

The law isn't straight

A queer person's

guide to accessing rights

About

Laws in India remain hostile and discriminatory towards queer persons in several ways. The most prominent example is S. 377 of the Indian Penal Code, 1860 (*IPC*), which criminalises carnal intercourse ‘against the order of nature’ and is used to target and harass the queer community. Innumerable laws function within a gender binary—these fail to extend the rights and benefits available to cisgender and heterosexual persons to LGBTQ+ persons, let alone provide for queer-friendly protections. Recent efforts at introducing laws, such as seen with the Transgender Persons (Protection of Rights) Bill, have also been inadequate, and excluded the very community they intend to serve.

The legal regime has failed to keep up with landmark Supreme Court (SC) judgments, such as those delivered in the 2014 case *NALSA v. Union of India* (*NALSA*) and more recently, in *Puttaswamy v. Union of India* (*Puttaswamy*). In *NALSA*, the SC held that *fundamental rights* are available to the ‘third gender’ in the same way that they are to a ‘man’ or ‘woman’. It also recognised the right of all persons to their self-identified gender, even if they have not had hormone therapy or ‘sex reassignment’ surgery. The Court further noted that civil laws need to be made trans-inclusive, though this exercise has not yet been carried out.

In the 2017 case *Puttaswamy*, the SC delivered another landmark decision for queer rights, more commonly known as the ‘right to privacy’ judgment. The SC recognised privacy as a *fundamental right*, holding that this right covers freedoms regarding one’s own body, choices and personal information. The SC also specifically discussed the right to privacy of LGBTQ+ persons, holding that ‘sexual orientation’ is an important facet of their right to privacy. It negated the arguments advanced in its judgment in *Suresh*

Kumar Koushal v. Naz Foundation (which upheld the validity of S.377 of the *IPC*) but did not explicitly read down S.377, since this question is currently pending before the Court in another matter.

Despite these progressive judgments, the overall legal regime for queer persons in India remains severely lacking. This manual is an attempt to help queer persons navigate their daily lives under this flawed regime, recognising the slow nature of legal change and the need for alternate strategies in the meantime.

The manual deals with **identity documents, violence, education, health, and personal finances**. In choosing its focus, we had to leave out certain areas that are fundamentally important but have little scope for any legal protection or remedy. These include:

- **Birth certificate:** Updating one’s name and gender on this document can be crucially important in securing higher degrees and jobs, but unfortunately, there are barely any official guidelines for doing so.
- **Housing:** Queer persons routinely face discrimination in renting and buying property, but there is little legal action that you can take against your landlord unless you have a formal rent agreement.
- **Accessing rights as a minor:** Queer persons may often be most vulnerable when they are children, but given our legal structure, minors have extremely limited autonomy. Thus, in this manual, we have been unable to offer suggested remedies for those below the age of 18.

Further, we recognise that adoption and civil partnerships are important issues but they are beyond the scope of this manual.

While this manual seeks to be a useful starting tool for LGBTQ+ persons in their attempt to access the legal system, it does not reflect the diverse experiences different persons have while trying to access their rights. We would be grateful for your feedback and hope to update the manual to make it as useful as possible.

To submit any feedback, please write to **Namrata Mukherjee** at namrata.mukherjee@vidhilegalpolicy.in **Nitika Khaitan** at nitika.khaitan@vidhilegalpolicy.in or **Nivedita Saksena** at nivedita.saksena@vidhilegalpolicy.in.

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In this manual, despite its various connotations, we use the term queer to denote LGBTQ+ persons and these two terms are used interchangeably. We have also used diverse third-person pronouns, including ze/zir, she/her, and the singular they/their.

You may not know some of the words in this manual. To help you, words in italics are explained on page iv.

Thank you

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This manual builds on previous work by and about queer persons in India. We would like to acknowledge the following for inspiration:

1. **A Legal FAQ Book:** Legal queries in gender-sexuality issues, Sappho for Equality, May 2016.
2. **A Good Practice Guide to Gender Affirmative Care,** Sappho for Equality, 2017. Available at <https://goo.gl/F7Mr4t>.
3. **LGBT Health:** A primer for health care providers in India, orinam.net. Available at <https://goo.gl/skDu47>.
4. **A Guide to Your Rights:** Legal Handbook for Sexual Minorities in India, Sangini (India) Trust, 2005.

This manual also builds on general explainers regarding the criminal justice system developed by Commonwealth Human Rights Initiative and Nyaaya.

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Glossary

Affidavit: A document in which you have stated certain facts, which you have sworn to on oath.

Attest: This simply means to sign a document. Self-attested means you have to sign a certain document yourself.

Bailable Offences: If accused of a bailable offence, you have the right to be granted bail (i.e. released from jail) if you can pay the bail bond. Non-serious offences, and those with less than three years' punishment, are often bailable.

Civil & Criminal Proceedings: Civil and criminal proceedings are decided in different forums. The accused can be fined in both, but can only get a jail term in criminal proceedings.

Cognizable Offences: The police can arrest without a warrant or order from the Court. These offences are serious crimes, such as murder and rape.

Fundamental Right: A fundamental right is a right guaranteed by the Constitution of India. These rights are placed on a higher pedestal than other rights. Some notable fundamental rights include: the right to equality, the right to freedom of speech and expression, the right to a dignified life, etc.

NALSA: The National Legal Services Authority (NALSA) of India seeks to provide free legal services to weaker sections of society. This may also refer to the landmark judgment of the SC recognising the rights of transgender persons.

Non-bailable Offences: Even in non-bailable offences, you can be granted bail. But you will have to file a bail application before a Magistrate, who will decide if you should be granted bail. More serious crimes are usually non-bailable.

Non-cognizable Offences: The police need permission from the Court before they can start investigating or arresting for these offences. These are less serious offences, such as hurt, public nuisance etc.

Notary: A notary is a person authorised to verify documents, including *affidavits*.

Oath Commissioner: An oath commissioner is a person authorised to verify documents, including *affidavits*.

Warrant: An order from a Court which allows the police to arrest you, or to carry out a search of your home or the premise.

ACRONYMS

DSM: Diagnostic and Statistical Manual of Mental Disorders

FIR: First Information Report

GAT: Gender Affirmative Therapy

GID: Gender Identity Disorder

ICC: Internal Complaints Committee

ICD: International Classification of Diseases

IPC: Indian Penal Code

JM: Judicial Magistrate

LCC: Local Complaints Committee

MLA: Member of Legislative Assembly

MP: Minister of Parliament

MM: Metropolitan Magistrate

NHRC: National Human Rights Commission

SHRC: State Human Rights Commission

STI: Sexually Transmitted Infections

WHO: World Health Organisation

Introduction

Identity documents are essential for accessing an array of rights and benefits. But updating them can be very difficult, particularly for transgender persons. Procedures for doing so are complicated, and officials in the process may often discriminate against queer persons. This chapter is based on official guidelines on how to obtain and change identity documents as available online, and on interviews with individuals and groups who have experience with these procedures.

It begins with the general process required to change one's name and gender. It then presents identity documents in the order in which they are easiest to get and to change. It focuses on how to change one's name, gender, and appearance, since these changes are likely to be most relevant for queer persons.

In several states, the process of obtaining and updating identity documents has been made easier through the setting up of 'e-seva kendras'. If possible, you can approach these centres to guide you through the process. If you hit a roadblock for any document, try approaching your *MLA/MP* for a letter.



Notifying change of name/gender in Gazette

An *affidavit* is a written document containing facts, which you have sworn are true.

Step 1

Use the sample *affidavit* (Annexe 1) or approach a lawyer.

Step 2

- The *affidavit* must be *attested* by an *Oath Commissioner* or notarised by a *Notary*.
- These are persons who are authorised by law to verify your *affidavit*.
- You will need to locate the nearest *Notary/Oath Commissioner's* office and physically go to them to verify your *affidavit*.

The *affidavit* by itself is proof of name and gender change. But the additional steps below of notifying the change in newspapers and the Gazette are recommended, as they will help you when you change your ID documents.

Many State Gazettes have a simpler procedure. It may be easier for you to get the change notified in your State Gazette than in the Central Gazette.



WHEN YOU GO TO THE NOTARY/ OATH COMMISSIONER'S OFFICE

- Dress the part of the gender you identify with.
- If you have undergone gender affirming surgery, or any medical procedure for transition, carry those documents.
- Carry a copy of the operative part of the *NALSA* judgment.

For the Central Gazette:

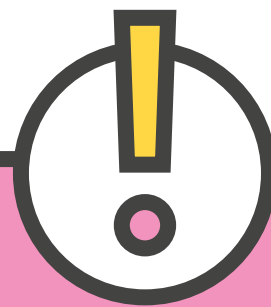
Step 3

Approach two local leading newspapers to publish your *affidavit* in them.

Step 4

Post the following documents to Department of Publications, Civil Lines, Delhi-54.

- Signed undertaking (Annexe 2).
- The original copy of the newspapers in which your *affidavit* was notified.
- Copy of proforma with your signature, and that of two witnesses (Annexe 3).
- C.D. containing the proforma in MS Word without witness portion and your name in place of signature.
- Two self-attested passport size photographs, and a self-attested photocopy of your ID proof.
- Request letter (Annexe 4) and fees.
- A certificate signed by you declaring that the contents of the hard copy and soft copy are similar.
- *Attested* photocopy of any medical/legal documents.



You will have to keep checking the Gazette online, to see when they notify your name/gender identity change. The Gazette will not inform you. This process can take several months.

Voter ID

Why is this document important?

Known as the Electoral Photo ID Card (EPIC), it is a proof of identity for Indian citizens when they vote in local, state and national elections. It thus allows you to exercise your rights as a citizen. Since it contains your name, address, age, and gender identity, it can be used as a basis to change other IDs. It is issued by the Election Commission.

What gender markers does it provide?

The voter ID allows for three gender markers: Male, Female and Third Gender.



If you have a Voter ID



- You have to submit Form-8 (Application for correction to particulars entered in electoral roll).
 - To change your name or gender marker, simply tick against the appropriate box in part (e) and write the correct information in the given space.
 - To change your photo, tick against 'Photograph' in part (e) and affix your most recent passport-size colour photo.

- You may have to submit proof of your changed name. This could be any other government ID, or a copy of the Gazette in which you notified your name change.
- You can submit this form either online (at www.nvsp.in), or submit it in-person/post to the Electoral Registration Officer (ERO)/ Assistant Electoral Registration Officer (AERO) at your voter centre.



If you don't have a Voter ID

Check if you are eligible—if you are a citizen of India, and are over 18 years, you are eligible to apply for a Voter ID card.

Fill out Form-6 (Application for inclusion of name in electoral roll) and gather other documents. You can choose 'male', 'female', or 'third gender' on Form-6.

OTHER DOCUMENTS

Residence proof

You will have to attach a residence proof. This could be any of the following:

- Any official document with your address such as Bank/Kisan/Post Office Pass Book, Ration Card, Driving License
- A copy of your latest rent agreement
- Latest Water/Telephone/Electricity/Gas Connection Bill with your current address which is either in your name or in the name of your parents/immediate relation
- Any post/letter/mail delivered through the Indian Postal Department in your name at the address of ordinary residence.

Persons living in sheds, pavement dwellers, homeless persons and sex workers are not required to provide proof of residence as long as they ordinarily reside at the same place. A Booth Level Officer may verify this. This may include talking to witnesses from your neighbourhood.

Age proof

You will have to attach an age proof if you are between the ages of 18-21 years. This could be:

- Any government ID document such as passport, PAN, driving license or Aadhaar.
- Birth certificate issued by municipal authority or school.
- Mark-sheet of class 5, 8 or 10 which contains your date of birth.

If none of these documents are available, you can attach a declaration (see Annexe 5) signed by your guru or parents.

If this declaration is not possible, you can also attach a certificate of age given by your sarpanch or a member of your municipal corporation. If you are over the age of 21, your declaration of your age will be taken as your age proof.

Aadhaar

Why is this document important?

The Aadhaar card has a unique 12-digit identification number issued by the government. It serves as a proof of identity and address across the country. It is also currently required for benefits under many government schemes and programmes.

What gender markers does it provide?

The Aadhaar card allows for three gender markers: Male, Female and Transgender.



If you...



HAVE AN AADHAAR CARD

- Visit your nearest enrolment centre.
 - For change in gender marker and appearance, no supporting document is required.
 - For change in name, take any government ID with your changed name or a copy of the Gazette in which you notified your name change.
- Pay Rs. 25. If the centre asks you to pay more, you can report this by calling 1947 or emailing help@uidai.gov.in.



DON'T HAVE AN AADHAAR CARD

- If you do not have an existing Aadhaar card and want to acquire one that reflects your self-identified gender, you can enrol for free at an Aadhaar enrolment centre.
- Along with the completed enrolment form, you will have to submit one copy each of a proof of identity (with photo), address, and date of birth. A full list of accepted proofs is at Annexe 6.
- According to the rules, officials are not required to verify your gender, and you can enter the gender you identify with, regardless of what your other identity documents say.



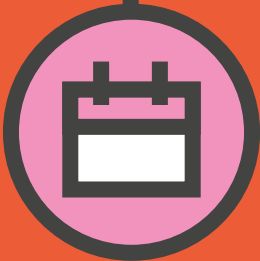
What happens next?



Once you have submitted your enrolment form and supporting documents at the enrolment centre, your photograph, fingerprints and iris scans will be taken.



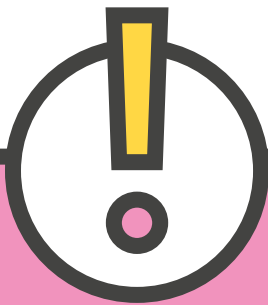
You will then be given an 'acknowledgment slip' of your enrolment, which contains your 14-digit enrolment number and other details captured during enrolment.



You will have to wait for up to 90 days for the Aadhaar card to be sent to you via Indian Post.



Problems with Aadhaar



- The Aadhaar process involves collection of your personal data, such as name, residence and biometric information, which is then stored in a central repository accessible by the government under certain circumstances. There is thus a possibility of surveillance by the government associated with this information.
- Aadhaar is controversial, because laws in India are not strong enough to protect the private data that Aadhaar collects. The Supreme Court is currently hearing a case on this.
- Aadhaar was supposed to be optional, but it has been made mandatory to receive various government benefits. For instance, those with Aadhaar must link it to their PAN to file their income tax returns, and to their bank accounts to keep them open. Many persons have decided not to get Aadhaar numbers because of these concerns.

- At the same time, our interviews revealed that Aadhaar is one of the easiest ID documents to change one's gender on. Doing so makes it easier to change many other documents, and to access services ranging from getting a SIM card to opening a bank account.
- You must weigh these pros and cons before deciding whether to get an Aadhaar.

NB: *The Vidhi Centre for Legal Policy was involved in drafting the Aadhaar Act and related regulations, and in assisting the government in litigation on the Aadhaar Act. Vidhi's work on Aadhaar does not affect the recommendations and concerns around Aadhaar raised in this manual.*

PAN

Why is this document important?

A Permanent Account Number is required to file taxes, and is also an identity proof.

- **It has 10 digits and is made up of alphabets and numbers.**
- **It is issued by the Income Tax Department.**

What gender markers does it provide?

None. However, the form requires you to choose either 'male', 'female' or 'transgender' as your gender.



If you have a PAN card



1. Fill out Form 49A

- You can get this from IT PAN Service Centres or TIN-Facilitation Centres (TIN-FCs); or download it from the Income Tax Department website (www.incometaxindia.gov.in), UTIITSL website (www.utiitsl.com), or NSDL e-Gov website (www.tin-ndsl.com).
- The form comes with detailed instructions on how to fill it, in Hindi and in English.
- If you possess an Aadhaar card, you have to provide your Aadhaar details in this form.

2. Gather proofs of ID, address, and age

See page 91 for a list of accepted documents under each category. Your name in the application should be the same as the name in your identity documents.

3A. Submit Online

- You can fill out Form 49A online at www.tin-ndsl.com.
- You will have to upload copies of your ID, address, and age proof.
- After you submit online, you will see an acknowledgement screen. Print this, paste two passport-size photographs and sign at the places indicated.

- Additionally, you will require
 - A Demand Draft for Rs.107 in favour of 'NSDL-PAN' as processing fees,
 - Copies of the same proofs of identity, address, and date of birth that you uploaded along with your form
- The completed Form 49A, Demand Draft and copies of all the proofs of identity you used to fill the form must be sent to: INCOME TAX PAN SERVICES UNIT, 5th Floor, Mantri Sterling, Plot No. 341, Survey No. 997/8, Model Colony, Near Deep Bungalow Chowk, Pune – 411 016.

3B. Submit in-person

You can also drop off Form 49A, along with your proofs of ID, address and age, at IT PAN Service Centres or TIN-Facilitation Centres (TIN-FCs).



SEND IMMEDIATELY!

It must reach them within 15 days of you applying online.



If you don't have a PAN card

- Use the 'Request for New PAN Card or/and Changes or Correction in PAN Data' form.
- You can get this from IT PAN Service Centres or TIN-Facilitation Centres (TIN-FCs); or download it from:
 - The Income Tax Department website (www.incometaxindia.gov.in)
 - UTIITSL website (www.utiitsl.com) or
 - NSDL e-Gov website (www.tin-nsdl.com).
- Gather proofs of identity, address or date of birth (Annexe 7) to support your change.
- For change of name, you will also have to submit a copy of the Gazette in which you notified your name change, or a certificate of identity issued by a Gazetted officer.
- For any other change, including changing your gender marker, no additional documents are required. Simply choose your choice of gender (though you will have to choose either 'male', 'female' or 'transgender')
- You can submit the PAN change request form on the website of the Income Tax department (www.tin-ndsl.com) or in-person at any TIN-Facilitation Centre (TIN-FCs).

A transwoman used her Aadhaar card to get a PAN card. For this, she appealed to her MP to give her a recommendation, and was then issued an *affidavit* by the *SDM* of the District Court.

"Once the documents were ready, I was more confident. If one can make an Aadhaar card under the gender identity one ascribes to so easily, it shows how easy the process actually is. Many transsexual and transgender people resort to any means to get hold of a document, but I wanted to change the provisions for the whole community," she says.

Transwoman forces Centre to embrace change, DNA (May 29, 2017).

Driving License

Why is this document important?

It is one of the basic government-issued identity proofs. Apart from indicating that you can legally drive in India, it is a photo proof of name, age, and residence, which can be used to get other benefits and ID docs.

Driving Licenses are issued by the Regional Transport Authority/Regional Transport Office ('RTA'/'RTO') of each State.

What gender markers does it provide?

Some State Licenses do not indicate gender, while some States do. Where gender is indicated, the gender markers are usually Male/Female.



If you...



HAVE A DRIVING LICENSE

- To change your gender marker on your driving license, submit an application indicating your desire to change gender (along with name and photograph if applicable), along with a copy of your old driving license to the RTO/RTA.
- Also submit a copy of your Aadhaar/ Voter ID indicating your gender of choice, the Gazette Notification indicating your changed name and gender, and a copy of the operative part of the NALSA judgment, specifically Direction 2 (in Annexe 10) which recognises the right to self-identified gender.



DON'T HAVE A DRIVING LICENSE

- In certain states, you can apply for a driving license online.
- In other states, you have to physically go to the nearest RTO/RTA, fill out the application form and submit it with other documents.
- Most state forms do not require your gender. Your gender will be indicated indirectly, because you will have to tick one of these while filling your name: Son/Wife/Daughter of _____.
- Some states such as Karnataka require gender, and at present the online application form has only Male/ Female as options.



How to get the gender marker you want



Do not fill the online form if Male/Female are the only gender options and those are not your choice of gender. Instead, visit the RTO/RTA physically.



Submit a written application indicating the gender of your choice. Along with the application, submit a copy of your Aadhaar/Voter ID which reflects your chosen gender, the Gazette Notification indicating your changed name and gender, and a copy of the operative part of the *NALSA* judgment, specifically Direction 2 which recognises the right to self-identified gender.



Also follow this process if you are not permitted to tick the noun of your choice (Son/Daughter/Wife) in forms which do not require gender.

Passport

Why is this document important?

The passport is issued to Indian citizens for international travel. It is also a fundamental proof recognised across India for identity, residence and age.

What gender markers does it provide?

The passport allows for three gender markers: Male, Female and Transgender.



If you have a passport

The process is similar to applying for a new passport.

You will need different documents depending on which details you are changing.

NAME

- The old passport
- At least two government/school documents in your changed name
- Clippings of two local newspapers, or copy of the Gazette, in which you notified your name change

APPEARANCE

- The old passport
- Recent passport-size photo

GENDER MARKER

- The old passport
- A sworn *affidavit* regarding change of sex
- Certification from the hospital where the person underwent “sex change operation” (for problems with this, see page 22)



If you don't have a passport

APPLY ONLINE

- Register and log into the Passport Seva Portal.
- Click on 'Apply for Fresh Passport.' Fill out the form online and submit.
- Click on 'Pay and Schedule Appointment' to find your nearest Passport Seva Kendra and schedule an appointment.
- After booking an appointment, you can pay through a credit/debit card, net banking of SBI and associated banks, or an SBI Bank Challan.
- The fees varies according to your age and number of pages you request in your passport (36 or 60). A 36-page passport for an adult will cost Rs. 1,500.
- Print out your application receipt, which will contain your Application Reference Number (ARN) or Appointment Number.
- Visit the Passport Seva Kendra at your appointment time with original proofs of identity, residence, age, and nationality. (Annexe 8)

APPLY IN-PERSON

- Print the application form from the Passport Seva Portal (on A4 paper), or purchase it from the District Passport Cell (DPC) for Rs.10.
- Submit the filled form and self-attested photocopies of proofs of identity, residence, age and nationality at District Passport Cell counter. (Annexe 8)
- Once the official at the counter has verified these, pay the fees through a demand draft.
- Write your name, date of birth, and date of submitting the application behind the demand draft.
- The fees varies according to your age and number of pages you request in your passport (36 or 60). A 36-page passport for an adult will cost Rs. 1,500.
- After you pay your fees, you will get an acknowledgment letter which contains a File Number. You can use the file number to track the status of your application.



Potential problems

THE MEDICAL CERTIFICATE

- Getting certification of a “sex change operation” can be difficult. Besides, under the *NALSA* judgment, you have the right to identify with a gender without any surgery.
- If you don’t have certification of gender-affirming surgery, you can try to proceed to the passport office with a copy of the *NALSA* judgment.
- By asking for a sex change operation certificate, the passport office is clearly violating *NALSA*: “Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.”

POLICE VERIFICATION

The police may call on you to verify your identity when you apply for a passport. Trans persons often face harassment when this happens. Insist that the police come to your residence or to any other location where you think you will feel safe and be able to call for help. Also insist that the police conduct their verification in daytime.

TRAVEL TO OTHER COUNTRIES

Other countries may not have “transgender” as a category on their own documents, and this may lead to problems when traveling abroad. But no country can detain or harass you because of this, and you are entitled to the same rights and protection from the Indian government as any other Indian citizen traveling abroad.

Ration Card

Why is this document important?

With a ration card, you can get essential goods at a lower price under the government's Public Distribution System. It is also an important proof of identity. Different ration cards are issued for persons Above Poverty Line (APL) and Below Poverty Line (BPL). It is issued by the State Government, and the exact procedure for application varies by State.

What gender markers does it provide?

Most State forms provide for 'male' and 'female'.



Ration cards and the gender binary

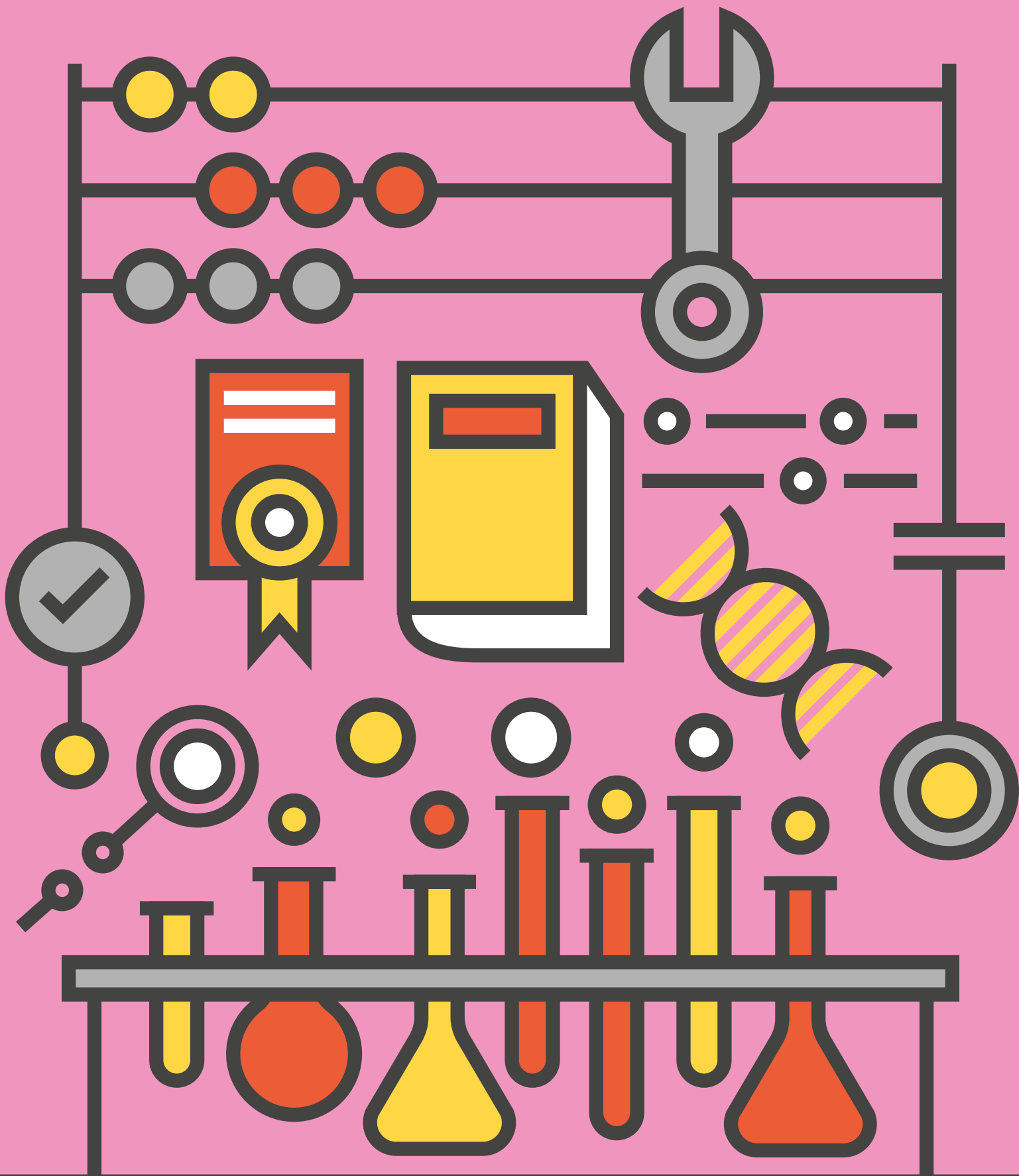
Under the National Food Security Act, 2013, ration cards are only issued to the eldest woman of the household (over 18 years), who is the head of the household. If the household does not have a woman above the age of 18, then the eldest male member is the head of household. Once the woman turns 18, she replaces the male as the head of household. Thus, the law continues to recognise only 'men' and 'women,' excluding persons who identify with a gender outside the binary.

But in *Ashwin Kumar Misra v Bharat Sarkar (2015)*, the Allahabad High Court applied the *NALSA* judgment and recognised that transgender persons can also be the heads of households. It directed State Governments to make sure that ration card forms have the category of "third gender/transgender."

Applying for a Ration Card

If your State has not changed the ration card form according to the Allahabad High Court judgment, and you identify outside the gender binary, you may:

- Identify the district office/circle office where you have to submit your ration card application
- Fill the gender of your choice (male/female/transgender) in the form and submit it.
- If the authority accepts your form, then you should get your ration card.
- If the authority does not accept your form, then you will have to file a complaint. For a sample complaint letter, see Annexe 9.
- Some states allow you to file a complaint online.
- If the State website does not allow you to file a complaint online, then physically file a complaint at the relevant district office/circle office.
- Also submit a copy of the Gazette where your gender change has been notified, and a copy of the directions issued under the *Ashwin Kumar* and *NALSA* judgments (see Annexe 10).



Education

Introduction

Queer persons, specifically transgender persons, may face several challenges while seeking admission to school, colleges and universities.

For one, updating one's name and gender marker on school certificates can be difficult, and this can further complicate college admissions.

Admission forms may not provide for one's gender of choice, and educational institutions lack adequate support for persons of all sexual orientations and gender identities.

While there is no comprehensive legal regime that addresses all these challenges, this chapter lists guidelines that may help transgender persons change their school certificates. It also lists recent measures that aim to make colleges and universities more supportive of transgender students.

School certificates

Why is this document important?

School certificates are issued to students when they complete their Class X and XII examinations either by the Central Board of School Education (CBSE), Indian Certificate of Secondary Education (ICSE), or the State Education Board. This is a basic minimum to pursue higher studies and apply for formal jobs. In some cases, the Class X certificate can be used as proof of your date of birth.

What gender markers does it provide?

The certificate mentions Son of/Daughter of, which indicates gender indirectly.



Amending your Class X or XII Certificate

To change your name and/or date of birth, the procedure varies if you were in a:

- Central Board of Education or
- State Board of Education

We have used Kerala and West Bengal as examples to illustrate the process.



CENTRAL EDUCATION BOARD

As per Rule 69.1 (Chapter 3) of Examination By-Laws, CBSE:

- Submit a written request.
- Provide original copy of two newspapers in which your name/date of birth has been changed.
- Present an *affidavit* of the change, sworn before a First-Class Judicial Magistrate/ Metropolitan Magistrate/ Executive Magistrate/ or Sub Divisional Magistrate.
- Provide original copy of publication of change in Gazette.
- Pay the prescribed fee.

- Get a copy of the admission form filled in by your parents, updated as per Gazette Notification and *attested* by the Head of your school.
- Attach a copy of the School Leaving Certificate of the previous school, submitted by you or your parents when you were admitted, updated as per Gazette Notification and *attested* by the Head of your school.
- Provide a copy of the page of admission and withdrawal register of the school, with the entry concerning you, updated as per the Gazette Notification and *attested* by the Head of your school.



STATE EDUCATION BOARDS

State Education Board of Kerala

Submit:

- Your original certificate, with an *attested* copy of the School-Leaving Certificate (SSLC) Marklist.
- The Board's application form, recommended by the Principal of the school in which you appeared for the examination.
- A forwarding letter from the Principal stating your details, and certifying that the correction was made in the School Admissions Register.
- A copy of the order issued by the Commission of Public Examinations.

State Education Board of West Bengal

- Fill out and submit the Board's correction forms, available online.



Changing gender on your school certificates

- While Central and State rules permit change of name, they are silent on change of gender. This may create problems while applying for jobs or higher education.
- For changing your gender on your certificate, you may submit an application to your board of education.
- It must be accompanied by an *affidavit* indicating your name/ gender change, and the Gazette Notification which notifies such change. Also attach the operative part of the *NALSA* judgment to the application.



Recent measures to make campuses transgender-inclusive

NATION-WIDE

- UGC guidelines made in 2014 require that universities provide a separate column for transgender persons in all application forms, academic testimonials and other documents processed by them. This enables transgender students to avail scholarship benefits.
- In 2015, UGC wrote to university Vice-Chancellors nationwide, stressing the creation of transgender-friendly infrastructure, organisation of sensitisation programmes and ethnographic research on issues related to transgender life and culture in India.

SPECIFIC UNIVERSITIES

- The Indira Gandhi National Open University (IGNOU) gives a full-fee waiver to transgender candidates on all its programmes. To avail this, you must provide an identity proof, such as Aadhaar or a certificate issued by the Central or State Government etc.
- The University of Mumbai has issued a circular to its colleges to hold counselling for transgender persons and other students, and build gender-inclusive bathrooms. The University also asked colleges to ensure that their grievance committees address grievances raised by transgender students within 24 hours. It further instructed colleges to assign one teacher to mentor transgender students.



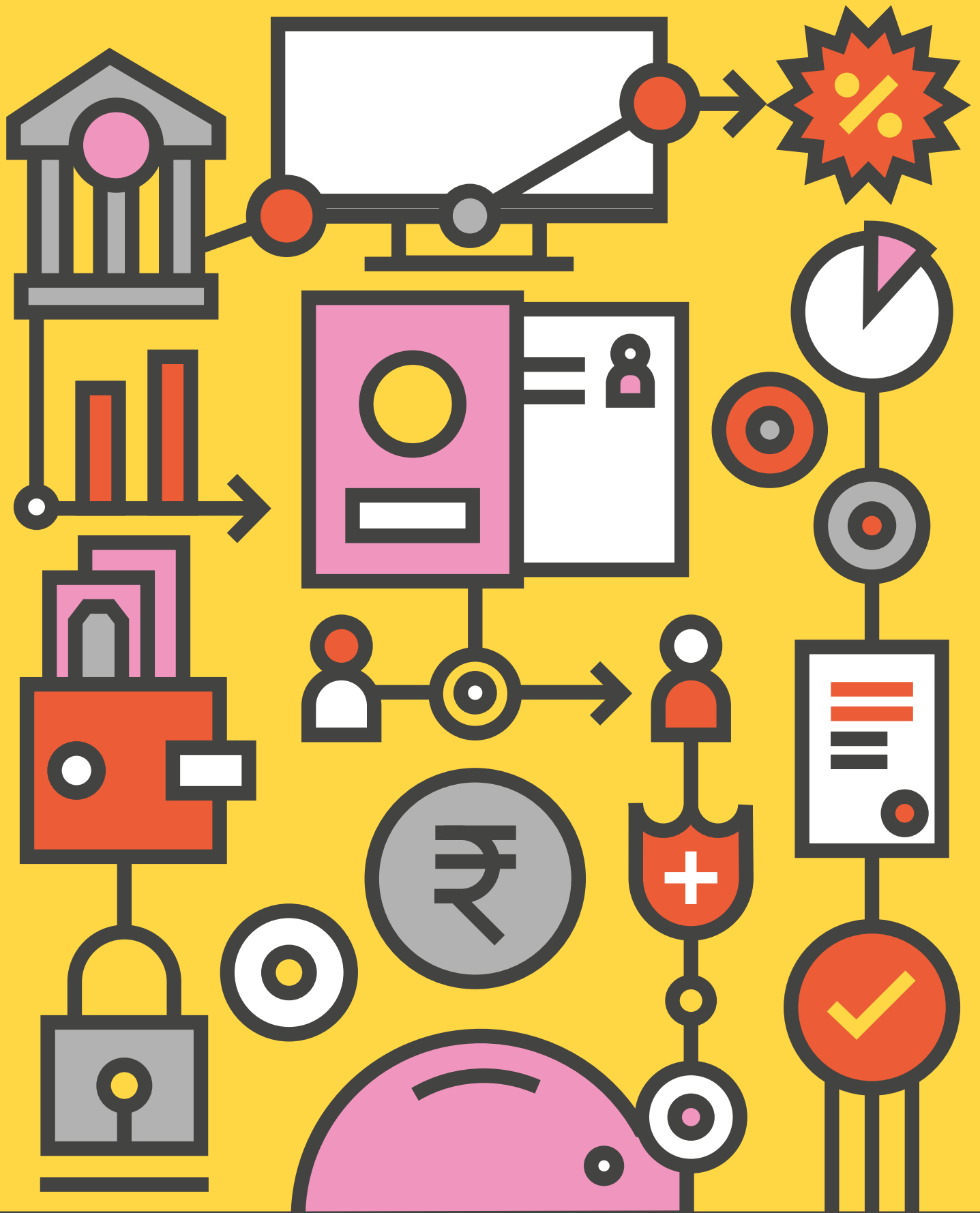
Discrimination at school

PROVISIONS AGAINST DISCRIMINATION UNDER THE RIGHT TO EDUCATION ACT, 2009 ('RTE ACT')

- Guideline 1(c) of the Guidelines issued for the implementation of Ss. 8(c) & 9(c) of the RTE Act requires schools to take appropriate measures to 'promote equality for children belonging to weaker section and disadvantaged group'. Ss. 8(c) and 9(c) of the same law ensure that no child belonging to such weaker section or disadvantaged group is discriminated against. In certain States, the said provision has been qualified to define 'disadvantaged group'.
- The Directorate of Education (Lt Governor) in Delhi notified the inclusion of a 'transgender' child within the meaning of 'child belonging to disadvantaged group', as defined in S. 2(d) of the RTE Act. This inclusion has been made applicable to all schools situated within the National Capital Territory of Delhi.
- The RTE Act also prohibits physical punishment and mental harassment. If a gender non-conforming child or a child with a parent(s) who is transgender is subject to discrimination or bullying because of such reason, you can file a complaint with the school. The school is under an obligation to initiate disciplinary action against the staff who have subjected the child to discrimination or harassment.



You may also file a written complaint with the local authority notified as the grievance redressal authority under the RTE Act by your State Government. For instance, in Delhi, each District Deputy Director of Education, Directorate of Education, Government of National Capital Territory of Delhi, has been notified as the local authority under the RTE Act. The local authority is obliged to decide the matter in 3 months after giving you an opportunity to be heard.

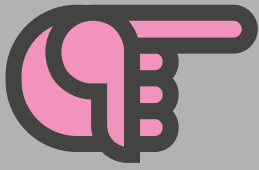


Personal Finances

Introduction

Queer persons often encounter issues when trying to acquire and transfer property, and manage personal finances. Due to widespread discrimination, their family may disinherit them from property that they are entitled to. Laws governing these areas neither recognise same-sex partnerships nor gender identities outside the binary (male and female).

This section describes helpful ways to navigate challenges relating to the transfer of property, opening joint bank accounts, making the person of your choice your insurance nominee, and inheritance.



Transferring property

It may be difficult for queer persons to transfer property to their partners, since queer persons often face resistance from their families while doing so, and since laws in India only recognise heterosexual unions.

You can freely transfer your assets to your partner, or to anyone of your choice, in two main ways:

- **during your lifetime, as a gift, and**
- **afterwards, through a will.**

Any two people can also own property jointly, unless one person is a foreign citizen or a minor.

GIFT

IMMOVABLE PROPERTY

To gift immovable property, which includes land/buildings etc.:

- Approach a lawyer to draft a 'gift deed'.
- Register the gift deed with the Sub-Registrar's office.
- This gift deed will contain your details, details of the property and of the person you are gifting to.
- You will have to pay stamp duty on this gift deed, which varies by state.
- Have the registered deed signed by two witnesses.

MOVABLE PROPERTY

To gift movable property (personal valuables, vehicles etc.):

- Registration is optional (but if someone ever challenges ownership over the property in Court, registration will be helpful).
- Make sure that you give the property to your partner, because possession of property by your partner is essential.

WILL

WHAT IS A WILL?

If you do not write a will, then your property will pass on to others according to the succession law. This succession law is different for different religions. Since only heterosexual marriages are recognised in India, your partner may not automatically inherit your property.

To ensure that your property (including personal valuables etc.) passes on to who you choose, you should write a will. Anyone who is over 18 years old and of sound mind can make a will.

SIGNING THE WILL & WITNESSES

- Sign or put your thumb impression on the will.
- Two witnesses should be present when you are signing or putting a thumb impression on your will.
- The two witnesses should preferably be a doctor and a lawyer. The doctor can testify that you were of sound mind when making the will, and the lawyer can help you with any legal questions you have.
- Both the witnesses should sign or put their thumb impressions on the will, in your presence.



HOW TO WRITE YOUR WILL

- Begin your will with your name, and the date and place of writing the will. Ideally, mention that it is your 'last will'.
- Mention that you are making the will 'voluntarily' and in a 'sound state of mind.'
- Every asset, property etc. that you wish to give to your partner should be mentioned in separate paragraphs, and with a complete and clear description of the person you wish to give it to.
- Your wishes regarding your assets and property should be express, simple and uncomplicated. Don't leave any room for confusion or interpretation.
- You should handwrite your will since this makes it easier to verify that it is genuine.

APPOINTING AN EXECUTOR

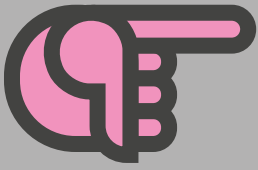
- The executor is the person who has to carry out the instructions in your will after your death.
- Any person above the age of 18 and of sound mind can be an executor.
- Choose a person in whom you have full trust and confidence, and who is willing and able to act as the executor.
- Make sure that the executor is younger than you, so that s/he can outlive you.
- Make sure your partner, or those you are giving your property to, know the executor.
- Appointing an executor is not necessary, but it is highly recommended.

CHANGING AND CANCELLING THE WILL

- A will can be changed as many times as you want.
- Sign and get the signatures of your witnesses in the margins near the changes or at the end of the will by making a reference to the changes.
- You can cancel your will by:
 - Making another will
 - Burning, tearing or destroying the will

REGISTRATION OF WILL

- Registering a will is not compulsory. But you *should* register your will, since this will help to prove that the will is genuine, in case it is challenged in Court later.
- For registration:
 - You can do so personally, which is recommended.
 - If you are unable to go, you can also authorise another person to do so.
 - Deposit the will in a sealed envelope bearing your name and the name of your agent (if any), with the title 'Will'.
 - The witnesses must accompany you to the registrar or sub-registrar's office. You and the witnesses must then sign the will in the presence of the registrar or sub-registrar.
- Registration fees and procedures might be different in different states.



Bank accounts and insurance

OPENING A JOINT BANK ACCOUNT

- Most banks can open joint accounts for unrelated individuals as friends or as business partners, though not specifically as queer partners.
- Since joint accounts face more scrutiny than other bank accounts, there may be more incidents of harassment.
- Each account holder will have to fill out Know-Your-Customer or KYC documentation, as specified in the form to open the account.
- If one of the account holders dies, how the money devolves depends on the type of account. At the time of opening the account, you should clearly set out these instructions. In cases where the funds devolve to a holder's legal heirs, both partners should clearly list the other as their heirs in a will.

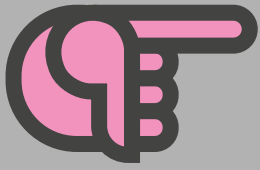
GETTING A JOINT BANK LOAN

- Joint bank loans are allowed to family members or spouses only, except for business loans.
- This includes housing loans provided by banks and housing finance companies. Any two persons can co-own property, but they may not be able to co-borrow a housing loan.
- One solution is to have one partner take a loan in their name, and then jointly draw up a personal agreement between the two partners. This agreement should set out each partner's liability towards the loan, or set out a personal debt that one partner owes the one officially taking the loan.



MAKING YOUR PARTNER AN INSURANCE NOMINEE

- Anyone can be a nominee on your life insurance policy, with their consent and documentation.
- However, having non-family members as nominees makes it difficult to prove insurable interest and increases risks.
- Till 2015, nominees simply received the money from the insurance company to distribute it amongst the person's legal heirs. Now, a nominee can also get the insurance money, but only if the nominee is the parent, child, or spouse of the person insured.
- To make sure that your nominee ultimately gets your insurance money, you should draw up a clear will stating so.
- Same-sex partners who are named in your will as legal heirs (apart from being nominees) will automatically get the rights to your assets, and going to Court will usually not be required.



Inheritance

Queer persons also often face challenges when trying to claim property that belonged to their parents or other family members. Inheritance laws do not accommodate persons outside the gender binary, and queer persons may also encounter resistance from relatives who don't accept their sexual orientation or gender identity.

Inheritance of property happens in two ways:

- When a person dies leaving behind a valid will
- When a person dies, but does not leave any valid will behind.



- If there is a valid will, your parents or other relatives can keep you out of their will. In this case, you will not be able to get any of their property.
- If there is no valid will, then inheritance depends on complex religious laws. Explaining these is beyond the scope of this manual, and it is best to approach a lawyer to understand your options.



Healthcare

Since gender is not a binary, there are no clearly defined categories of male and female. Often, people may not conform to the gender assigned to them at birth.

For some, the gender they identify with may align with the binary. They may therefore identify as male or female. Others may identify with a range of identities on the gender spectrum- including genderqueer, polygender and agender.

Similarly, one's sexual orientation may lie anywhere on the spectrum. One may identify as homosexual, bisexual, pansexual, asexual etc.

Everyone's healthcare needs are different, and are influenced by factors such as their gender identity, their sexual orientation as well as their social circumstances. It is therefore important to think about health care holistically, and for each person to access the kind of healthcare services most useful to them.



Mental health

- Members of minority groups, such as queer persons, may be at a higher risk for a number of mental conditions, including depression, anxiety and substance abuse.
- Psychologists attribute many of these conditions to 'minority stress', which may arise due to prejudice, discrimination, poor social support, the need to suppress their identity and the consequences of disclosure. These are experienced by queer persons in their daily lives because of their non-mainstream sexual orientations, gender identities and/or expressions.
- A knowledgeable and sensitive mental health professional can provide therapy and counselling in such situations.
- There is a wide range of such professionals you can approach, including psychiatrists, psychologists as well as clinical social workers.
- You can also seek their assistance to explore your gender identity, gender expression and sexual orientation. Further, they may facilitate the process of coming out to others about your gender identity and sexual orientation.

THE MEDICAL PERSPECTIVE

- While consulting a qualified and competent mental health professional is half the job done, it is also important to know some basic information about sexual orientation, gender identity and mental health.
- The Diagnostic and Statistical Manual of Mental Disorders (*DSM-5*) and the World Health Organisation's International Classification of Diseases (*ICD-10*), the most widely accepted tools among psychiatrists to classify and diagnose mental disorders, do not categorise homosexuality as a disorder.
- The Indian Psychiatric Society has also stated that homosexuality is not a mental illness.
- Therefore, there is no medically recognised method to change sexual orientation. A claim by a doctor to do so would be considered medical malpractice.



What you should know

DSM-5 AND GENDER DYSPHORIA

The *DSM-5* identifies Gender Dysphoria as the discomfort that arises due to a conflict between a person's physical or assigned gender and the gender with which they may identify.



- It must be noted that gender non-conformity in itself is not a disorder. It is the clinically significant distress arising out of such non-conformity that may require therapy or treatment.
- Therefore, it is possible that a gender non-conforming person who is not experiencing any distress does not have gender dysphoria.

ICD-10 AND GENDER IDENTITY DISORDER

- Another tool that your psychiatrist may use during your treatment is the *WHO's* International Classification of Diseases (*ICD-10*).
- The *ICD-10* categorises 'Gender Identity Disorder' (*GID*) as "a strong and persistent cross-gender identification (such as stating a desire to be the other sex or frequently passing as the other sex) coupled with persistent discomfort with his or her sex".
- In the newer edition of this classification (*ICD-11*), this term is expected to be replaced with 'Gender Incongruence'.
- Some doctors, especially in government settings, prefer to use the *ICD-10* over the *DSM-5*.

Sexual health

If you are sexually active, you may be at risk of acquiring sexually transmitted infections (STIs). Men who have sex with men, in particular, may be at a higher risk of exposure to HIV and Hepatitis C.

You can protect yourself against *STIs* through safer sex and precaution, and there are several ways to do this:

- Using condoms on penises or dental dams on the vulva and anus significantly reduces the transmission of *STIs* such as HIV, herpes, Hepatitis B and C.
- Some drugs, when used as pre-exposure prophylaxis (PrEP), can prevent the transmission of (only) HIV by up to 96%.
- Post-exposure prophylaxis (PEP) can reduce the risk of acquiring HIV if taken within 72 hours of exposure. This may be used in case of accidental exposure to body fluids such as condom breakage or needle-stick injuries in healthcare settings.
- In addition, it is also recommended to test for *STIs* at regular intervals. These tests are available for free in most government hospitals.

Gender Affirmative Therapy

What is it?

People experience a wide variety of atypical gender experiences, and often their bodies, in their current form, may not be conducive to the expression of their gender.

Gender Affirmative Therapy (GAT) is any medical intervention which assists a person with affirming their gender identity, and through which a person can explore different options for the expression of that identity.

Medically prescribed *GAT* may differ for different individuals. Psychiatric counselling is a common intervention for all individuals experiencing gender dysphoria. Additional gender affirming procedures such as endocrine blockers, cross-gender hormone therapy and surgical procedures may also be medically necessary and can be sought.

Factors that do not exclude you from *GAT*:

- Being married, or having children
- Testing positive for *STIs* such as HIV, Hepatitis B or Hepatitis C
- Your sexual orientation: People of all sexual orientations, including asexuality, may seek *GAT*.



Gender Affirmative Therapy

WHO CAN GET GAT?

According to standards prescribed by the World Professional Association for Transgender Health (WPATH), at the age of 18, a person is considered to be mature enough to give their free and informed consent to GAT.

However, gender non-conforming children and adolescents may also require various forms of psycho-social support.

In some cases, legal minors with acute gender dysphoria associated with puberty may be prescribed treatment which delays puberty. The effects of this treatment can be reversed.

HOW CAN I START GAT?

- Before any form of psychiatric or medical intervention is made, a psychiatrist **must diagnose you with gender dysphoria or gender identity disorder.**
- This is the distress that arises when one's assigned gender is not in conformity with the gender that one identifies with (see discussion on gender dysphoria on page 43).
- Following this, you will need referral by two mental health professionals, preferably one of whom is your treating psychiatrist.

WHAT THERAPY OPTIONS ARE AVAILABLE?

Once a diagnosis of gender dysphoria or *GID* has been made, the most common types of treatments include:

- Psychotherapy, which may include living part-time or full time in a gender that is consistent with one's identity
- Hormone Therapy to make the body more masculine or feminine
- Surgery
- Less invasive forms of therapy such as the removal of body hair, breast-binding, penile prosthesis and voice therapy

To decide which form of therapy is most suited to you, you should discuss all the available treatment options and benefits and risks (such as side-effects and health hazards) that may arise due to the treatment with your doctor.

PSYCHOTHERAPY

In addition to making (or not making) a diagnosis of gender dysphoria or *GID*, psychotherapy can help treat the discomfort arising from gender non-conformity, allow you to explore gender roles and expressions that match the gender you identify with, address stigma and internalized transphobia, improve body image and set up social and peer support.

Psychotherapy cannot be used to make a person's gender identity conform to that assigned to them at birth. Such treatment is considered unethical. It can, however, help you feel more comfortable in the gender identity of your choice.

HORMONE THERAPY

- Hormone therapy can be used to suppress the physical characteristics that you find undesirable and develop the characteristics of your self-identified gender. This is done through the administration of hormones which induce changes in your sexual characteristics.
- It is important that you discuss the possible effects of hormone therapy with your doctor. Some of the chemical agents in these hormones may cause irreversible physical changes to your body, and affect your chances of bearing a child. You may therefore want to consider options such as sperm banking or freezing your eggs or embryos.

- Given these risks, one should avoid self-medication of these hormones if possible. After you start treatment, it is also important to ensure regular follow-up to monitor if the treatment is progressing as expected.
- Your Mental Health Practitioner must also be involved at all stages of your transition to ensure proper treatment.
- While this may not always be possible, your family can play an important role in providing financial, psychological and social support, as well as post-transition care.

SURGERY

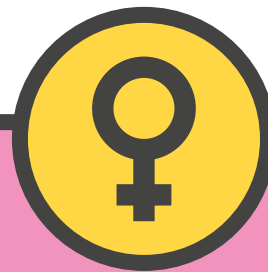
- In some instances, surgery may help to ease some of the discomfort caused due to a mismatch between your assigned and self-identified gender, and acquiring a body-type that is more in tune with the gender that one identifies with.
- Such an intervention may be used to alter characteristics associated with your sex such as breasts/chest, external and internal genitalia, facial features, voice and body contouring.
- Once you have undergone surgery, the surgeon will issue to you a sex-change certificate, which will be required to change your name and identity in other documents (as outlined in Chapter I).



TRANSITIONING FROM FEMALE TO MALE

For Female to Male (FtoM), hormone therapy can lead to:

- Hair growth on the face and body
- Increased muscle mass and reduction of breast tissue
- Increase in the size of the clitoris
- Deepening of the voice



TRANSITIONING FROM MALE TO FEMALE

For Male to Female (MtoF) persons, hormone therapy can lead to:

- Breast growth
- Thinning and reduction in the growth rate of body and facial hair
- Decrease in the size of the testes
- Softening of the skin



Surgery for intersex persons

Some people are born with ‘ambiguous’ genitalia, which means that their reproductive anatomy, sexual anatomy, or chromosome pattern don’t fit typical definitions of ‘male’ or ‘female’.

“The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery ... when enforced or administered without the free and informed consent of the person concerned.”

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
Juan E. Méndez (A/HRC/22/53,
February 2013)

- Doctors often prescribe ‘corrective surgery’ to intersex persons right after birth to make their primary sexual characteristics more in line with the gender binary (i.e. male or female).
- These surgeries may cause several issues, including difficulty in urination, loss of genital sensation and sexual function as well as depression.
- Many experts now urge delaying definitive surgery as long as the person is healthy, and involving the child in any such decisions about surgery.



Discrimination by doctors and hospitals

DISCRIMINATION IN HEALTHCARE SETTINGS

A discrimination free health-care setting requires:

- Timely and quality health care irrespective of gender, sexual orientation, caste, disability or health status
- The informed consent of the patient for any treatment or test carried out
- Respect for the patient's privacy and confidentiality
- Regular training and capacity building for health-care providers to avoid stigma and discrimination
- Presence of grievance redressal mechanisms within the setting to ensure accountability
- The participation of affected communities in the development of policies and programmes

(Source: UNAIDS, Agenda for Zero Discrimination in Healthcare Settings (2017))

DISCRIMINATION BY YOUR PSYCHIATRIST

- Under the Mental Healthcare Act, 2017, doctors cannot discriminate against a person on the grounds of their gender, sex or sexual orientation when providing mental health services.
- Discrimination means not only the denial of treatment, but also any behaviour which imposes a burden or disadvantage on you, while you are being treated.
- This includes psychiatrists prescribing outdated and medically inaccurate treatment to 'treat' your sexual orientation (e.g. conversion therapy, advice to get married) and refusing to prescribe proper treatment for gender dysphoria.
- Under the Act, your psychiatrist is also under a duty to keep all information with respect to your mental health and treatment confidential.

REMEDY FOR DEFICIENCY IN MENTAL HEALTH SERVICES

- If your psychiatrist violates any of these obligations, or if there is any deficiency in care or services by her, you can register a complaint with the Mental Health Review Board ('Board') in your State under S. 28 of the Mental Healthcare Act, 2017.
- If you are not satisfied with the response, you can also approach the State Mental Health Authority ('State Authorities').
- At the time this manual was drafted, these Boards and State Authorities had not been set up in all states. The Rules under the Act, which prescribe the form in which these complaints are to be made, are yet to come into force.
- However, once these institutions are in place, they will provide a convenient way to seek remedy for any discrimination or deficiency in services by your psychiatrist.

DISCRIMINATION BY OTHER HEALTHCARE WORKERS

- Medical professionals cannot refuse to treat you because of your gender or sexual orientation.
- Any treatment must respect your dignity and rights. This includes assigning you the hospital ward of your preferred gender.
- Medical workers (which includes doctors, nurses and medical attendants) must not breach your confidentiality in any circumstances. For example, they cannot:
 - Inform your family members about your treatment without your consent
 - Release medical information and information about your gender identity or sexual orientation to any outsiders
- Further, any medical treatment must be with your full and informed consent. You cannot be forced to seek medical care or undergo treatment.



Legal remedies

There are three fora you can potentially approach in case of deficiency in services or discrimination by your doctor: a Consumer Court, a Criminal Court or the Medical Council. Each of these fora, and potential issues you may face, are discussed below:

CONSUMER COURT:

- If you experience any deficiency in services by a medical professional, you can file a consumer complaint claiming compensation.
- Under the Consumer Protection Act, 1986 the term 'deficiency' is defined broadly to mean any fault or imperfection in the provision of services.
- However, in practice, it is very difficult to prove that services provided by a doctor have been deficient. Only in very exceptional circumstances, when a doctor has been grossly negligent, does the Court usually order compensation.
- A Consumer Court does not have the power to impose a fine or order imprisonment. It can only award compensation.
- You cannot file a consumer complaint if the services were provided to you free of cost. However, if you paid for services, compensation may be claimed from both government and private establishments.

CRIMINAL COURT:

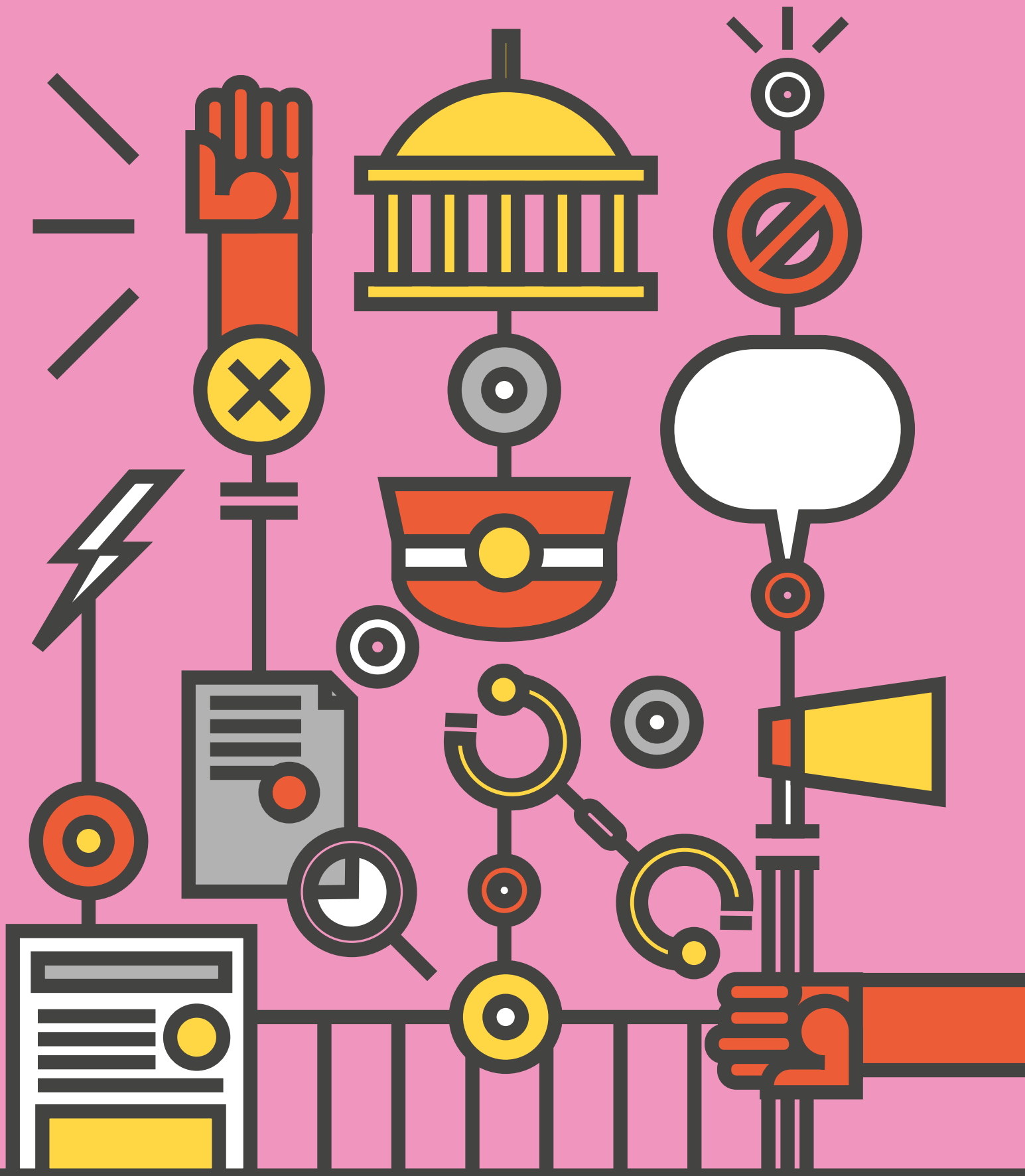
- If a doctor treats you forcibly without your consent, you can file a complaint against them for causing hurt or grievous hurt.
- If you are restrained against your will for treatment, it may constitute wrongful constraint or confinement. For more information about these offences, see Chapter V.
- Even if the treatment is with your consent, a complaint may be filed if a rash or negligent act
 - Endangers human life (S.336 IPC)
 - Causes hurt (S.337 IPC) or
 - Causes grievous hurt (S.338 IPC)



- If a doctor treated you with your consent, it is almost impossible to prove a criminal offence. Injuries caused in the ordinary course of medical treatment very rarely meet this standard.
- For example, if a doctor takes your consent and acts in 'good faith', they can perform an operation even if they know that it is likely to cause death. All that is required is that the intention of the doctor was to relieve your pain, and not to cause your death. (Illustration S. 88, IPC)

MEDICAL COUNCIL:

- The Medical Council of India ('MCI') prescribes a code of professional conduct and medical ethics that must be complied with by all its members.
- This code requires that doctors maintain the confidentiality of your medical records and of any personal information provided by you.
- It also requires that your consent must be taken in writing before any surgery is performed on you.
- A complaint may be made to the MCI (on their website) if the doctor fails to meet these requirements, which can lead to temporary or permanent suspension of their registration.
- A complaint may also be made to the State Medical Council of the state where the doctor practices.



Violence

Various forms of violence are a part of daily life for queer persons. The social stigma associated with being queer, combined with a brutal legal regime, results in both persecution and prosecution. But while the criminal law system has been used against queer persons, it also has the potential to be employed against the perpetrators of violence.

In this section, we look at both sides of queer persons' potential interactions with the law: one, where queer persons are treated as offenders or harassed due to their identity, and the second, where queer persons are the survivors/victims of crimes.

In this context, we explain the rights available to you as both an accused and as a victim. Connected to this, we highlight the legal provisions most commonly used against queer persons, as well as the legal provisions that a queer person can rely on for support.

This section ends with a table that categorises the offences mentioned as *cognizable/non-cognizable* and *bailable/non-bailable* offences.

If you are accused of an offence

Arrest

You have a right to know why you are being arrested.

- If it is a *cognizable offence*, the police do not need a *warrant* to arrest you, such as abduction and under S. 377 of the *IPC*. But they must still tell you reasons for your arrest.
- If it is a *non-cognizable offence*, such as public nuisance, the police cannot arrest you without a *warrant*. They must tell you the substance of the *warrant*.
- If you are charged with a *bailable offence*, then you have a right to be released on bail. Also, the arresting officer has a duty to inform you of your rights.

The law provides special rights for women,* including the rights to:

- Not be arrested after sunset and before sunrise.
- Be arrested in the presence of a female constable only.
- Be searched only by a female officer.
- Be examined only by a female doctor.
- Be placed in a women-only lock-up.

*Despite *NALSA*, it is unclear whether transwomen will be able to avail these rights in practice.



- Make sure that the person arresting you is wearing a proper police uniform with clear name tags and visible ranks.
- As the arresting officer can search and take your articles, make sure that you take a receipt from the officer which notes all the articles taken from you.
- Make sure that the arresting officer is making a 'Memo of Arrest' which clearly mentions your name and the date and time of your arrest. Make sure to sign this arrest memo, and also get it signed by your relative/friend and the arresting officer.



SEARCH

- The police has the right to search your house. But they usually need a *warrant* to do so. Make sure that you ask the police to give you the *warrant* before allowing the officer to search your house.
- The police can search your house without a *warrant* if they believe that you have something which they require immediately for their investigation, or if they are accompanied by a Judge/Magistrate.
- Make sure that the police allows you to be present during the search.
- To search houses with only women in them, the police must get another woman officer to carry out the search.
- The police must bring along two independent witnesses while they search your house. These independent witnesses must sign the list of things (also called 'Seizure Memo') found by the police.
- Always ask the police to hand you a copy of the 'Seizure Memo'.

AFTER ARREST

- You have the right to be produced before the nearest Magistrate within 24 hours of your arrest.
- The police must inform your relatives or your friends about your arrest and where you are detained or kept, and must enter this information at a designated register in the police station.
- You have a *fundamental right* to consult a lawyer of your choice from the moment you are arrested.
- You have a right to have your lawyer present during interrogation but not throughout the interrogation.
- The police, or any other person, **cannot** abuse, torture, threaten or influence you while you are in custody to make a confession.
- Soon after your arrest, make sure that you are examined by a government medical officer/ registered medical practitioner.
- If you ascribe to being a female, then you have the right to ask for a female medical officer.
- Make sure that a copy of the medical report is given to you or a person nominated by you.
- Always ask the arresting officer to record any injuries found on your body in an 'Inspection Memo'. Remember to get it signed by the police officer, and ask for a copy of the same.
- You have the right to ask for a medical examination every 48 hours.

Custody



CUSTODIAL VIOLENCE

The police may subject you to various forms of violence while you are in their custody. This could include physical, verbal or sexual abuse.

The *IPC* recognises rape by a police official as an aggravated form of rape and provides for higher punishment for this offence.

Taking action against the police is generally very difficult. However, if you want to report police abuse, you must approach your local NGO or human rights organisation for help, since it is unlikely that the police will entertain your complaint unless you have sufficient legal help.

HOW LONG CAN THE POLICE KEEP YOU IN JAIL?

- The police must take you before a Magistrate's Court within 24 hours of arrest. The police officer must give the Magistrate a copy of the case diary, a daily diary that details everything that happens in an investigation.
- The police officer can detain you beyond 24 hours only with the Magistrate's permission.
- The Magistrate can direct the police to keep you in custody for a period not exceeding 15 days. At the end of this period, you have to be brought before the Magistrate again.
- Once you are brought before the Magistrate, ze may direct that you be shifted from police custody to judicial custody. In case of police custody, you are under the authority of the police and they can interrogate you, but in case of judicial custody,

you are under the authority of the Court, and interrogations by police are not allowed except in exceptional circumstances. You cannot be kept in police custody for a period exceeding 15 days.

- You may be kept in judicial custody for a period of 90 days (for offences with prison sentences of more than 10 years) or 60 days (for all other offences). You have a right to be released on bail at the end of this period. However, you will not be automatically released, and you/your lawyer will have to apply to the Magistrate.
- If you are unable to furnish the bail amount, you will continue to remain in judicial custody beyond 60 or 90 days.



RIGHTS WHEN YOU ARE FIRST PRODUCED BEFORE COURT

- When produced before the Magistrate, you have a right to be medically examined—if you demand. This is done to make sure that you have not been subject to physical violence by the police while in their custody.
- The medical examination must be recorded on an 'Inspection Memo' and signed by you and the arresting officer.
- You have a right to be represented by a lawyer of your choice.
- You have a right to free legal aid if you fall in any of the categories mentioned in Annexe 11. The Magistrate has to inform you of this right the moment you are produced before zir.
- The Magistrate has to inform you of your right to bail, in case of *bailable offences*.

Bail

BAILABLE OFFENCES

- In *bailable offences*, you have a right to be released on bail if you pay the bail amount.
- If the police do not release you on bail, the Magistrate must fix your bail amount when you are first produced before zir (within 24 hours of your arrest).
- The Court must fix your bail amount according to your circumstances.
- If you cannot pay the bail amount, the Court must release you after you have been in jail for 7 days from the date of your arrest.

NON-BAILABLE OFFENCES

- You can get bail, but only if the Court decides. You do not have a right to automatically get bail.
- You can file a bail application when you are first produced before the Magistrate (within 24 hours of your arrest).
- If the Magistrate rejects your bail application, you can appeal in the Sessions Court or High Court.



BOND

The police or the Court may also release you on a personal bond if you are indigent. In such a case, you will be made to sign a personal bond declaring that you will cooperate with the police in investigation and will appear before the Court when called upon. You will not have to pay the bail amount. However, this is a discretionary power and not a right.

SURETY

This is a person you appoint who will have to pay your bail amount to release you. Your surety should be someone known to you. When your trial ends, the surety will get zir money back. If you don't appear in Court when you are supposed to, ze will lose zir money.

Trial

- Once the police finish their investigation, and if they conclude that you have committed a crime, then the trial will start.
- The Magistrate may choose to question you and take your statement. If after this, she is convinced that there is no case, she can dismiss it.
- If the case is not dismissed, then the Magistrate will call you to Court. She may issue either a *warrant* or a summons.
 - *Warrant*: A *warrant* will be issued against you if you have been accused of a crime which attracts jail time of more than two years. You must appear before the Court in person, and if you do not appear before the Court, you can be arrested.
 - *Summons*: For other crimes, a summons will be issued. In such cases, you can ask your lawyer to make an application before the Magistrate so that you do not need to attend in person.
- The trial will start with the Court looking at the accusations against you. In case the Court thinks there is not enough evidence against you, it can let you go. If not, then the Court will inform you of the offences you are accused of and the trial will begin.



RIGHT TO BE RELEASED

The Court must consider you for release if you have been in jail for one half of the maximum jail time you could have gotten for that offence under the *IPC*.

The Court must release you if you have been in jail for the maximum jail time that you could have gotten.

Specific offences

Abduction

These provisions are commonly used by the police to harass queer persons:

TRANSGENDER PERSONS:

- S. 290 ('public nuisance') & S. 377 ('unnatural offences'), S.294 ('obscene songs and acts') and S. 320 ('grievous hurt', specifically emasculation) of the *IPC*.
- Anti-beggary laws may also be used to target transgender persons.
- Transgender persons in red-light areas may be arrested under the Immoral Traffic Prevention Act, 1956 which allows for arbitrary arrest of sex workers.

GAY MEN:

- S. 377 ('unnatural offences') of the *IPC*.

LESBIAN WOMEN:

- S. 362 of *IPC* ('abduction'): In the event that you run away with your partner, family members may use this provision to harass you.

- Lesbian women who flee with their partners may face abduction charges. These charges are generally brought by the family members. Further, NGOs/organisations sheltering such run-away women may also face a similar charge.
- Abduction is a *cognizable* and *non-bailable offence*.
- To prove the charge of abduction, one needs to demonstrate that the accused used force or deceitful means to induce the victim to go from one place to another. In case of consenting adult women, it will be difficult to prove the offence.
- Family members may also use the writ of habeas corpus to retain control over an individual who has willingly eloped with her partner. Habeas corpus literally means to produce the body, and with this writ, family members can demand that a run-away relative be produced before the Court.
- If produced before the Court, you must insist that you left your home out of your free will. However, this defence will work only if you are above the age of 18 years.



TIPS FOR LGBTQ+ ORGANISATIONS

- If you are an organisation that provides temporary shelter to lesbian partners who have fled their homes, ensure that both the women are above the age of 18.
- If either or both women are below the age of 18, then the charge against the partner who is above the age of 18 or your organisation will be that of kidnapping and not abduction.
- Consent is not a defence against the charge of kidnapping. Thus, even if the girls ran away out of their free will, this defence will not stand in Court.
- It is recommended that the organisation advises the girls to return to their homes and continues to support them in their limited capacity in such cases.
- If the women are above 18, then it is important that organisations prepare and make them sign an *affidavit* where they declare that they left their homes and are living with you out of their free will. Annexe 12 provides a draft *affidavit*.

Shobana v. SI Police (W.P. Cri. 365/2013)

In this case, the Kerala High Court dismissed a petition brought against the LGBTQ+ organisation Sangama by the mother to recover her daughter who had left her home and joined her partner. The Court observed that her daughter was an adult woman and was free to go anywhere she wanted. This judgment is a useful precedent for LGBTQ+ organisations that shelter adult queer women who run away from their families.



Section 377

- It is important to remember that S.377 of the *IPC* does not make homosexuality an offence. You can be charged only if you have committed certain sexual acts.
- Most charges under this provision are dropped in the course of the trial because it is extremely difficult to gather the evidence to prove the act.
- The real punishment lies in the persecution this provision permits.
- In order to quash the *FIR* at the earliest, and get bail, it is necessary that you contact a lawyer immediately.

If you are a survivor/ victim of an offence

Filing a criminal complaint



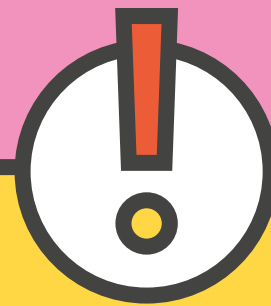
With the police

- Approach the police station in the district where the offence happened, to file a First Information Report ('FIR'). You can also file a zero FIR in any other police station and transfer it later.
- You can file a written or oral complaint. If you file a written complaint, you are entitled to a copy, with the police stamping, signing and dating it, to show that they received your complaint.
- The officer will file an FIR on the basis of your complaint, if your offence is *cognizable*. The police must read out the FIR to you, and give you a free copy. Get this copy for your records.
- If you are mentally or physically disabled, even temporarily, the police have to record the FIR at your residence or location of your choice with an interpreter/special educator, and they must videograph it.
- You do not need to file an FIR yourself. Any person who has knowledge of the crime can file an FIR on your behalf. The FIR must mention both the victim's and complainant's name, if the two are different.
- You must try and tell the police whatever you know of the crime. But even if you don't know all the details, such as the offender's name, try and provide a description.
- Once you have filed an FIR, the police must get your statement recorded by a Magistrate as soon as possible.
- If the police refuses to file your complaint or harasses you, you can forward your complaint to the Superintendent of Police ('SP'), Deputy Inspector General ('DIG') or the Inspector General of Police ('IGP') of the Police Station.

FIR

- An FIR is a document that the police prepares when they get information about a crime.
- If the offence is *cognizable*, the police have to file an FIR and start investigation immediately.
- If the offence is not *cognizable*, the police must first get permission from a Magistrate before starting the investigation.

- You can either meet the SP/DIG/IGP in person, or write and post the complaint to them. Alternately, you can also approach the Court, or write to *SHRC/NHRC*.
- After registering your complaint and filing the *FIR*, the police will carry out a preliminary investigation. On finishing the investigation, the police will file a charge-sheet or challan.
- If the charge-sheet indicates that there is enough proof that the offence was committed, the matter will go to Court.
- Otherwise, if the investigation reveals that there is not enough proof about the commission of the crime, the police can close the case after justifying its reasons in Court.
- If the police decides to close the case, they are duty-bound to inform you of their decision.



DELAY IN FILING *FIR*

In case you do not approach the police immediately after the crime, you should explain the reason behind this delay in the *FIR* itself. The reason could be as simple as you were in shock or you were afraid of approaching the police. But it is important to explain this delay so it cannot be used against you later.



With a Magistrate

- Ideally, the police should be your first avenue. However, if the police is hostile or refuses to register an *FIR*, you can also approach the Judicial Magistrate ('JM') or the Metropolitan Magistrate ('MM') of your district.
- To file a complaint with the *JM* or *MM*, you will have to physically go to the District Court and submit a written copy of your complaint at the filing counter of the Court.
- You will be informed of the date on which your matter will be listed and you must come to Court on that date.
- The *JM/MM* may examine you, and any other witness, under oath.
- The *JM/MM* shall carry out an enquiry by themselves or direct the police to investigate the matter.
- If the *JM/MM* is convinced that there is sufficient ground to proceed with the matter, then the case will go to trial.
- If dismissed by the *JM/MM*, reasons have to be recorded in writing.



SOME TIPS

- While police stations can be hostile spaces, approach the police before you approach the Court. Otherwise, it is likely that the Court will direct you to approach the police first.
- When filing a complaint with the Court, ensure you mention the reason you could not file the complaint with the police.



Other avenues

You can also approach any of these bodies for help with filing your complaint before the police or a Judicial/Metropolitan Magistrate.

- National Human Rights Commission
- State Human Rights Commission
- National Commission for Women
- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes

“NHRC is of the view that all people regardless of their sexual orientation or gender identity, should be able to enjoy their human rights. The Commission, therefore, appeals to the Government to urgently take all necessary legislative treatment on the basis of sexual orientation or gender identity so that no individual or a group of people is deprived of their human rights. Section 377 of the IPC should be suitably modified to achieve the above object.”

NHRC issues a statement appealing to the Government for suitable modification in Section 377 of the IPC to protect the rights of gay [sic] (Press Release, 13 December 2013)

Specific offences



Extortion

Gay, bisexual or queer men are particularly vulnerable to extortion, where a person may threaten to out your identity or orientation.

- When subject to extortion, you may approach the police and file a complaint under S. 389 of the *IPC*.
- People often don't approach the police because they fear being outed, and possibly charged under S. 377 of the *IPC*.

POINTS TO REMEMBER:

- You will need to think carefully before you file a complaint. You will have to provide the necessary details to the police, and prepare for the chance that the police may threaten to out you.
- The offence consists of "Putting person in fear of accusation of offence, in order to commit extortion," and putting you in fear of having committed an offence under S. 377 falls within this provision.
- S. 389 is a *cognizable offence*, which means the police must register your *FIR*.
- But also remember that while prosecution under S. 377 is a severe threat, it is extremely difficult to actually prove the charge.



- If your oral/written complaint does not make out an offence, the police can carry out a preliminary investigation before registering your *FIR*.
- To avoid this delay, ensure that you make a watertight case in your complaint by doing the following:
 - If blackmailed over the phone, preserve your phone log so you have the number as well as the date/time on which you received the call.
 - If blackmailed over texts/email/messages, preserve them or keep snapshots of them.
 - If blackmailed in person, mention the tentative date, time and location, as well as the contents of the conversation.
- Even if you do not have any of the above information, make sure that your complaint is precise. Mention the tentative date/time, the nature of the conversation, location, and duration for which you were subject to extortion.



USING DATING APPS

Internet/dating apps can also leave queer persons particularly vulnerable to extortion. Generally:

- The blackmailer expresses interest in you in order to gain access to sensitive information (texts, photos, videos etc.) which could be used to out you.
- The blackmailer invites you to a private space such as his home, and threatens to out you, or physically assaults or robs you.

KEEP THESE TIPS IN MIND:

- Be careful about the photographs you post on your profile.
- Do not share sensitive details about yourself in your description.
- Do not initiate conversations with persons whose profiles appear vague/fake.

- Do not share intimate details during your conversation till you have built a relationship of trust with the person, preferably after meeting them.
- When meeting, ensure that your first few dates are in a public place such as a cafe or a restaurant. Inform your friends about the timing and location of your first few dates as well.

A Magistrate's Court in Mumbai allowed a charge to be framed under S. 389 of the *IPC* against three persons accused of blackmailing the petitioner. The petitioner had met one of the accused on a social networking site, and had subsequently arranged to meet him in person. The accused then blackmailed the petitioner and threatened to out him. The case is still underway. If successful, it will set an important precedent for S. 389 being used in cases where queer men are blackmailed.



Wrongful confinement

Queer persons, specifically queer women, are often forcibly confined in their house by their family to keep them away from their partners. Forcibly confining a person against their will is a criminal offence since it violates their liberty. In such a situation, you can explore the following remedies:

- Approach the police and file a case under Ss. 339/341 and 340/342 of the *IPC* against the individuals who are wrongfully confining your partner. Ss. 339/341 criminalises the act of voluntarily preventing a person from moving freely, and Ss. 340/342 criminalises the act of restraining a person from moving beyond a certain area.
- Ideally, the police should still be your first avenue. But if a police complaint is not the ideal remedy for you, you can approach a lawyer to file a writ of habeas corpus in the respective High Court. The Court will require the accused individuals to produce the person who has been unlawfully confined. The Court will thereafter proceed to hear the matter.

In *Shivani Bhat v State NCT of Delhi*, the Delhi High Court declared that “Gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom. These freedoms lie at the heart of personal autonomy and freedom of individuals.” In this case, the petitioner Shivy, a transman, had been illegally confined in his grandparents’ home, and his family had withheld his passport and green card. Shivy managed to reach out to Nazariya, a queer feminist group, and escape his home. Shivy’s parents filed a ‘missing persons’ complaint with the police who went on to harass the activists who were helping Shivy. The matter was then brought before the Delhi High Court which declared that Shivy’s confinement and the subsequent police harassment were illegal, and upheld his rights by reiterating that transgender persons have equal rights under the Constitution of India.

Sexual offences: Women-only provisions

Certain provisions such as rape, sexual harassment, stalking etc. recognise only 'women' as victims. Therefore, it is likely that you can use these provisions if you have a vagina, regardless of how you identify.

Under NALSA, transwomen (regardless of whether they have had gender-affirming surgery or not) should be able to take recourse under these provisions. However, we have not found cases where transwomen have been able to use these provisions.

If you cannot take recourse under these provisions, refer to pages 76-81 for gender-neutral provisions.



Domestic violence

WHAT CAN THIS LAW PROTECT YOU FROM?

- The law applies to physical, mental and sexual abuse.
- It applies to both actual abuse and the threat of abuse.

You can approach a Protection Officer or Service Provider (which your State Government will have notified for your area) under the Act, and they are supposed to help you seek shelter and file a complaint.

The Magistrate can order the offender to:

- stop violence, stay away from you, stop calling at your office etc. (protection order).
- let you stay in the shared household, not give away or sell the shared household, leave the household himself, give you rent to stay elsewhere (residence order).
- provide you with monetary relief.
- compensate you for any loss your abuse has caused you, such as loss of earnings, medical expenses, mental injuries, etc. (compensation order).
- give you temporary custody of your children (custody order).



Offences against women in the IPC

| Provisions | Offence | Elements |
|----------------|--------------------------|--|
| S. 375 | RAPE | <p>Against the will/without the consent of the woman:</p> <ul style="list-style-type: none">• Penetration into the vagina, urethra, anus or mouth using a penis.• Inserting any other body part or solid object into the vagina, urethra or anus. <p>Consent is defined as clear, voluntary communication that the woman gives for a certain sex act.</p> |
| S. 376 | AGGRAVATED RAPE | <ul style="list-style-type: none">• Rape by a person in a position of control or dominance e.g. police officer, public servant, member of armed forces.• If the woman is pregnant, under the age of 16, can't give consent or has a mental/physical disability.• Gang rape. |
| S. 354A | SEXUAL HARASSMENT | <p>Acts by a man against the will of the woman:</p> <ul style="list-style-type: none">• Physical contact and sexual advances.• Demanding sexual favours.• Showing pornography. |
| S. 354D | STALKING | <ul style="list-style-type: none">• Continuous following or contacting of a woman by a man.• Attempts to contact a woman to build a personal relationship with that woman.• Monitoring a woman's electronic communication, i.e. communication over emails, social media. |
| S. 354D | OUTRAGING MODESTY | <p>Assault or use of force to outrage a woman's modesty.</p> |
| S. 354C | VOYEURISM | <ul style="list-style-type: none">• Taking a picture, or filming a video of a woman where she thinks no one is watching.• This includes a woman using a toilet, undressed, in her underwear or engaged in a sexual act. |



Sexual harassment at the workplace

Who can use this law?

The Sexual Harassment of Women at Workplace Act of 2013 only recognises complaints filed by “aggrieved women”.

This should still allow transgender women who have official identification as women to file a complaint for sexual harassment. There is no provision for men filing against other men or women. The gender of the accused is left open.

KINDS OF WORKPLACES

- The law applies to public and private offices, and houses as well (where domestic workers are employed).
- You can use this law if you work in the formal or informal sector, are employed part-time or full-time, and even if you are not getting paid for your work or have not signed a proper contract.
- This law applies to all workplaces, both where you work and any workplace that you have visited and were harassed in.



WHAT CONSTITUTES SEXUAL HARASSMENT?

- Unwelcome touching or other physical contact,
- Asking or demanding sex or any other sexual activity,
- Making remarks which are of a sexual nature,
- Showing pornographic material which may include videos, magazines, books etc.,
- Any other actions that are sexual in nature, which may be through speech, writing, touching etc.

Especially if these actions are

- In return for special treatment in workplace, such as a promotion, higher salary, change of workload, or

- Accompanied by threats that if you do not comply you will be fired, demoted, paid less, given extra work, be treated badly by your employers, or even face violence etc.

Also see page 77 for guidelines governing sexual harassment in universities.



HOW DO YOU FILE A COMPLAINT?

- You must submit a written complaint to the *LCC*, or the *ICC* of the accused's workplace (not yours).
- You can seek an inquiry, compensation and punitive measures against the offender, or conciliation.

WHICH BODIES ARE SET UP UNDER THE ACT?

- The government must set up Local Complaints Committees (*LCC*) for every district, tehsil, block or municipality. The Committee's members must be from NGOs, the local community, and the legal field.
- Every office employing more than 10 workers must also have an Internal Complaints Committee (*ICC*).

WHAT HAPPENS AFTER YOU FILE A COMPLAINT?

The *LCC* or *ICC* can direct the employer to:

- Transfer you or the offender to any other workplace,
- Grant you leave, over and above the leave otherwise given to you.

REMEDIES FOR OTHER GENDERS

While the Sexual Harassment Act provides remedies only to women, individual organizations are free to have more expansive definitions of the offence.

For instance, below is the sexual harassment policy of an airline company:

“Sexual Harassment” would mean and includes any or all of the following:

- Any unwelcome sexually determined behaviour such as physical contact or advances, requests or demand for sexual favours, either explicitly or by implication, in return for employment, promotion, examination or evaluation of a person towards any company activity.
- Any unwelcome sexually determined behaviour involving verbal, non-verbal or physical conduct such as sexually coloured remarks, jokes, letters, phone calls, SMS or email communication, gestures, showing of pornography, lewd stares, physical contact or molestation, stalking, sounds, display or pictures, signs, verbal or non-verbal communication which offends the individual’s sensibilities and affects his or her performance at the workplace.

The University Grants Commission guidelines (see page 78) also provide a useful model for workplaces to adopt for an inclusive sexual harassment policy.



- In case you are placed in a hostile situation at the workplace and are not legally identified as a woman, check to see if your organization has a broader policy than the Act.
- If your organization’s policy is identical to the Act, you may still have a remedy in case you are a transgender-identified person. Consider approaching your ICC with a copy of the NALSA judgment to make your case.
- In some states, if you are a transgender-identified person, you can also approach your State’s Transgender Development Board.
- Approach your local LGBTQ+ advocacy organisation for assistance.

If you are in a situation where there is no company-specific recourse available, there might still be other avenues under the *IPC* (page 81). Specifically:

- Criminal Force (S. 350, *IPC*)
- Assault (S. 351, *IPC*)

Sexual offences: Gender-neutral provisions



Online sexual harassment

- Approach the social media platform and report the offending party. Most have options to report or block the person or content.
- File a criminal complaint under the Information Technology Act, 2000 ('IT Act') at the local police station or cyber crime investigation cell.
- Cyber crimes are not limited by jurisdiction, and hence you can file a complaint anywhere in India.

Offences under the IT Act include:

| IT Act | Offence | Elements |
|--------|--------------------------------------|--|
| S. 66E | VOYEURISM | Taking a picture, or filming a video of a woman where she thinks no one is watching. This includes a woman using a toilet, undressed, in her underwear or engaged in a sexual act. |
| S. 67 | PUBLISHING OBSCENE MATERIAL | Publishing or sharing any obscene material. |
| S. 67A | PUBLISHING SEXUALLY EXPLICIT CONTENT | Publishing or sharing material containing sexually explicit acts or content online. This provision has been used to report 'revenge porn.' |
| S. 72 | BREACH OF PRIVACY | Disclosing information about another person without their consent. |



Sexual harassment at the university

University Grants Commission Regulations

The University Grants Commission Regulations ('guidelines') define 'sexual harassment' to include any verbal, physical or non-verbal conduct with sexual undertones intending to create a hostile and intimidating environment for the individual.

The guidelines are applicable to all institutes of higher education in the country, and are applicable across genders.

Any person (male/female/third gender) can complain against any person (male/female/third gender) under the current guidelines.



WHAT CONSTITUTES SEXUAL HARASSMENT?

- Any unwelcome physical, verbal or non-verbal conduct of sexual nature,
- Demand or request for sexual favours,
- Making sexually coloured remarks,
- Physical contact and advances, or
- Showing pornography.

Some illustrations of such behaviour include:

- Implied or explicit promise of preferential treatment as quid pro quo for sexual favours.
- Implied or explicit threat of detrimental treatment in the conduct of work.
- Implied or explicit threat about the present or future status of the person concerned.
- Creating an intimidating, offensive or hostile learning environment.
- Humiliating treatment likely to affect the health, safety, dignity or physical integrity of the person concerned.



HOW DO YOU FILE A COMPLAINT?

According to the guidelines, an Internal Complaints Committee ('ICC') consisting of up to 8 members must be set up in all universities. Of these, at least half must be women. Complaints can be filed with the ICC along with the police.

- You must submit a written complaint to the ICC within three months of the incident. In case of a series of incidents, you must file the complaint within three months of the last incident.
- If you cannot make the complaint in writing, the Presiding Officer or any member of the ICC must give you all reasonable help to file a written complaint.
- If you are prevented from filing a written complaint due to certain circumstances, the ICC can extend the period, but by another three months only.



WHAT HAPPENS AFTER YOU FILE A COMPLAINT?

- After you file your complaint, the *ICC* must send a copy to the respondent within seven days.
- The respondent then has ten days to submit their reply along with the names and addresses of witnesses.
- The *ICC* must finish the inquiry within 90 days of you filing the complaint. It must submit the inquiry report along with recommendations (if any) to the executive authority of the educational institution within 10 days of completion.
- It must also give you and the respondent a copy of the report.

WHO ENFORCES THE *ICC*'S RECOMMENDATIONS?

The executive authority must act upon the *ICC*'s recommendations within 30 days, unless an appeal is filed by either party.

- If the executive authority decides to not follow the *ICC*'s recommendations, it must record written reasons and provide a copy to the *ICC* and both parties.
- If it does act upon the *ICC*'s recommendations, then it must serve the respondent a show cause notice of 10 days. It can proceed only after hearing you or considering the respondent's reply.

IS CONCILIATION POSSIBLE?

You may seek conciliation if you wish. The *ICC* is responsible for making sure that you are satisfied with the conciliation process. Monetary compensation cannot be a means of conciliation.

Other relevant IPC provisions for all genders

Finally, certain provisions in the *IPC* can be used by persons of all genders to prosecute offences.

These provisions are worded broadly. Even if you cannot prove the specific ingredients of an offence mentioned earlier, you can use these provisions to access the criminal justice system.

| IPC | Offence | Elements |
|-------------|--|--|
| Ss. 321/323 | VOLUNTARILY CAUSING HURT | Any act intended to cause hurt. |
| Ss. 322/325 | VOLUNTARILY CAUSING GRIEVOUS HURT | Grievous hurt includes emasculation; deprivation of eyesight, hearing, or limbs; permanent disfigurement of head or face; fracture or dislocation of bone or tooth; or any hurt which endangers life or which causes severe bodily pain for a period of 20 days. |
| Ss. 350/352 | CRIMINAL FORCE | Use of force knowing that it will cause injury, fear or annoyance. |
| Ss. 351/352 | ASSAULT | Any gesture that causes apprehension in the person that such gesture will lead to injury, fear or annoyance. |

Criminal offences: whether cognizable and bailable

| Offence | Cognizable | Bailable |
|---|------------|----------|
| S. 323—VOLUNTARILY CAUSING HURT | NO | YES |
| S. 352—ASSAULT OR USE OF CRIMINAL FORCE OTHERWISE THAN ON GRAVE PROVOCATION | NO | YES |
| S. 354—ASSAULT OR USE OF CRIMINAL FORCE TO WOMAN WITH INTENT TO OUTRAGE HER MODESTY | YES | NO |
| S. 354A—SEXUAL HARASSMENT | YES | YES |
| S. 354C—VOYEURISM | YES | YES |
| S. 354D—STALKING | YES | YES |
| S. 365—ABDUCTING WITH INTENT TO CONFINE | YES | NO |
| S. 375/376—RAPE | YES | NO |

| Offence | Cognizable | Bailable |
|---|-------------------|-----------------|
| S.290—COMMITTING A PUBLIC NUISANCE | NO | YES |
| S. 294—OBSCENE ACTS AND SONGS | YES | YES |
| S. 320—GRIEVOUS HURT | YES | YES |
| S. 341—WRONGFULLY RESTRAINING ANY PERSON | YES | YES |
| S. 342—WRONGFULLY CONFINING ANY PERSON | YES | YES |
| S.377—UNNATURAL OFFENCES | YES | NO |
| S. 389—PUTTING A PERSON IN FEAR OF ACCUSATION OF AN OFFENCE PUNISHABLE WITH DEATH, IMPRISONMENT FOR LIFE, OR IMPRISONMENT FOR 10 YEARS IN ORDER TO COMMIT EXTORTION. | YES | YES |

AFFIDAVIT

I, [name assigned at birth], son/daughter of [father's name], aged about [age] years, am currently residing at [address]

do hereby state on solemn affirmation as follows:

1. I declare that I am a permanent resident of [place of residence] residing at the above said address. I declare that I was born on [date of birth] and am aged about [age] years.

2. I have been known as [name assigned at birth]. I am now changing my name to [chosen name]. I renounce the use of my old name [name assigned at birth] and in its place thereof I do hereby assume from this date the name [chosen name] and so that I may hereafter be called, known and distinguished not by my former name but assumed name of [chosen name].

3. That for the purpose of evidencing such, I shall at all times hereafter in all records, deeds and writings and in all proceedings, dealings and transactions use and sign the name [chosen name] as my name.

4. That I expressly authorise and request all persons in general to address me by such assumed name [chosen name].

5. I submit that I was assigned [gender assigned at birth] at birth and subsequently I identify as a [self identified gender] and in furtherance of the same I have undergone due medical procedures under the care and guidance of doctors at [-hospital name here-] and am taking hormone treatment. I am a transgender person. Hence I wish to change my name and gender.

6. I am instructed by my advocate that in light of the Supreme Court's decision in *NALSA v Union of India* (Writ Petition (Civil) No.400 of 2012), I am authorised to make this affidavit.

7. I state that in all my records my name is referred to as [name assigned at birth] I hereby declare that henceforth I shall be referred to as [chosen name].

VERIFICATION

I, the above-named deponent do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified _____ on this [day] of [Month], 2018

DEPONENT

UNDERTAKING

I, [Given name at birth], son/daughter of [Father's Name], aged about [Age] years, currently residing at [Current Residential Address], do hereby state on solemn affirmation as follows:

1. I declare that I am a permanent resident of [place of residence] residing at the above said address. I declare that I was born on [Date of Birth], and am aged about [Age] years.
2. I have been known as [Given name at birth]. I am now changing my name to [Changed name]. I renounce and abandon the use of my old name [Given name at birth] and in place thereof I do hereby assume from this date the name [Changed name] and so that I may hereafter be called, known and distinguished not by my former name but assumed name of [Changed name].
3. That for the purpose of evidencing such, I shall at all times hereafter in all records, deeds and writings and in all proceedings, dealings and transactions use and sign the name [Changed name] as my name.
4. That I expressly authorise and request all persons in general to address me by such assumed name [Changed name].
5. I submit that I was assigned [gender assigned at birth] at birth and subsequently I identify as a [self-identified gender] and in furtherance of the same I have undergone due medical procedures under the care and guidance of doctors at [Name of Hospital (OPTIONAL)] and am taking hormone treatment. I am a transgender person. Hence I wish to change my name and gender. I self identify as a [gender of choice].
6. I state that in all my records my name is referred to as [Given name at birth], I hereby declare that henceforth I shall be referred to as [Changed name].

All the statements made in the above paragraphs are true and correct to the best of my knowledge, information and belief and I believe the same to be true and correct.

Name:

Address:

Proforma regarding Change of Sex

PUBLIC NOTICE

It is for general information that I was previously known as
Son/Daughter of Sh. resident of
..... My previous gender identity was
..... but I now identify as
I will, henceforth be known as Son/Daughter of
Sh./Smt. resident of
.....
.....

It is certified that I have complied with the other legal requirements in this connection.

Signature of Applicant

(Name of Applicant)

Witness No. 1:

Full name Signature.....
Address
.....
Mobile/Phone no.

Witness No. 2:

Full name Signature.....
Address
.....
Mobile/Phone no.

SAMPLE LETTER

To

Subject:

Publication of Notice in Gazette for Change of Name and Gender)

Respected ma'am/sir,

With due respect I want to state before you that I have changed my name from [old name/name given at birth] to [changed name] and gender from [old gender] to [new gender] by virtue of an affidavit made before the Notary Public/Oath Commissioner, [address.....] on [date dd/mm/yyyy], which has also been published in the [name of newspapers].

Now I want to publish the Notice Gazette of India and therefore I request you to issue necessary orders for the publication of the same in E.O.G and obliged.

Required documents are attached herewith for ready reference.

1. Copy of Affidavit
2. Copy of Undertaking
3. Copy of newspaper notification
4. Copy of Proforma
5. Copy of ID Proof
6. Copy of connected medical documents [if applicable]

Yours faithfully,

Name

Address

Annexe 5: Declaration signed by guru or parents

FORM OF OATH OR AFFIRMATION

(To be made by either of the parents/guru of first time applicant in the age group of 18-21 years who has no age proof)

I, whose name is enrolled at the Serial no. in the Part no. of electoral roll of the Assembly Constituency do swear in the name of God/solemnly affirm that my son/daughter/chela is years of age on 1st January 20..... and is residing with me.

Place:

Signature of the parent / guru

Date:

Sworn in the name of God/solemnly affirmed by Shri/Shrimati at (place) at (hour) this the (day) of 20..... before me.

**Signature of Electoral Registration Officer/
Assistant Electoral Registration Office with Seal**

**SUPPORTED PROOF OF IDENTITY DOCUMENTS
CONTAINING NAME AND PHOTO**

1. Passport
2. PAN Card
3. Ration/ PDS Photo Card
4. Voter ID
5. Driving License
6. Government Photo ID Cards/ service photo identity card issued by PSU
7. NREGS Job Card
8. Photo ID issued by Recognized Educational Institution
9. Arms License
10. Photo Bank ATM Card
11. Photo Credit Card
12. Pensioner Photo Card
13. Freedom Fighter Photo Card
14. Kissan Photo Passbook
15. CGHS / ECHS Photo Card
16. Address Card having Name and Photo issued by Department of Posts
17. Certificate of Identify having photo issued by Gazetted Officer or Tehsildar on letterhead
18. Disability ID Card/handicapped medical certificate issued by the respective State/UT Governments/ Administrations

**SUPPORTED PROOF OF RESIDENCE DOCUMENTS
CONTAINING RELATIONSHIP DETAILS TO HEAD OF**

FAMILY

1. PDS Card
2. MNREGA Job Card
3. CGHS/State Government/ECHS/ESIC Medical card
4. Pension Card
5. Army Canteen Card
6. Passport
7. Birth Certificate issued by Registrar of Birth, Municipal Corporation and other notified local government bodies like Taluk, Tehsil etc.
8. Any other Central/State government issued family entitlement document
9. Marriage Certificate Issued by the Government

**SUPPORTED PROOF OF DATE OF BIRTH
DOCUMENTS**

1. Birth Certificate
2. SSLC Book/Certificate
3. Passport
4. Certificate of Date of Birth issued by Group A Gazetted Officer on letterhead
5. PAN Card
6. Mark-sheet issued by any Government Board or University
7. Government Photo Id Card / Photo identity card issued by PSU containing DoB
8. Central/State Pension Payment Order
9. Central Government Health Service Scheme Photo Card or Ex-Servicemen Contributory Health Scheme Photo card

**SUPPORTED PROOF OF ADDRESS DOCUMENTS
CONTAINING NAME AND ADDRESS**

1. Passport
2. Bank Statement/ Passbook
3. Post Office Account Statement/Passbook
4. Ration Card
5. Voter ID
6. Driving License
7. Government Photo ID cards/ service photo identity card issued by PSU
8. Electricity Bill (not older than 3 months)
9. Water bill (not older than 3 months)
10. Telephone Landline Bill (not older than 3 months)
11. Property Tax Receipt (not older than 1 year)
12. Credit Card Statement (not older than 3 months)
13. Insurance Policy
14. Signed Letter having Photo from Bank on letterhead
15. Signed Letter having Photo issued by registered Company on letterhead
16. Signed Letter having Photo issued by Recognized Educational Institutions on letterhead
17. NREGS Job Card
18. Arms License
19. Pensioner Card
20. Freedom Fighter Card
21. Kissan Passbook
22. CGHS / ECHS Card
23. Certificate of Address having photo issued by MP or MLA or Gazetted Officer or Tehsildar on letterhead
24. Certificate of Address issued by Village Panchayat head or its equivalent authority (for rural areas)
25. Income Tax Assessment Order
26. Vehicle Registration Certificate
27. Registered Sale / Lease / Rent Agreement
28. Address Card having Photo issued by Department of Posts
29. Caste and Domicile Certificate having Photo issued by State Govt.
30. Disability ID card/handicapped medical certificate issued by respective State/UT Governments/Administrations
31. Gas Connection Bill (not older than 3 months)
32. Passport of Spouse
33. Passport of Parents (in case of Minor)
34. Allotment letter of accommodation issued by Central/State government of not more than 3 years old
35. Marriage Certificate Issued by the Government containing address

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM49A/ CSF/ FORM 49AA**

F49A & CSF

DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY , PROOF OF ADDRESS AND PROOF OF
DATE OF BIRTH AS PER RULE 114 (4) OF INCOME TAX RULES, 1962

For Individuals and HUF

| S.No. | Proof of Address (Copy of) | Proof of Identity (Copy of) | Proof of DoB (Copy of) |
|--------------|---|---|--|
| 01 | AADHAAR Card issued by the Unique Identification Authority of India | AADHAAR Card issued by the Unique Identification Authority of India | AADHAAR Card issued by the Unique Identification Authority of India |
| 02 | Elector's photo identity card | Elector's photo identity card | Elector's photo identity card |
| 03 | Passport | Passport | Passport |
| 04 | Driving License | Driving License | Driving License |
| 05 | Electricity Bill | Central Government Health Scheme Card or Ex-servicemen Contributory Health Scheme photo card | Central Government Health Scheme Card or Ex-servicemen Contributory Health Scheme photo card |
| 06 | Land-line telephone or broadband connection bill ^ | Photo identity card issued by the Central Government or a State Government or a Public Sector Undertaking | Photo identity card issued by the Central Government or a State Government or a Public Sector Undertaking |
| 07 | Water Bill^ | Ration card having photograph of the applicant | Birth certificate issued by the Municipal Authority or any office authorised to issue Birth and Death Certificate by the Registrar of Birth and Deaths or the Indian Consulate as defined in clause (d) of sub-section (1) of S. 2 of the Citizenship Act, 1955 (57 of 1955) |
| 08 | Arm's License | Consumer gas connection card or book or piped gas bill ^ | Pension Payment Order |
| 09 | Pensioner Card having photograph of the applicant | Bank account statement or as per Note 3 ^ | Marriage certificate issued by Registrar of Marriages |

Annexe 7: Proofs of identity, address or date of birth for PAN

DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND DATE OF BIRTH FOR FORM 49A/ CSF/ FORM 49AA

| S.No. | Proof of Address (Copy of) | Proof of Identity (Copy of) | Proof of DoB (Copy of) |
|-------|----------------------------|---|---|
| 10 | | Depository account statement ^ | Matriculation certificate or mark sheet of recognized board |
| 11 | | Credit card statement ^ | <i>Affidavit</i> sworn before a Magistrate stating the date of birth. |
| 12 | | Domicile certificate issued by the Government | Domicile certificate issued by the Government |
| 13 | | Passport of the spouse | Driving License |
| 14 | | Post office pass book having address of the applicant. | |
| 15 | | Latest property tax assessment order | |
| 16 | | Allotment letter of accommodation issued by the Central Government or State Government of not more than three years old | |
| 17 | | Property registration document | |

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM49A/ CSF/ FORM 49AA**

| S.No. | Proof of Address (Original) | Proof of Identity (Original) |
|--------------|---|---|
| 01 | Certificate of identity in original signed by Member of Parliament or Member of Legislative Assembly or Municipal Councillor or a Gazetted Officer ,as the case may be. | Certificate of identity in original signed by Member of Parliament or Member of Legislative Assembly or Municipal Councillor or a Gazetted Officer ,as the case may be. |
| 02 | Bank certificate in original on letter head from the branch (along with name and stamp of the issuing officer) containing duly <i>attested</i> photograph and bank account number of the applicant. | Employer certificate in original |

Note:

1. In case of a person being a minor, any of the above mentioned documents of the parents or guardian of such minor shall be deemed to be proof of identity and address.

2. For HUF, an *affidavit* by the Karta of Hindu Undivided Family stating name, father's name and address of all the coparceners on the date of application and copy of any of the above mentioned documents in the name of Karta of HUF is required as proof of identity, address and date of birth.

Note:

1. Proof of address is required for residence address mentioned in item no.7

2. Documents followed by '^' should not be more than three months old on the date of application.

3. In case of an Indian citizen residing outside India, copy of Bank Account Statement in country of residence or copy of Non-resident External (NRE) bank account statements shall be the proof of address.

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM 49A/ CSF/ FORM 49AA**

Other than Individuals and HUF

| | | |
|----|---|---|
| 01 | Company | Copy of Certificate of Registration issued by the Registrar of Companies. |
| 02 | Partnership Firm | Copy of Certificate of Registration issued by the Registrar of Firms or Copy of partnership deed. |
| 03 | Limited Liability Partnership | Copy of Certificate of Registration issued by the Registrar of LLPs. |
| 04 | Association of Persons (Trust) | Copy of trust deed or copy of certificate of registration number issued by Charity Commissioner. |
| 04 | Association of Person, Body of Individuals, Local Authority, or Artificial Juridical Person | Copy of Agreement or copy of certificate of registration number issued by charity commissioner or registrar of cooperative society or any other competent authority or any other document originating from any Central or State Government Department establishing identity and address of such person. |

Proof of PAN : a> Copy of PAN Card or Copy of PAN allotment letter.

Note: No other document shall be accepted as a proof of PAN. If proof is not provided then application shall be accepted on a 'Good Effort Basis.'

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM 49A/ CSF/ FORM 49AA**

Documents acceptable for change of name/father name

| | | |
|----|---|---|
| 01 | Married ladies- change of name on account of marriage | <ol style="list-style-type: none">1. Marriage certificate or marriage invitation card.2. Publication of name change in official Gazette or3. Copy of passport showing husband's name,4. Certificate issued by a Gazetted officer (only for change in applicant's name) |
| 02 | Individual applicants other than married ladies | <ol style="list-style-type: none">1. Publication of name change in official Gazette or2. Certificate issued by a Gazetted officer (only for change in applicant's name) |
| 03 | Companies | ROC's certificate for name change |
| 04 | Firms / Limited Liability Partnerships | <ol style="list-style-type: none">1. Revised partnership deed2. Registrar of Firm/LLP's certificate for name change |
| 05 | AOP/Trust/BOI/AJP/LOCAL authority | <ol style="list-style-type: none">1. Revised Deed/ Agreement2. Revised registration certificate |

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM 49A/ CSF/ FORM 49AA**

F-49AA

DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY AND PROOF OF ADDRESS AS PER
RULE 114(4) OF INCOME TAX RULES, 1962

For Individuals and HUF

Proof of Identity (Copy of)

1. Copy of passport, or
2. Copy of Person of Indian Origin (PIO) card issued by Government of India, or
3. Copy of Overseas Citizen of India (OCI) card issued by Government of India, or
4. Copy of other national or citizenship Identification Number or Taxpayer Identification Number duly attested by "Apostille" (in respect of countries which are signatories to the Hague Convention of 1961) or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located or authorised officials of overseas branches of Scheduled Banks registered in India.

Proof of Address (Copy of)

1. Copy of Passport, or
2. Copy of Person of Indian Origin (PIO) card issued by Government of India, or
3. Copy of Overseas Citizen of India (OCI) card issued by Government of India, or
4. Copy of other national or citizenship Identification Number or Taxpayer Identification Number duly attested by "Apostille" (in respect of the countries which are signatories to the Hague Convention of 1961) or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located or authorised officials of overseas branches of Scheduled Banks registered in India or
5. Copy of Bank account statement in the country of residence, or
6. Copy of Non-resident External (NRE) bank account statement in India, or
7. 7. Copy of Certificate of Residence in India or Residential permit issued by the State Police Authorities, or
8. 8. Copy of Registration certificate issued by the Foreigner's Registration Office showing Indian address, or
9. 9. Copy of Visa granted & Copy of appointment letter or contract from Indian Company & Certificate (in original) of Indian address issued by the employer.

**DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY, ADDRESS AND
DATE OF BIRTH FOR FORM 49A/ CSF/ FORM 49AA**

F-49AA

DOCUMENT ACCEPTABLE AS PROOF OF IDENTITY AND PROOF OF ADDRESS AS PER
RULE 114(4) OF INCOME TAX RULES, 1962

For Other than Individuals

Proof of Identity (Copy of)

1. Copy of Certificate of Registration issued in the country where the applicant is located, duly attested by "Apostille" (in respect of the countries which are signatories to the Hague Convention of 1961) or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located or authorized officials of overseas branches of Scheduled Banks registered in India.
2. Copy of registration certificate issued in India or of approval granted to set up office in India by Indian Authorities.

Proof of Address (Copy of)

1. Copy of Certificate of Registration issued in the country where the applicant is located, duly attested by "Apostille" (in respect of the countries which are signatories to the Hague Convention of 1961) or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located or authorized officials of overseas branches of Scheduled Banks registered in India.
2. Copy of registration certificate issued in India or of approval granted to set up office in India by Indian Authorities.

Proof of Date of Birth (DOB)

1. Birth Certificate issued by the Registrar of Births and Deaths or the Municipal Corporation or any other prescribed authority,whosoever has been empowered under the Registration of Birth and Deaths Act, 1969 to register the birth of a child born in India
2. Transfer/School leaving/Matriculation Certificate issued by the school last attended/recognised educational board
3. Policy Bond issued by the Public Life Insurance Corporations/Companies having the DOB of the holder of the insurance policy
4. Copy of an extract of the service record of the applicant (only in respect of Government servants) or the Pay Pension Order (in respect of retired Government Servants), duly *attested/certified* by the officer/in-charge of the Administration of the concerned Ministry/Department of the applicant
5. Aadhaar Card/E-Aadhaar
6. Election Photo Identity Card (EPIC) issued by the Election Commission of India
7. PAN Card issued by the Income Tax Department
8. Driving License issued by the Transport department of concerned state Government
9. A declaration given by the Head of the Orphanage/Child Care Home on their official letter head of the organization confirming the DOB of the applicant

Note: Documents mentioned in point 4 to 8 are acceptable as proof of Date of Birth only if it has the precise Date of Birth of the applicant.

Proof of Address

1. Water Bill
2. Telephone (landline or post paid mobile bill)
3. Electricity bill
4. Income Tax Assessment Order
5. Election Commission Photo ID card
6. Proof of Gas Connection
7. Certificate from Employer of reputed companies on letter head
8. Spouse’s passport copy (First and last page including family details mentioning applicant’s name as spouse of the passport holder), (provided

the applicant’s present address matches the address mentioned in the spouse’s passport)

9. Parent’s passport copy, in case of minors(First and last page)
10. Aadhaar Card
11. Rent Agreement
12. Photo Passbook of running Bank Account (Scheduled Public Sector Banks, Scheduled Private Sector Indian Banks and Regional Rural Banks only)

Note:

- Applicants are required to submit the proof of address of the present address only, irrespective of the date from which he/she has been residing at the given address. However, he/she is required to mention all the places of stay during previous one year (from the date of application filling) in the Passport application form.
- Furnishing of Aadhaar card will expedite processing of passport applications.
- Aadhaar letter/card or the e-Aadhaar (an electronically generated letter from the website of UIDAI), as the case may be, will be accepted as Proof of Address (POA) and Proof of Photo-Identity (POI) for availing passport related services. Acceptance of Aadhaar as PoA and PoI would be subject to successful validation with Aadhaar database.
- (For Minor): For minor applicants, present address proof document in the name of parent(s) can be submitted.
- (For Document No. 7): Only public limited companies can give address proof on company letter head along with seal. Computerised print-outs shall not be entertained.
- (For Document No. 11): To view the Circular, click [here](#).
- (For Document No. 12): To view the list of banks whose Photo Passbook is acceptable as proof of address, click [here](#). Documents containing address out of sixteen documents listed under Tatkaal application, could also be accepted as proof of residence if such documents have the same present residential address as given by the applicant in the Passport Application Form. To view list of acceptable documents click [here](#)

Annexe 9: Sample complaint letter for ration card

To whosoever concerned,
[Address of the appropriate district office]

Date: _____

Respected Ma'am/Sir,

My name is _____. My self-identified gender is _____. I am presently residing at _____
_____.

I have changed my name from [old name] to [new name] and gender from [old gender] to [new gender] by virtue of an affidavit made before the Notary Public/Oath Commissioner, [address] on [date], which has also been published in the [name of newspapers]. This has also been notified and published in the Gazette of India which is attached to this letter.

I had applied for my ration card on [date] at [address of appropriate district office]. However, I was not allowed to submit my form to avail a ration card since [specify exact reasons].

Such refusal amounts to a violation of my fundamental right to self-identified gender identity which has been recognised by the Supreme Court in the judgment National Legal Services Authority v. Union of India delivered on the 15th of April, 2014. The relevant directions are attached to this letter. Further, the Allahabad High Court in its judgment *Ashwin Kumar Misra v Bharat Sarkar Thru. Sachiv Khadhya & Prasanskarn Mantralya*, has applied the Supreme Court's judgment and specifically recognised that transgender persons have a right to access food security and avail the status of head of household under the National Food Security Act, 2013.

In light of this, I request you to accept my application for a ration card which I have attached to this letter, and issue the same to me as per procedure.

Thank you.

Regards,
[Name]

Attachments:

1. Gazette notifying name and gender change.
2. Relevant directions under National Legal Services Authority v. Union of India.
3. Application form for the ration card.

OPERATIVE PART OF THE NALSA JUDGMENT

Para 129:

- Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
- Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
- We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments. (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.
- Centre and State Governments should seriously address the problems being faced by Hijras/ Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one’s gender is immoral and illegal.
- Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
- Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
- Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
- Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

RELEVANT EXCERPTS FROM ASHWIN KUMAR MISRA V BHARAT SARKAR THRU. SACHIV KHADHYA & PRASANSKARN MANTRALYA (ALLAHABAD HIGH COURT)

“The form which has been prescribed by the State Government for submitting applications under the Act contains an enumeration of several items on which a disclosure of information has been sought from the applicant. One of them requires a disclosure of the name of the woman who is the head of the household. That however cannot be read as an exclusion of a transgender to apply for the issuance of a ration card and must be read in the context of serial number twelve of the application form. Serial number twelve refers to the gender of the applicant. In parenthesis, the reference to gender is construed to mean ‘female/ male/other’. The expression ‘other’ would necessarily include a transgender.”

“The object and purpose of S. 13 of the Act in other words was not to exclude transgenders though in view of the judgment of the Supreme Court in National Legal Services Authority”

“The salutary public purpose, underlying the enactment of S. 13 of the Act can be furthered by incorporating a situation where a transgender can be recognized as a head of an eligible household.”

“For the purposes of these proceedings, we are of the view that the form which has been prescribed by the State Government, duly takes into account the concerns of the transgender population by recognizing their entitlement to seek access to food security and to avail of the status of the head of a household.”

**YOU ARE ENTITLED TO FREE LEGAL SERVICES
IF YOU FALL WITHIN ANY OF THE FOLLOWING
CATEGORIES:**

1. A member of a Scheduled Caste or Scheduled Tribe.
2. A victim of trafficking in human beings or beggar.
3. A woman or a child.
4. A person with disability as defined in the law.
5. A person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster.
6. An industrial workman.
7. A person in custody.
8. A person in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

AFFIDAVIT

I, [name assigned at birth], son/daughter of [father's name], aged about [-age-] years, do hereby state on solemn affirmation as follows:

1. I declare that I am an adult, aged [-age-] and I left my house out of my free will and [name of organisation] and [names of people involved] have not forced or unduly influenced me to leave my home.

2. I am presently residing at [.....address where you are residing] with [names of persons you are residing with] voluntarily and out of my free will. [Name of organisation] and [Names of persons you are residing with] are not keeping me at [.....address where you are residing] by force, coercion, or by exercising undue influence.

VERIFICATION

I, the above-named deponent do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

Verified _____ on this [day] of [Month], 20...

DEPONENT

Vidhi

Centre for Legal Policy

BETTER LAWS. BETTER GOVERNANCE

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is an independent think-tank
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in making better laws.**

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