolutions. In the first report to OHCHR by the Independent Expert for the cause, six essential underpinnings for prevention and protection against violence and discrimination on the basis of gender and sexual identities were listed.¹²

Further, recognition of the crimes against the community in terms of *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Resolution on Extrajudicial, Summary or Arbitrary Executions*, reinforces the international community’s stance regarding violation of the rights of the community.¹³¹⁴¹⁵

While there is no explicit mention of sexual and gender minorities in the Sustainable Development Goals, the pledge of “no one left behind” and attention to “sex” and “other status” in the goals allow for a focus on the cause of the sexual and gender minorities.¹⁶ In

resulting report highlighted the obligations of States towards sexual minorities. See A/HRC/19/41 Accessed at: www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf.

⁶ *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994); *Young v. Australia*, Communication No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003); *X. v Columbia*, Communication No. 1361/2005, U.N. Doc. CCPR/C/89/D/1361/2005.

⁷ A/HRC/RES/17/19 (adopted on 17 June 2011).

⁸ A/HRC/RES/27/32 (adopted on 26 September 2014).

⁹ A/HRC/RES/32/2 (adopted on 30 June 2016) Accessed at: www.un.org/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2.

¹⁰ Note: India abstained from voting for the 2016 Resolution on the appointment of the independent expert for violence and discrimination faced by the community. In 2019, India again abstained from voting for the Resolution for extending the mandate of the independent expert.

¹¹ A/HRC/RES/40/5 Accessed at: undocs.org/en/A/HRC/RES/40/5.

¹² A/HRC/35/36 Accessed at: undocs.org/A/HRC/35/36; Also see: A/72/172 Accessed at: undocs.org/A/72/172.

¹³ A/RES/44/144 Accessed at: <https://www.refworld.org/docid/3b00efef7c.html>.

¹⁴ The Convention’s prohibition of cruel, inhumane and degrading treatment and punishments bears similarity to the practices of Conversion Therapy. The same has been acknowledged by the Office of the United Nations High Commissioner for Human Rights.

See UN Human Rights Council. “Report of the Office of the United Nations High Commissioner for Human Rights, Discrimination and Violence Against Individuals Based on their Ssexual Orientation and Gender Identity”. 4 May 2015. A/HRC/29/23; Also see, UN General Assembly, A/HRC/44/53.

¹⁵ A/RES/57/214 (adopted by the General Assembly 25 February 2003).

¹⁶ Jeffrey O’Malley et al. “Sexual and gender minorities and the Sustainable Development Goals”. United Nations Development Programme, 2018. Accessed at: www.undp.org/content/undp/en/home/librarypage/hiv-aids/sexual-and-gender-minorities.html.

particular, *SDG 1*, which is to end poverty in all forms, *SDG 3*, which is to ensure health and wellbeing of all, and *SDG 8*, which is to promote “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”, and *Goal 16*, which covers inclusive societies and access to justice, holds special relevance for the cause of the community.

B. Legal Position in India - Recognition of ‘Third Gender’ and Decriminalization of Consensual Same-Sex Relationship

Similar trajectory can also be observed in judicial decisions by the Indian Supreme Court. In 2014, the Indian Supreme Court, through the judgment in *National Legal Services Authority v. Union of India*, recognized Transgender persons right to choose their identity - as being man, woman or belonging to a “third” gender as separate from the genders man/woman. The judgement held that discrimination against them is unconstitutional.¹⁷ On the path carved by the Court, the government of India passed the Transgender Persons (Protection of Rights) Act, 2019.

The act is notable for formally recognising equality and non-discrimination for the Transgender individuals in educational institutions, employment, and occupational opportunities. It also recognised the additional medical needs of transgender individuals, including the need for accessible sex-reassignment surgery, hormonal therapy and insurance schemes to help finance these. However, the Act affronted a significant element of the NALSA judgment – the right to self-determine one’s gender.¹⁸ Further, the Act failed to provide an explicit right to reservation to transgender individuals.¹⁹ Both of these elements, having previously received legal approval from the Supreme Court, gave rise to widespread criticism of the Act.

On another front, in 2018, the Supreme Court held that criminalizing consensual sodomy was discriminatory on the basis of sexual orientation and was, thus, in violation of the Constitution. A major victory for the LGBT community, the Court held that such a provision goes against the right to equality and non-discrimination, right to privacy, and the right to life with dignity of homosexual individuals.

¹⁷ The case relied on definitions by the Yogyakarta Principles - a set of international standards in relation to sexual orientation and gender identity.

¹⁸ The Act failed on several fronts, including in failing to provide basic civil rights guaranteed by the International Human Rights Law contained in the UDHR and ICCPR.

¹⁹ The Act provided for the possibility of welfare measures, such as reservations, to be undertaken by the government. However, it did not provide a legal right to such reservations. It was only in 2020, years after the NALSA judgment, that the Ministry of Social Justice and Empowerment began to consider reservations in educational institutions and governmental jobs for transgender individuals. Prospects of such reservations are still uncertain. Vishnoi, Anubhuti. “Centre likely to treat transgenders as OBCs to give them education quota”. *The Economic Times*. Nov. 18, 2020. Accessed at: economictimes.indiatimes.com/news/politics-and-nation/centre-likely-to-treat-transgenders-as-obcs-to-give-them-education-quota/articleshow/79289883.cms?from=mdr.

Although widely criticised, these landslide legal changes brought forth a significant benefit to the SGM community – i.e. formal recognition. Formal recognition allowed transgender individuals the dignity, freedom, and liberty to identify as per their felt identity. Decriminalization of consensual intimacy brought sexual and gender minorities out of the shroud of criminality, “unnaturalness”, and shame. This is also crucial because sixty-nine countries around the world still criminalise homosexual relationships.²⁰ More practically, organizations working with the LGBT community/individuals could now work without the fear of supporting criminally sanctioned behaviours/acts.

C. Mismatched Law & Social Reality

Recognition of various identities in the LGBT community on the national legal front provided a significant push to the LGBT community’s movement for recognition and equality. However, the fight for equality is still at a nascent stage – with inconsistencies within laws as well as a gap between law and social reality.

Firstly, essential civil rights elude the LGBTQ community in law and in practice. Sexual minorities in India continue to remain without equal protection of law, equal personal and family rights, and employment opportunities.

Despite progressive judgments, essential civil rights evade sexual and gender minorities.

- 1. Denial of the Right to Self-Determination:** Denying the most crucial right for the community, the Transgender Persons Act fails to provide decisional autonomy regarding their sexual and gender identity.²¹ For other sexual and gender minorities, the statutes fail to even acknowledge their existence.
- 2. Denial of the Right to Marriage:** While the demands of equality in the aspect of marital laws is a subject of an ongoing public interest litigation in the Delhi High Court, the central government maintains its position that the laws in India do not recognize the marriage of same-sex individuals.²² Transgender individuals also face similar lack of recognition by the personal laws. However, in 2019, the Madras High

²⁰Mendos, Lucas Ramon et al. “State Sponsored Homophobia Global Legislation Overview Update”. *ILGA World*, Dec, 2020, pp. 113. Accessed at: https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf.

²¹ “Perspective needs to change to accommodate trans community: Laxmi Narayan Tripathi”. *The New Indian Express*, Mar 24, 2018/ Accessed at: www.newindianexpress.com/nation/2018/mar/24/perspective-needs-to-change-to-accommodate-transcommunity-laxmi-narayan-tripathi-1791966.html.

²² “Another plea in HC for recognition of same sex marriages”. *Hindustan Times*, Feb 25, 2021. Accessed at: www.hindustantimes.com/lifestyle/relationships/another-plea-in-hc-for-recognition-of-same-sexmarriages-101614257290466.html.

Court held that a marriage solemnized between a male and a transwoman was valid as per the Hindu Marriage Act.²³

3. **Denial of the Right to Adopt:** Adoption remains inaccessible to transgender individuals and same-sex couples due to narrowly drawn criteria of adoption laws.²⁴ This law exists despite the long-recorded culture of non-biological family structures of transgender individuals, wherein abandoned or run-away transgender children are often informally adopted.²⁵
4. **Denial of Equal Protection by Law:** Even after the landmark decriminalization of consensual same-sex intimacy (part of section 377 of the Indian Penal Code), most of the penal code remains gendered. Through gendered notions of rape, sexual violence and harassment, penal offences in India continue to ignore the crimes which take place against the sexual and gender minorities. They are also regularly profiled, targeted and harassed by the state machinery as perpetrators due to their identity as a "sexual deviants".

Legal recognition of rights provides a bedrock for social transformation. Presently, not all SGM individuals have attained legal recognition or equal protection of basic human rights. Guaranteeing this would require, among other things, amendment of laws which recognise the right to a family life - including the right to marry, adopt or attain parenthood through surrogacy, and the right to receive inheritance. However, new bills, like the Uniform Civil Code Bill or the Surrogacy Bill, fail to consider the rights of the SGM individuals. With Supreme Court's recent decisions providing some legal basis for recognising the rights and freedoms of SGM, further hard coding these rights under civil and criminal laws of the country will render complete the legal puzzle.

Secondly, individuals from the community continue to face severe social and familial sanctions in daily life despite progressive support from the highest court of the land. The sanctions range from subtle discrimination in recruitment and employment to physical violations such as involuntary institutionalization and corrective rape (to "cure" them of their "sickness"), forced marriage, wrongful confinement, torturous, cruel and inhumane treatment. They are met with harassment by their families, which often go to the extent of ostracizing the person, strangers or non-state actors who create an atmosphere of shame,

²³ Arunkumar and Another. v The Inspector General of Registration and Ors. (WP (MD) No. 4125 of 2019 and WMP (MD) No. 3220 of 2019 in Madras High Court.

²⁴ Heliwal, Mukti. "On LGBTQ Adoption and Legal Reform: The Fight For The Community Is Still Not Over". *Youth Ki Awaaz*, April 2, 2020. Accessed at: www.youthkiawaaz.com/2020/04/why-should-there-be-an-amendment-in-c-a-r-a-for-the-lgbt/; Muringatheri, Mini. "Transgenders raise the adoption question". *The Hindu*, Jan 4, 2020. Accessed at: www.thehindu.com/news/national/kerala/transgenders-raise-the-adoption-question/article30481170.ece.

²⁵ Sinha, Chinki. "We can't erase our hijra culture. *India Today*, Aug 16, 2019. Accessed at: www.indiatoday.in/india-today-insight/story/cant-erase-hijra-culture-transgender-persons-bill-1581247-2019-08-16.

hatred and fear, to state/police officers who profile and harass individuals for their unique sexual and gender orientation.²⁶

²⁶Living with Dignity Sexual Orientation and Gender Identity Based Human Rights Violations in Housing, Work, and Public Spaces in India”. *International Commission of Jurists*, Jun, 2019. Accessed at: www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf.

Socio-Economic Status of the LGBTQIA+ Community

A. Economic Exclusion

Economic exclusion and discrimination make it harder for SGM individuals to earn livelihood, stay secure and pursue their goals. This discrimination takes many forms - from a trans-person being limited to insecure and unsafe employment to a homosexual couple without any access to a financial assistance/loan through banks. However, due to hidden numbers of SGM individuals, including those who chose to be “closetted” or try to “pass” as a man or woman, it is difficult to conclusively ascertain their socio-economic status. However, from available data, it can be seen that “outed” homosexual and transgender individuals²⁷, witness adverse impact on their employment and incomes.²⁸

A study conducted in the States of Uttar Pradesh and Delhi suggests that a mere 6% of the transgender individual in these states were employed in the formal sector.²⁹ The majority of the transgender individuals were found to be relying on beggary and sex-work or engaged in informal activities such as *bhadhai* (blessing), singing and dancing, or informal employments as beauticians, domestic workers, or tailors. This is also in line with the most recent census from the year 2011 according to which only 38 percent of ‘third gender’ respondents were found to be working as opposed to the national average of 46 percent.³⁰

Low level of participation in the formal sector and lower earnings can be explained by, *among others*, the poor record of literacy and education among the individuals of the community. The study found that only about 22 percent of Transgender individuals have completed education beyond the 10th grade. It also found that around 30 percent of the transgender individuals had never experienced school education. This remains true despite the vows of the Right to Education Act, 2009 which set out to provide universal education in India.

²⁷K, M. Nidheesh. “Transgender in Kochi Metro: The Unsaid Story”. *Mint*, Jun 23, 2017. Accessed at www.livemint.com/Leisure/hAxjCCa20vvnv9DJSULDQHP/How-Kochi-Metro-is-making-a-difference-in-the-lives-of-trans.html.

²⁸ Badgett, M.V. Lee. “The Wage Effects of Sexual Orientation Discrimination”. *ILR Review*, Vol. 48, No. 4, July, 1995, pp. 726-739. Access at: ideas.wharton.upenn.edu/wp-content/uploads/2018/07/Badgett1995.pdf.

²⁹ Kerala Development Society. “Study on Human Rights of Transgender as a Third Gender”. Feb, 2017. *National Human Rights Commission*. 2017. Access at: nhrc.nic.in/sites/default/files/Study_HR_transgender_03082018.pdf.

³⁰ The census from the year 2011 notes the population of the “other” gender - those who did not wish to be recorded as either a man or woman - at 4,87,803. Due to inaccessibility of primary sources, the employment data noted here is referred from secondary sources. See Jeffrey O’Malley et al. “Sexual and gender minorities and the Sustainable Development Goals”. *United Nations Development Programme*. 2018, pp. 35. Accessed at: www.undp.org/content/dam/undp/library/HIV-AIDS/Key%20populations/SDGs_SexualAndGenderMinorities.pdf.

B. Social Exclusion

Socially imbibed notions reflect in apparent biases, policy limitations and oversights, as well as subtler discrimination and instances of micro-aggressions during a SGM person's interaction with the society. When seen through a macroscopic lens, the patterns of discrimination, with its influence running through all aspects of life, presents itself clearly. Discrimination against individuals belonging to the gender and sexual minority community manifest in social exclusion in several forms, such as:

1. Difficulty to Access Public Spaces

SGM individuals face exclusion in public spaces such as railway stations/buses/metro-stations, public parks, restrooms, shopping malls, hotels, hospitals etc.³¹ For instance, due to the gendered nature of security screening at most publicly accessed facilities, with separate queues made for males and females, transgender individuals often have to negotiate for their gender identities and face verbal and physical harassment.³² They are also denied entry or go through greater security supervision due to their presumed image of sex workers or beggars.

2. Lack of Psychosocial Support

Due to their sexual and gender identity, SGM individuals often undergo threats to life from their families and the society. Faced by additional stressors associated with their minority identity, SGM individuals have a greater tendency of mental health concerns, drug abuse and suicidality inclination.^{33,34} The lack of support from families or society contributes adversely to these conditions.³⁵

³¹ Living with Dignity Sexual Orientation and Gender Identity Based Human Rights Violations in Housing, Work, and Public Spaces in India". *International Commission of Jurists*, Jun, 2019, pp. 122. Accessed at: www.icj.org/wp-content/uploads/2019/06/India-Living-with-dignity-Publications-Reports-thematic-report-2019-ENG.pdf.

³² *Ibid*.

³³ Wandrekar, R Jagruti and Advaita S. Nigudkar. "What Do We Know About LGBTQIA+ Mental Health in India? A Review of Research From 2009 to 2019". *SAGE Journal of Psychosexual Health*. Vol. 2, No. 1, pp. 26-36, 2020. Access at: journals.sagepub.com/doi/pdf/10.1177/2631831820918129.

³⁴ Jeffrey O'Malley et al. "Sexual and gender minorities and the Sustainable Development Goals". United Nations Development Programme, 2018, pp. 44-45. Accessed at: www.undp.org/content/undp/en/home/librarypage/hiv-aids/sexual-and-gender-minorities.html.

³⁵ *Ibid*; Murugesan, Sivasubramanian et al. "Suicidality, clinical depression, and anxiety disorders are highly prevalent in men who have sex with men in Mumbai India: findings from a community-recruited sample". *Psychology Health and Medicine*, vol. 16, no.4, 2011, pp.450-462. doi: 10.1080/13548506.2011.554645.; Azad, S.A.K. "Health Care Barriers Faced by LGBT People in India: An Investigative Study". *Research Innovator*, vol. 3, no. 5, Oct, 2016, pp. 77-82. Access at: research-chronicler.com/resinv/pdf/v3i5/10-3510-Prafulla_Kumar_Nayak_Dr._S.A.K._Azad-Health_Care_Barriers_faced_by_LGBT_PEOPLE_IN_INDIA.pdf.

3. Inaccessible Healthcare

Healthcare barriers, including ignorance and discrimination by healthcare providers, result in poorer access to healthcare by sexual and gender minorities.³⁶ They often undergo delayed, and at times inappropriate care³⁷, due to imbibed prejudice based in homophobia and transphobia.³⁸ For instance, SGM individuals (in particular, Transgender individuals and MSM) are disallowed from donating blood. Based on an order of the Ministry of Health and Family Welfare, this practice is currently under challenge before the Supreme Court.³⁹ Together with the practice of compelling ‘replacement blood’, SGM individuals, who need blood but have no acquaintances who can be a replacement donor, often face difficulties in receiving life-saving blood transfusion.⁴¹

This exclusion is further aggravated due to special or heightened sexual healthcare requirements which the individuals from SGM community have. Prevalence of sexually transmitted infections, including HIV, is higher among transgender individuals who have to engage in sex-work, often involuntarily or due to lack of accessible jobs.⁴² Despite heightened risk, research suggests that in India, MSM (Short for ‘Men who have sex with Men’⁴³) are

³⁶Jeffrey O'Malley et al. “Sexual and gender minorities and the Sustainable Development Goals”. United Nations Development Programme, 2018, pp. 42. Accessed at: www.undp.org/content/undp/en/home/librarypage/hiv-aids/sexual-and-gender-minorities.html.

³⁷ Transgender individuals seeking to transition to the gender of their choice medically can find that provision is either harmful or non-existent.

³⁸ Azad, S.A.K. “Health Care Barriers Faced by LGBT People in India: An Investigative Study”. *Research Innovator*, vol. 3, no. 5, Oct, 2016, pp. 77-2. Access at: research-chronicler.com/resinv/pdf/v3i5/10-3510-Prafulla_Kumar_Nayak_Dr._S.A.K._Azad-Health_Care_Barriers_faced_by_LGBT_PEOPLE_IN_INDIA.pdf.

³⁹National Blood Transfusion Council. “Guidelines for Blood Donor Selection and Blood Donor Referral”. *Ministry of Health and Family Welfare, GoI*, Oct, 2017. Accessed at: [/naco.gov.in/sites/default/files/Letter%20reg.%20%20guidelines%20for%20blood%20donor%20selection%20%26%20referral%20-2017.pdf](http://naco.gov.in/sites/default/files/Letter%20reg.%20%20guidelines%20for%20blood%20donor%20selection%20%26%20referral%20-2017.pdf).

⁴⁰Mahapatra, Dhananjay. “Why trans, gay and female sex workers can't be blood donors: PIL”. *The Times of India*, Mar 6, 2021. Accessed at: timesofindia.indiatimes.com/india/pil-why-cant-gays-transgenders-be-blood-donors/articleshow/81358671.cms.

⁴¹ The practice of compelling arrangement of replacement blood donors *before* one may receive blood transfusions has safety risks and ethical concerns. This was aimed to be prohibited and “phased out” gradually by the Ministry of Health and Family Welfare as per the National Blood Policy Policy, 2007. However, this remains in use even today. See “National Blood Policy”. *National AIDS Control Organisation, Ministry of Health and Family Welfare, GoI*, 2007, par. 1.2.1. Accessed at: www.naco.gov.in/sites/default/files/National%20Blood%20Policy_0.pdf. Also see Singh, Sudeshna. “SC Issues Notice To Centre Over Guidelines Banning Transgenders From Donating Blood”. *Republic World*, Mar 5, 2021. Accessed at: www.republicworld.com/india-news/law-and-order/sc-issues-notice-to-centre-over-guidelines-banning-transgenders-from-donating-blood.html.

⁴² Jeffrey O'Malley et al. “Sexual and gender minorities and the Sustainable Development Goals”. United Nations Development Programme, 2018, pp. 45. Accessed at: www.undp.org/content/undp/en/home/librarypage/hiv-aids/sexual-and-gender-minorities.html.

⁴³ ‘MSM’ has been used in epidemiological studies to identify Men who sleep with other Men - a practice which is seen to accentuate the risk of STIs. This term is predominantly used in medical literature and does not consider the issue of self-identification.

less likely to access critical health services, such as HIV testing and treatment due to discrimination and judgmental attitude of the health care personnel.⁴⁴

4. Lack of a Safe and Accepting Learning Environment

Lack of peer and teacher acceptance in school create an unsafe learning environment for SGM children. According to studies, bullying and harassment in schools by peer groups and teachers forces many children to drop out of school or suffer lower academic performance.⁴⁵ Further, with heavily policed gendered practices in schools (for instance, gendered seating and attires), SGM students face the mental stress of conforming to the social norms of man/woman identity. Anecdotal evidence also suggests that children of SGM individuals are also susceptible to significant stigma and scarring harassment from their peer group because of the gender/sexual identities of their parents.⁴⁶⁴⁷ Faced with pervasive stigma around sexuality and gender, SGM children learn to hide their identities/remains “closeted”. Violence and Harassment from Law Enforcement Agents

5. Violence and Harassment from Law Enforcement Agents

SGM individuals regularly undergo criminal profiling, illegal arrests, detention, and torture at the hands of law enforcement agents due to their identity. This continues despite international and national laws prohibiting such actions.⁴⁸ Anecdotes also suggest misgendering of transgenders, emotional abuse, sexual assault, and absent or inappropriate medical care of SGM in prisons.⁴⁹

Policy Responses for the Welfare of Sexual Minorities

The Indian State’s response towards the Sexual and Gender Minorities has been limited by scope - favourable to the Transgender community, but oblivious to other identities within the community. Pursuant to the *NALSA* judgement and the Transgender Persons Act, several States, including Kerala, Maharashtra, Rajasthan, Assam, Gujarat, West Bengal and

⁴⁴ Lorway, Robert et al. “Going Beyond the Clinic: Confronting Stigma and Discrimination among men who have sex with men in Mysore through community-based participatory research”. *Critical Public Health*, vol. 24, no. 1, Jan 2013, pp. 9-10. DOI: 10.1080/09581596.2013.791386.

⁴⁵ “Experiences of bullying in schools: A survey among sexual/gender minority youth in Tamil Nadu”. *UNESCO New Delhi Cluster Office*, 2018. Accessed at: orinam.net/content/wp-content/uploads/2019/06/UNESCO_researchbrief.pdfcitizenmatters.in/india-city-schools-homophobia-lgbt-discrimination-gender-research-6863.

⁴⁶ “A census first for third gender”. *Census India*. Accessed at: censusindia.gov.in/Ad_Campaign/press/third%20gender.pdf.

⁴⁷ Rapaport, Lisa. “Gay fathers face stigma as parents”. *Thomson Reuters Healthcare and Pharma*, Jan 16, 2019. Accessed at: www.reuters.com/article/us-health-lgbt-gay-dads-idUSKCN1P92TS.

⁴⁸ “Targeted and tortured: UN experts urge greater protection for LGBTI people in detention”. *UN Human Rights Office of High Commission*, Jun 23, 2016. Accessed at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20165&LangID=E.

⁴⁹Shantha, Sukanya. “Misgendering, Sexual Violence, Harassment: What it Is to Be a Transgender Person in an Indian Prison”. *The Wire*, Feb 11, 2021. Accessed at: thewire.in/lgbtqia/transgender-prisoners-india.

Andhra Pradesh, have formed Transgender Welfare Boards. The State of Tamil Nadu, notably, constituted a Transgender Welfare Board in 2008. At the central level, the National Council of Transgender Persons was constituted in 2020. Formation of these boards marked important steps towards the realisation of the Transgender Persons Act. Although not without faults, these boards provide a framework for political representation of the Transgender community. However, other non-binary identities, including Homosexual, Bisexual/Pansexual and Asexual individuals, have been overlooked.

Several welfare schemes and projects for the benefit of Transgender individuals have also been formulated. A short, albeit non-exhaustive, enumeration would include *Sweekruit* Scheme for Promotion of Transgender Equality & Justice (Orissa)⁵⁰, *Garima Greh* Shelter Home (Vadodara, Gujrat)⁵¹, *Thanal* Transgender Care-Home (Thiruvananthapuram, Kerala), *Mazhavillu* project for establishing a crisis management centre and transgender cell (Kerala)⁵². A National Portal for Transgender Persons has also been launched by the Department of Social Justice and Empowerment for digital application and procurement of Transgender Identity card.⁵³ Furthermore, schemes, like the *Deendayal Antyodaya Yojana - National Rural Livelihoods Mission*, have included transgender individuals as its beneficiaries.⁵⁴ A Central scheme for the provision of free gender-reassignment surgery and counselling in each state is also anticipated in the near future.⁵⁵ However, several of these schemes, projects, and welfare boards have been critiqued for their failures to provide timely or actual benefit to the transgender individuals.

⁵⁰ SWECKRUTI A Scheme for Promotion of Transgender Equality & Justice". *Social Security and Empowerment of Persons with Disabilities Department*, Government of Odisha, Accessed at: cdn.s3waas.gov.in/s335051070e572e47d2c26c241ab88307f/uploads/2018/04/2018042881.pdf.

⁵¹ Ministry of Social Justice & Empowerment. "Shri Thaawarchand Gehlot E-Launches 'National Portal for Transgender Persons' and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat". *Press Information Bureau*, Nov 25, 2020. Accessed at: pib.gov.in/PressReleaseIframePage.aspx?PRID=1675629.

⁵²Balan, S Saritha. "Kerala govt launches new project for transgender community even as old promises unkept". *The News Minute*, May 17, 2018. Accessed at: www.thenewsminute.com/article/kerala-govt-launches-new-project-transgender-community-even-old-promises-unkept-81473.

⁵³ Ministry of Social Justice & Empowerment. "Shri Thaawarchand Gehlot E-Launches 'National Portal for Transgender Persons' and E-Inaugurates Garima Greh: A Shelter Home for Transgender Persons in Gujarat". *Press Information Bureau*, Nov 25, 2020. Accessed at: pib.gov.in/PressReleaseIframePage.aspx?PRID=1675629.

⁵⁴ Reserve Bank of India. "Master Circular – Deendayal Antyodaya Yojana - National Rural Livelihoods Mission (DAY-NRLM)". Nov 26, 2019. Accessed at: www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=11743.

⁵⁵Pandit, Ambika. "Govt plans free ops for gender reassignment of trans people". *The Times of India*, Nov 26, 2020. Accessed at: timesofindia.indiatimes.com/india/govt-hospitals-in-states-to-offer-free-gender-reassignment-surgeries-under-proposed-scheme-for-transgenders/articleshow/79421792.cms.

Corporate Social Responsibility and Sexual and Gender Minorities

With the private sector witnessing substantial growth after the 1991 liberalization and privatisation, private organisations have the capacity to make significant and meaningful contributions to support the development of the masses. However, the potential for such contribution is not fully utilized. Where contributions are made, political and commercial impact of it on the firm influence the choice of projects. This is evident in the gap between need and allocation of CSR resources.

For instance, India consistently scores low on the Global Gender Gap Index. Yet, as we examine in the following sections, this sector receives less than 2% of domestic philanthropic and CSR funds, with most funds within this sector allocated only towards women empowerment-related programs.⁵⁶ Quality Education, on the other hand, gets one-third of these funds, despite India's strong score on this Sustainable Development Goal (SDG).⁵⁷

What is CSR?

Corporate Social Responsibility (CSR), as a concept, refers to the obligation of corporations to “pursue those policies, to make those decisions, or to follow those lines of action” which are aligned to the objectives and values of the society.⁵⁸ CSR is seen as a duty that businesses have towards the society which it forms a part of. Usually an ethical responsibility, CSR is legally mandated in India.

In India, CSR is governed by Section 135 and Schedule VII of the Companies Act, 2013. The provision makes it mandatory for the companies to take up social welfare activities to positive impact on the society. India is the first country in the world mandate a CSR obligation.

Section 135 of the Companies Act applies to Indian companies and foreign companies doing business in India that, during the immediately preceding financial year, have met with a minimum threshold of: (1) annual turnover of at least INR 10 billion (approximately USD 133 million), (2) net worth of at least INR 5 billion (approximately USD 67 million), or (3) net profit of INR 50 million (approximately USD 667,000). These companies are required to spend at least 2% of their average net profits made during the three immediately preceding fiscal years on CSR activities. Further, CSR Rules provide specific mandates on how the CSR funds may be spent. Eligible CSR activities on which such funds may be applied are outlined in Schedule VII of the Companies Act, which has been amended several times.

⁵⁶ World Economic Forum. “Global Gender Gap Report 2020”. Accessed at: www3.weforum.org/docs/WEF_GGGR_2020.pdf.

⁵⁷ Bain & Company. “India Philanthropy Report 2020”. 2020. Accessed at: www.bain.com/insights/india-private-equity-report-2020/.

⁵⁸ Bowen, R. Haward. “Social Responsibility of the Businessman”. Harper & Row: New Yorker, pp. 6.

CSR activities may be taken up by the company through a Trust/Society/Section 8 company set up by the corporate for its philanthropic activities or through similar non-profit entities set up independently. Companies are also allowed to collaborate with other companies for undertaking the CSR Activities.

However, corporatizing philanthropy, as is mandated through CSR law, is argued to be a double edge sword. On the one hand, market driven win-win situations for social impact are gaining traction; on the other, entrepreneurial approaches to solving social problems (including the focus on data-driven impact) is being criticised as possibly reductionist.⁵⁹ It is also feared that corporate charity would foster a plutocratic tendency within the country since it is becoming increasingly difficult for philanthropists to separate their giving from how they make their money.

Mapping LGBTQ Welfare & CSR

A wide variety of activities can be encompassed within the purview of permissible activities in the Schedule VII. In 2014, a circular by the Ministry of Corporate Affairs (MCA)⁶⁰ clarified that the permitted activities under Schedule VII “*must be interpreted liberally so as to capture the essence of the subjects*”. Thus, although enumerated in the form of a list, these thematic areas are amenable to a liberal interpretation. This allows for a creative, and legal, use of these activities as long as the essence of the thematic area is catered to. Therefore, despite no express mention, activities which support the welfare of sexual and gender minorities can be conducted as part of CSR activities.

Following are some permitted objectives for CSR spending under Schedule VII of the Companies Act, 2013 under which the welfare of the SGM individuals may be envisaged:

- (i) **Eradicating hunger, poverty and malnutrition**, [**promoting health care** - including preventive health care”] and sanitation and making available safe drinking water.
- (ii) **promoting education**, including special education and **employment enhancing vocational skills** especially among children, women, elderly and the differently abled and **livelihood enhancement projects**.
- (iii) **promoting gender equality**, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such

⁵⁹ Joshi, Poonam. “Philanthropy Future Trend Report”. Civic Space 2040 Initiative, *International Center for Not-for-Profit Law*, Feb, 2020, pp. 4. Accessed at: [www.google.com/url?q=https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/CS2040-Trend-Report-Philanthropy-vf.pdf&sa=D&source=editors&ust=1617274607793000&usg=AOvVaw1MPysA2EicJkYFnTXbZ-Ly](https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/CS2040-Trend-Report-Philanthropy-vf.pdf&sa=D&source=editors&ust=1617274607793000&usg=AOvVaw1MPysA2EicJkYFnTXbZ-Ly).

⁶⁰ Ministry of Corporate Affairs. “Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013”. No. 05/01/2014- CSR, Jun 18, 2014. Accessed at: www.mca.gov.in/Ministry/pdf/General_Circular_21_2014.pdf.

other facilities for senior citizens and **measures for reducing inequalities faced by socially and economically backward groups.**

Therefore, while it is true that a specific inclusion of Sexual and Gender Minorities in the schedule would benefit their cause, a lack of it does not make CSR initiatives for their welfare any less legal. A wide range of activities which benefit the SGM in the areas of education, livelihood, healthcare, and social acceptance can be the focus of CSR activities in India.

In 2017, the Madurai-based Vadamalayan group of hospitals announced that it would provide job opportunities for transgender community members as part of its business practice.

In 2019, the Health and Hygiene Company RB announced a program seeking to improve awareness on sexual wellbeing among children and the LGBTQ community. The program is estimated to reach out to children across 10,000 schools in seven states in northeast India.

Parallels between CSR, Schedule VII and the SDG in relation to LGBTQ

Many CSR themes, for being similar in nature to Sustainable Development Goals, can accommodate well-defined and tangible SDG target activities under them.⁶¹ Reading both collaboratively can provide a comprehensive growth model for bringing real impact in society.⁶² However, SDG are similarly placed to the causes of Sexual and Gender Minorities as the CSR Schedule VII. Though Sustainable Development Goals provide for equitable human rights such as inclusion in education, healthcare and livelihood as overarching principles, no SDG is dedicated specifically to the welfare of gender & sexual minorities. This aspect has attracted some cynicism⁶³. However, not much has been done towards changing that position.

Irrespective of this, due to their vast scope, the following SGDs finds intersection with the interests of sexual and gender minorities:

Goal 1: End Poverty in All Its Forms Everywhere

Goal 3: Ensure Healthy Lives And Promote Well-Being For All At All Ages

Goal 4: Ensure Inclusive And Equitable Quality Education And Promote Lifelong Learning Opportunities For All

Goal 5: Achieve Gender Equality And Empower All Women And Girls

⁶¹ Global Compact Network India and KPMG. "Sustainable Development Goals (SGSs): Leveraging CSR to Achieve SDGs" Dec, 2017. Accessed at: assets.kpmg/content/dam/kpmg/in/pdf/2017/12/SDG_New_Final_Web.pdf.

⁶² *Ibid*

⁶³ Stonewall International. "The Sustainable Development Goals and LGBT Inclusion". Jan 201. Accessed at: www.stonewall.org.uk/system/files/sdg-guide.pdf.

Goal 8: Promote Sustained, Inclusive and Sustainable Economic Growth, Full And Productive Employment And Decent Work For All

Goal 10: Reduce Inequality Within And Among Countries

Goal 11: Make Cities And Human Settlements Inclusive, Safe, Resilient And Sustainable

Goal 16: Promote Peaceful And Inclusive Societies For Sustainable Development, Provide Access To Justice For All And Build Effective, Accountable And Inclusive Institutions At All Levels.

CSR and Initiatives for Sexual and Gender Minorities

CSR contributions and projects have a real potential to accelerate developmental aims of a society. For instance, studies suggest that the quality of life in Indian villages have substantially improved from 2011 to 2014 through contributions by CSR activities. Refuting the fear that multinational companies can endanger local communities, the study by Strotmann gives empirical proof of socio-economic development in villages where CSR activities take place.⁶⁴ However, despite real potential for development, factors beyond social welfare often influence CSR policy decisions.

CSR activities are known to influence brand equity and have a potential to impact the profitability of the company. Factors such as brand belief and responsiveness, brand loyalty, brand inclination, brand perception, and brand confidence are positively influenced by a healthy and truly responsible CSR policy.⁶⁵ Thus, CSR policies which are not socially and politically favourable are unlikely to find support from for-profit organisations.⁶⁶ This may explain the relatively lower contribution of CSR funds for SGM welfare organisations and initiatives.

Sectors (listed in order of CSR funds received)	Quantum of CSR funds (FY 2014-15 to FY 2019-20) in INR crores
--	---

⁶⁴ Strotmann, Harald et al. "Multinational companies: can they foster well-being in the eyes of the poor? Results from an empirical case study" *International Journal of Corporate Social Responsibility*, Springer, vol. 4, no. 1, Dec, 2019, pages 1-14. Accessed at: jcsr.springeropen.com/track/pdf/10.1186/s40991-019-0040-0.pdf Accessed on 20/03/2021.

⁶⁵ Thakur, Sandeep Kumar et al. "CSR Laws in India: Does It Impact As a Marketing Tools to Enhance the Brand Equity" *International Conference on Advances in Engineering Science Management & Technology*, Uttarakhand University, Dehradun, India. Mar 14, 2019. Available at SSRN: ssrn.com/abstract=3383342 or dx.doi.org/10.2139/ssrn.3383342.

⁶⁶ Annenberg, Alvin Zhou. "Communicating Corporate LGBTQ Advocacy: A Computational Comparison of the Global CSR Discourse". OSF Preprints, Oct. 28, 2020. DOI: [10.31219/osf.io/gz7bw](https://doi.org/10.31219/osf.io/gz7bw).

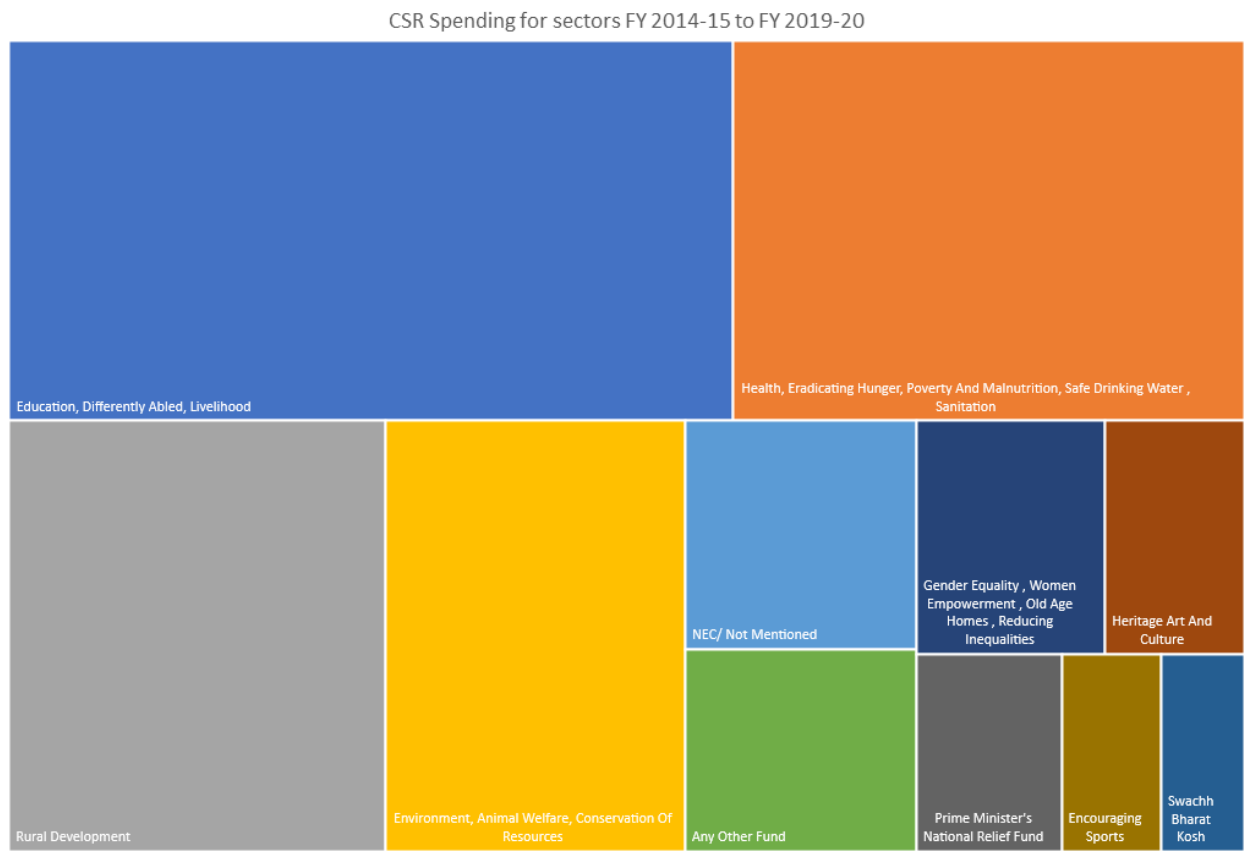
Education, Differently Abled, Livelihood	38279
Health, Eradicating Hunger, Poverty and Malnutrition, Safe Drinking Water, Sanitation	27040
Rural Development	10390
Environment, Animal Welfare, Conservation of Resources	8243
Gender Equality, Women Empowerment, Old Age Homes, Reducing Inequalities	2825

The sectors that have seen majority of the CSR funds during the study period include: (1) Education, (2) Health, (3) Rural Development, and (4) Environment. Between 2014 and 2020, education has received the highest traction.⁶⁷ A study by the NGO *Samhita*, similarly, revealed that at least 80% of the top 100 listed companies implemented programs in education – either through donation of infrastructure, scholarships, or funding NGOs that work in the space.⁶⁸ In contrast, spending towards gender equality and women empowerment did not find much traction. Within this, the funds utilised for SGM community’s welfare remains lesser still. Between 2014 and 2020, CSR flows under “gender equality” totalled INR 2825.7 crores (less than 10% of the flows towards the education sector). It would be a reasonable assumption that CSR funds towards sexual and gender minorities would turn out to be miniscule in comparison to health, education, and rural development.

⁶⁷ KPMG. “India’s CSR Reporting Survey 2019”. Feb, 2020. Accessed at: assets.kpmg/content/dam/kpmg/in/pdf/2020/02/india-s-csr-reporting-survey-2019.pdf; Bain & Company. “India Philanthropy Report 2020”. 2020. Accessed at: www.bain.com/insights/india-private-equity-report-2020/.

⁶⁸ Parekh, Anushree and Poorvaja Prakash. “Why Companies Prefer CSR in Education”. *The Hindu Business Line*, Mar 9, 2019. Accessed at: www.thehindubusinessline.com/opinion/why-companies-prefer-csr-in-education/article22515117.ece.

Where such funding is available, the extent of funds allocated for projects focused on sexual and gender minorities is unclear from the publicly available data. Government estimates of CSR funds carry significant reporting and classification issues. The themes of permitted CSR activities listed under Schedule IV are broadly categorised and consists of overlapping concerns. For example, building a women’s toilets in the rural areas may be classified as a rural development project as well as women’s empowerment project⁶⁹. Similarly, education in a community of urban transgender sex workers, may be regarded under the head of education, urban development, or gender equality. No governmental guidelines clarify classification issues. However, accounting for such anomalies is unlikely to change the overall direction of CSR spending trends towards this cause.



⁶⁹ “The primary objective of CSR was not to mobilize resources for [the] government to bridge resource gap[s] in meeting Sustainable Development Goals (SDGs). The primary objective is to promote responsible and sustainable business philosophy at a broad level and encourage companies to come up with innovative ideas and robust management systems to address social and environmental concerns of the local area and other needy areas in the country.”
 See Ministry of Corporate Affairs. “Report of the High Level Committee on Corporate Social Responsibility”. 2018. Accessed at: www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf.

It is worth investigating the disproportionate spend towards CSR interventions in some sectors, which may come at the expense of funds being allotted to other sectors. Apart from political influence and profitability, the following factors are found to influence the CSR policy decisions in India.

What Influences CSR Funds?

1. Central Government Policy Influences CSR Funding

In the sectors that have witnessed significant CSR flows, we notice strong correlation between the presence of central government policies which explicitly mention “development requirements” or “need-based support” for a specific concern and the direction of CSR flows in that area. For instance, in the area of rural development – which has attracted the third highest amount of CSR flows between 2014 to 2020 (INR 10,390.73 crores) – there exists central government’s initiatives such as the Transformation of Aspirational Districts Program (TADP)⁷⁰. Education and health – the two sectors that have seen the highest volumes of CSR flows – have also benefited by a high prevalence of central and state government schemes such as the Right to Education Act, *Beti Bachao Beti Pado*, Skill Development and Vocational training measures. Consequently, a vibrant network of NGOs operates in these sectors.⁷¹

On a similar line, the Ministry of Social Justice and Empowerment’s High-Level Committee on Social Responsibilities estimated a strong correlation between CSR spends - for *Swachh Bharat*, Clean *Ganga* Fund and any other fund set up by the central government for socio-economic development – and government policy. Thus, a potential correlation exists between government policy measures and the flow of CSR funds.

One explanation of this can be the existence of pre-made metrics, outcomes and readily identifiable gaps for CSR funds and initiatives to address. Thus, public programs may help provide a ready framework – by explicitly outlining gaps, needs, and requirements – which helps CSR personnel to map outcomes.

While the nature of the flows initially seems to suggest a correlation between public policy support with CSR flows, we do not witness similar trends in all fields of action. For instance, women empowerment has witnessed an increased public policy focus in the last decade. During this period, several state governments have introduced policies for the welfare and empowerment of women. However, unlike the sectors of Education and Rural Development, a correlated increase in CSR spends is not witnessed for women

⁷⁰ Launched in 2018, the TADP focuses on five parameters in 117 districts. These parameters include health and nutrition, education, agriculture and water resources, financial inclusion and skill development, and basic infrastructure.

⁷¹ Such as Pratham and Central Square Foundation.

empowerment. This necessitates further scholarly efforts to understand the peculiar nature of the sector and why it does not present a similar correlation.

2. Industrial Character of States Impacts CSR Funds

Another trend that bears out is the disproportionate concentration of CSR spending in industrialised states in the country. CSR data suggests that industrialized states, such as Maharashtra, Karnataka, Gujarat, Andhra Pradesh, Tamil Nadu and Delhi, have together received approximately 38% of the total CSR funds spent across states between 2014 and 2020. In the same states, we observe a disproportionate quantum of CSR flows towards women's empowerment since 2014. At the same time, the States of Maharashtra and Tamil Nadu perform significantly better in gender parity parameters - such as representation of women in the workforce, local government institutions, etc.

In contrast, states which fall behind in industrialisation, including the States of Bihar, Odisha or Madhya Pradesh, CSR flows lag significantly in gender equality even as several private and government studies indicate poor performance in gender parity. Thus, even though companies have looked to operate in non-industrialised states or rural areas on gender-related issues, the needs of financial support and CSR funds allocation remain mismatched.

3. Physical Presence of the Firm and Convenience Impacts CSR Funds

In Maharashtra and Tamil Nadu, CSR funding is found to be focused on districts where companies have established their physical presence or is seeking to expand its corporate profile. One example is of the domestic private mineral giant **Vedanta Limited** which has CSR activities focused in and around Thoothukudi district where it has an operating copper smelter till 2018. Thus, while centre and state government policies help direct CSR flows, convenience (where a company is located) and brand equity, i.e. how the company wants to be profiled in

Hindustan Zinc Limited, a private extractive company, contributed its CSR funds towards women empowerment by running a "Safal Sakhi" program in August 2020. In the program, mobile tablets were distributed to at least 119 rural women for "digital empowerment" across rural areas in Rajasthan and Uttarakhand. In the following months, studies and media reports criticized the intervention underlining the company's failure to comprehend needs of the women in the community. It was noted that most women who were given such tablets faced pressing issues pertaining to safe housing and domestic violence which the company was accused of overlooking.

Oxygen, a digital payment firm, offers skill training programs through 42 vocational institutes across villages in Rajasthan (Rajnata, Buteri and Behror), Madhya Pradesh (Guna), Tamil Nadu (Trichy), Uttar Pradesh (Rae Bareli and Dhankaur), and Andhra Pradesh. These include stitching and tailoring centers, computer classes and beauty salon training courses. These institutes form part of the rural women empowerment program and the company claims that it has trained 8479 girls. However, there is no information regarding how such requirements were mapped, what processes were followed to determine the needs and how they were administered.

the local area, also mark CSR funding patterns.⁷²

A report by the Ministry of Corporate Affairs-led High-Level Committee (2018) on CSR reaffirms this and suggests companies to strengthen CSR work in their local areas, tying into their broader brand equity concerns. The report finds it “*essential for companies to identify ... non-governmental organizations (NGOs) operating in their local area which can assist them in not only formulating projects, as per the local needs, but also in implementing them*”. However, the report fails to bring into consideration the needs of states which may need more support than others.

4. Conservative Forces Impact CSR Funds Available to Progressive Initiatives

While philanthropic and public support for organizations which oppose progressive issues is not new, civil society experts have noted a significant growth in conservative, and in some cases regressive, civil society actors over the last decade. Religious conservatism, in particular, has been noted as a central force in opposition of equitable sexual and reproductive rights and SGM community’s demand of equality. Control over bodies is a key component that has historically characterized distinct religious traditions - putting sexuality as a crucial area of interest.⁷³ Regressive forces, as influenced by religious dogmatism, is one explanation of constricted flow of philanthropic capital to the causes of sexual and gender minorities.

5. Risk Perception Impacts CSR Fund Allocation

Concerns regarding developing brand recognition also colour influence corporate organisations’ CSR allocations, especially towards their interpretation of “need-based support”. A company’s CSR policy is likely to succumb to the risk perception that is associated with any adopting social impact. A report by the India Philanthropic Initiative classifies such risks for big philanthropic activities into three different kinds:⁷⁴

⁷² Parekh, Anushree et al. “Corporate Engagement in Women’s Economic Empowerment”. *Samhita | United Nations Development Programme*. Accessed at: www.in.undp.org/content/india/en/home/library/womens_empowerment/Digital_Gender_Report.html.

⁷³ Defago, María Angélica Peñas et al. “Religious Conservatism on the Global Stage: Threats and Challenges for LGBTI Rights”. *Global Philanthropy Project*, Nov, 2018. Accessed at: [www.google.com/url?q=https://globalphilanthropyproject.org/2018/11/04/religious-conservatism-on-the-global-stage-threats-and-challenges-for-lgbti-rights/&sa=D&source=editors&ust=1617274607794000&usg=AOvVaw0u0qvrucrFwOojpudAxe7J](https://globalphilanthropyproject.org/2018/11/04/religious-conservatism-on-the-global-stage-threats-and-challenges-for-lgbti-rights/&sa=D&source=editors&ust=1617274607794000&usg=AOvVaw0u0qvrucrFwOojpudAxe7J).

⁷⁴ Phansalkar, Sanjiv. “Big Philanthropy in India: Perils and Opportunities”. *VikasAnvesh Foundation*, Dec 15, 2020. Access at: www.vikasanvesh.in/books/big-philanthropy-in-india-perils-and-opportunities/.



The report points out that the government encourages philanthropy for national priorities such as education, employability, health, nutrition, sanitation, and poverty alleviation, while also funding these significantly itself. These are sanitized and acceptable areas to give to. However, there are other areas which are important for a functional democracy - like ensuring independent and biased free journalism, protecting the democratic rights of all groups of citizens (including undertrials, convicts, marginalized, minority communities)

and supporting a vibrant civil society - some of which could be viewed as borderline confrontational with the Government. It is postulated that corporate giving is likely to limit its support to local causes or well-established national charities to avoid conflict with governments, particularly in more restrictive contexts. Similarly, supporting sexual and gender minorities might spur the ideologies of conservative sections of society. Thus, it might be viewed as a high-risk area to adopt and support.

Without adequate government endorsement, corporate organisations are unlikely to support initiatives which offend the established gender and sexual norms of the society.

Recommendations to Bridge the Gap Between CSR Funds and the Need of the LGBTQIA sector

Corporate support has a significant potential to buttress the SGM welfare movement and lead to legal and social developments, but there is a severe deficit of CSR funds channelized in this direction. As seen above, this could be due to the lack of substantive legal & policy framework supporting the cause and existence of palpable social, cultural & political risks associated with it. To bridge the gap between the financial needs for SGM welfare and available CSR funds, we propose a combination of recommendations that will *firstly*, foster a non-threatening environment for CSR

Based on PACTA's observations and findings, it appears that advocacy for Sexual and Gender Minorities rights will continue to operate in a less accommodative political environment for the foreseeable future. As a result, the quantum of CSR flows directly supporting LGBTQ programs will remain limited. In the absence of major changes at the central level, it will remain largely restricted to:

- (i) states that have recognised sexual minorities and have state programs aimed at the community, and
- (ii) companies that have strong inclusion and LGBTQ policies and practices (or alternatively, have LGBTQ+ personnel in key roles) and actively seek to support such CSR activities.

Explicit Inclusion of the concern of SGM community in CSR Law, Schedule VII, or CSR Rules would negate the perceived risks of social investment associated with the sector. It will ensure that the legality and legitimacy surrounding the entitlements of the SGM are no longer shrouded in doubt and will lend political, cultural, and legal alignment in the sector.

However, CSR support towards activities such as infrastructure, education, health, and rural development activities may indirectly benefit sexual minorities through addressing related gaps in such sectors.

backed SGM welfare initiatives, and *secondly*, allow for a non-linear approach to CSR in this sector

Recommendations to Corporate Actors

Corporate actors can support the causes of the SGM community by:

1. Supporting organisations engaged in SGM welfare through direct CSR contributions

Companies may adopt a direct agenda to address the needs of the SGM community and solidify it into their CSR policy to ensure targeted impact and welfare. As per the Rules, companies are required to set up a CSR committee to draft a CSR policy that defines the

objectives and impact that a company seeks to achieve through its CSR activities.⁷⁵ Thus, CSR provides for a robust framework for welfare activities through programs & interventions designed to cater to the needs of various sectors, including those of the SGM community.

2. Supporting SGM through general CSR contributions

Focus of a CSR policy need not be present exclusively for the cause of the SGM community. There could be indirect methods such as funding programs & interventions that overlap with the needs of the sexual minorities. For instance, initiatives for universal education, adequate and affordable healthcare and livelihood opportunities will benefit individuals from the SGM community, if they are considered as a key group during implementation of such programs.⁷⁶

Even without an express mention of LGBTQ or gender-based welfare under its CSR policy, IndusInd Bank Ltd supports a photography grant that covers Tami Nadu's unique Koovagam festival for transgenders through its CSR funds. Primarily, IndusInd Bank's CSR policy focuses on multiple components of Schedule VII including education, livelihoods, environment, rural development, sports and healthcare.

⁷⁵ Rule 6, Companies (Corporate Social Responsibility Policy) Rules, 2014.

⁷⁶ CSR Policy, Indus Bank. Accessed at: oldweb.indusind.com/content/csr-home/our-approach/csr-policy.html.

3. Differentiated targets, measurement, and reporting of CSR impact

Only what gets measured, gets done. Within the targeted impacted, committing to specific impact targets in relation to SGM individuals lends also lends support to their cause. For general initiatives which also benefit SGM individuals, a differentiated measurement of CSR impacts on the community can provide valuable empirical data for their benefit. Such is likely to set more initiatives on the same path. Thus, reporting differentiated data of the impact of CSR activities on gender and sexual minorities can be of significant benefit to the community.

4. Supporting research and empirical studies to identify the needs of the community

CSR funds can initiate and support research studies to gain a greater understanding of the community's experiences and socio-economic status. As noted, the Census 2011 collected information of the "other" gender - those who did not wish to be recorded as either a man or woman. However, this data was clubbed with that of "men" during statistical analysis, thereby leaving crucial sociological information pertaining to the 'other gender' unpublished. Beyond Census, while indicative figures on access to employment, education, and physical and mental healthcare of SGM individuals exist, the exact extent of the needs of the community remains uncertain. Different experiences and needs of individuals within the SGM community further complicate the viability of available data. Using CSR to fund research can, thus, help drive future programs and CSR policies of corporations to the tailored needs of the SGM community and individuals.

Empirical studies should be designed such that they address not just inclusion but also progression. The focus of measurement must shift from 'surviving' to 'thriving' to foster safe spaces for the SGM individuals in the society.

Packaging social issues in light-hearted, or bold and artistic, commercials have an immense potential to reduce social stigma by bringing discussions about tabooed topics into dinner time conversations. In the past, reproductive health rights campaigns have successfully utilised advertisement as a means to build awareness and promote the use of condoms. Similar action can be supported/initiated by corporate CSR funds to bring more awareness about sexual and gender diversity. Examples of advocacy through media may be subtle and bold at the same time, such as the advertisements by Vicks and Brooke Bond which aimed at normalising gender diversity.

5. Supporting change in social perception and improving social inclusion through self-driven initiatives

CSR funds can help to create an inclusive environment for SGM individuals. The efficiency of welfare measures is often stunted due to wider social unacceptance. For instance, several of the transgender individuals who were hired as part of a Kochi Metro Rail Limited's welfare initiative for transgenders had to quit due to inability to

find accommodations in the city.⁷⁷ Those who continued the work had to resort to other means, such as sex-work, to afford the unusually high prices charged for their accommodation.⁷⁸ Thus, awareness building measures have a great potential to magnify the benefits of already existing welfare measures or protective laws.

Diversity & Inclusion Programmes

Diversity and inclusion programs is a prominent way to increase inclusivity. Providing safe, sensitive and inclusive spaces for SGM individuals to pursue livelihoods of choice demonstrates the responsibility of the corporate sector to ensure equality. Such programmes provide a gateway for absorption of SGM individuals who have received rehabilitation/skill-based/vocational training into the workforce and ensure their sustained welfare in employment. They also compliment the CSR contribution for SGM eco-system in a unique way.

Notable Corporate Initiatives Beyond CSR

The clothing brand Levis Strauss & Co. promised to contribute 100% of the proceeds from their 'Pride Collection' to an NGO that works for the advancement of the rights of LGBTQ+ people around the world.

Godrej Industries Ltd. has a active and vibrant policy on gender diversity and inclusion at the workplace. In a research report by Godrej Culture Lab titled 'Manifesto on Trans Inclusion in the Workplace', Godrej urged corporations to reign in on LGBTQ+ inclusion as a way of improving brand appeal, innovation and untapped commercial promise. The company feels that their cause should not be looked upon as charity or CSR. Instead, it makes a business case for LGBTQ inclusion at the workplace.

⁷⁷Babu, Ramesh. "In one week, eight transgender employees quit working for Kochi Metro". Hindustan Times, Jun 25, 2017. Accessed at: www.hindustantimes.com/india-news/in-one-week-eight-transgender-employees-quit-working-for-kochi-metro/story-XDp6xgnA2Y6dhaAYcs8abP.html.

⁷⁸K, M. Nidheesh. "Trangender in Kochi Metro: The Unsaid Story". Mint, Jun 23, 2017. Accessed at: www.livemint.com/Leisure/hAxjCCa20vvnv9DJSULDQHP/How-Kochi-Metro-is-making-a-difference-in-the-lives-of-trans.html.

Conclusion

The movement for the recognition of Sexual and Gender minorities is still in its nascent stages in India. Where considerable legal developments can be noted for the Transgender individuals, the same is yet to be achieved for other identities in the SGM community. A combination of socio-legal changes is needed to support the SGM community and individuals comprehensively. From the existing CSR data and reports, it is difficult to discern funds which have been allocated for programs or initiatives for SGM welfare. Nonetheless, it is clear that there is a disparity in CSR fund flow towards the LGBTQIA+ causes despite their urgent need.

Corporate actors have an immense potential to catalyse a social transformation through its corporate social responsibility mandate. However, factors beyond social welfare influence CSR policy decisions. This includes legal and financial risks associated with politically unfavourable stands. Further, a lack of public policy measures, pre-made metrics, outcomes and readily identifiable gaps deter CSR funds towards their welfare. Where public policy supports the welfare of SGM and where society is more amenable to equitable right to SGM minorities, corporate actors are likely to increase CSR funding in this subject-area. Such public policy support may include explicit recognition of their rights, active operational guidelines spelling out support for their employment or a dedicated focus on their education. However, corporates must attempt to go beyond such lack and support for a progressive transformation of the society.

Corporate can lend support for SGM causes by: (1) Supporting organisations engaged in SGM welfare through direct CSR contributions; (2) Differentiated measurement & reporting of CSR impact on SGM community/individuals; (3) Supporting research and empirical studies to identify the needs of the community, and (4) Supporting change in social perception and improving social inclusion through self-driven initiatives.