



MANUAL  
*FOR* LEGAL  
RIGHTS *FOR*

**LGBTQIA**





## ACKNOWLEDGMENTS

This manual is commissioned by Humsafar Trust under grant from the GFATM as a sub-recipient to India HIV/AIDS Alliance as Principal Recipient (PR) to implement an innovative project called NETREACH until March 2024.

This manual is authored by a team from Pacta comprising of Nivedita Krishna (*Founder-Director*), Anagha Sasidharan (*Associate, Law and Policy*), Dishari Chakrabarti (*Senior Consultant, Law and Policy*), and Manasvini Ranganathan (*Associate, Law and Policy*). The manual is designed by Angeline S Pradhan & Upesh Pradhan (*The Other Design Studio*), and Sudeshna Bose (*Graphic Designer, Pacta*).

Humsafar Trust along with the authors thank the participants from the community consultation. We acknowledge the valuable inputs provided by them to shape up the manual. We also extend our gratitude to Tvisha Vasudevan (intern) for her research support for this project.

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

Copyright © Humsafar Trust 2024.

All rights reserved. Published in India, March 2024.

## PREFACE

**The Indian legal system is undergoing a positive shift when it comes to recognizing the rights and needs of the LGBTQIA+ community. This manual aims to address this critical knowledge gap of legal developments pertaining to the LGBTQIA+ community. It seeks to empower the LGBTQIA+ community by providing them with a clear understanding of their rights and the existing legal framework. It also identifies areas where the implementation and operationalization of these rights fall short.**



## RESEARCH METHODS

The development of this manual involved a meticulous desk review. This review encompassed a thorough examination of all central government legislation pertaining to LGBTQIA+ individuals. This in-depth analysis served the critical purpose of constructing a complete picture of the legal rights currently asserted by the community. In addition to the legislative review, all relevant judgments passed between the years 2013 and 2023 were meticulously examined.

Additionally, the research includes a community consultation component. This consultation process was crucial in ensuring that the manual addressed not only the legal rights of the LGBTQIA+ community but also their lived experiences and specific needs. By engaging directly with community members, the research team was able to gain valuable insights into the challenges faced by the community and tailor the manual's content accordingly.

Finally, the information gathered through the research process was translated into a user-friendly format. The manual is structured for ease of use, with each section further divided thematically. This thematic organization allows for clear and organized information, enabling the reader to readily locate relevant legal provisions and their interpretations.

## HOW TO READ THE MANUAL

This manual has been written with the intent of informing the community of the legal basis for their rights and laying down points for further advocacy. Trainers should apply their discretion while conducting sessions and share relevant information to the community. The manual contains a thematic classification of existing rights available to the community and the textboxes contain information that will help build a case for advocacy.



# CONTENT

Introduction	1
Themes	2
I. Gender & Sexual Identities	2
II. Civil Rights	6
III. Employment & Education	8
IV. Access to Public Services	13
V. Health	16
VI. Access to Justice	23
VII. Advocacy	31
Annexure I Community Consultation Report	34
Annexure II References	42
Annexure III Forms for ID Cards	46
Annexure IV Grievance Redressal for National Council for Transgender Persons	46
Annexure V List of Documents for ID Card	46
Annexure VI Glossary of Terms	47
Annexure VII Dos and Dents for Trainers	50
Annexure VIII Names and Contact Information of CBOs	52
Annexure IX State-wise income ceilings for free Legal Aid	53
Annexure X Forums and Processes for availing Legal Aid	54





# INTRODUCTION

From a legal rights point of view, the LGBTQIA+ community<sup>1</sup> has diverse needs and experiences based on their gender and sexual orientation<sup>2</sup>. The members of the community are excluded from accessing many basic rights and entitlements as they do not fall within the binary definitions of sex, and gender currently used in most Indian legislation and public services. The Supreme Court [SC] has issued several directives through the NALSA judgement, which recognized the third gender, and the Navtej Singh Johar judgement, which decriminalised consensual sexual relationships between adults. However, there are many gaps in operationalizing and implementing the rights available to LGBTQIA+. One of the major issues is the lack of awareness and sensitisation.

The objective of this manual is to empower the community with awareness of the rights and remedies available under the law. This manual also identifies the gaps in implementing and operationalizing SC directives that have already addressed the concerns raised by the community<sup>3</sup> but are yet to materialise.



1 -Refer Glossary of Terms, Annexure VI

2- Refer Glossary of Terms, Annexure VI

3 -Refer the Community Consultation Report, Annexure I



## Gender & Sexual Identities



### LEGAL RECOGNITION OF THIRD GENDER

The SC has said that gender identity<sup>5</sup> is a fundamental aspect of an individual's life, encompassing their innate sense of being male, female, transgender, or another gender identity. Gender refers to a person's deeply felt internal experience of gender, which may or may not align with the sex assigned at birth. Gender includes one's perception of their body, which may involve altering bodily appearance or functions through medical, surgical, or other means, as well as various expressions of gender such as clothing, speech, and mannerisms.<sup>6</sup>

The SC officially recognized transgender individuals as the 'third gender' in India. This means that transgender people have the same legal status and rights as any other male or female person in the country.<sup>7</sup>

Gender identity is an individual's self-identification as a man, woman, transgender, or any other identified category.

Additionally, in 2019, the Indian Parliament passed the Transgender Persons (Protection of Rights) Act [TG Act 2019] that legally recognized 'transgender' as an official gender in the country. This further solidified the legal rights and recognition of transgender individuals in India.

### RIGHT TO CHOOSE GENDER IDENTITY

Recognizing and respecting each person's self-defined sexual orientation and gender identity is essential for upholding their autonomy, dignity, and freedom<sup>8</sup>. An individual has the right to decide their gender, even if they haven't had any medical procedures. The Court also said that laws should be changed to make sure everyone is treated fairly, regardless of their gender identity<sup>9</sup>.

In *Mrs X v. State of Uttarakhand*,<sup>10</sup> the Court ruled that it is wrong to deny people the right to choose their gender because it's part of their basic freedom.

4 - Please note that the rights will include the limitations also

5 - Refer Glossary of Terms, Annexure VI

6 - *NALSA v. Union of India* 2014 (5) SCC 438

7 - *NALSA v. Union of India* 2014 (5) SCC 438

8 - *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1

9 - *NALSA v. Union of India* 2014 (5) SCC 438

## PROCESS FOR OFFICIALLY RECORDING GENDER IDENTITY

# a

### OBTAINING CERTIFICATE & ID WITHOUT SURGERY

The Transgender Persons (Protection of Rights) Act, 2019 simplifies the process for changing gender identity without a medical examination.<sup>11</sup> This guide explains how to get a Certificate of Identity as a transgender person, allowing the transgender person to update their gender on official records.

#### ELIGIBILITY CRITERIA

Any transgender person is eligible. Medical examination, Sex Reassignment Surgery [SRS] and other medical procedures are not required to become eligible.

### APPLICATION PROCESS



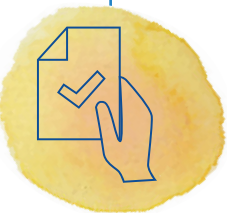
#### DISTRICT MAGISTRATE (DM) APPLICATION

Individuals can submit the application form (Form-1) in person, by post, or online (once available). The government may offer assistance to those residing in remote areas or facing challenges. The list of documents used to apply for this is available in Annexure IV.



#### REQUIRED DOCUMENTS

- a. Affidavit declaring gender identity (Form-2) - No medical examinations are required.
- b. Affidavit confirming residence within the DM's jurisdiction on the application date (Form-2)



#### PROCESSING

The DM will verify the application and issue an identification number for tracking purposes.



#### ISSUANCE

Upon approval, the applicant will receive a Certificate of Identity (Form-3) specifying their gender and a Transgender Identity Card (Form-5) within 30 days.



#### UPDATING OFFICIAL DOCUMENTS

The Certificate of Identity allows for changes to gender, name, and photo on official documents). The applicant should apply to the issuing authority of each document within 15 days. Notably, the original document reference number remains unchanged, and any benefits linked to the previous ID card are preserved.



# b

## OBTAINING A REVISED CERTIFICATE OF IDENTITY AFTER GENDER-AFFIRMING SURGERY (INDIA)

This guide applies to transgender individuals who have undergone medical intervention for gender confirmation (male or female)<sup>12</sup>.

### ELIGIBILITY

The individual must have undergone gender-affirming surgery.

## APPLICATION PROCESS



### DOCUMENTS REQUIRED

- Application form (Form-1)
- Certificate issued by the Medical Superintendent/Chief Medical Officer of the surgery facility (verifying the procedure)
- Affidavit confirming the applicant's current residence within the DM's jurisdiction (Form-2) - No additional documents are required.



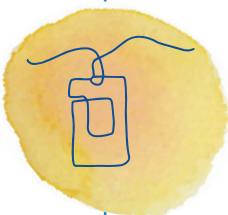
### SUBMISSION

Submit the application package to the District Magistrate (DM).



### VERIFICATION

The DM will verify the medical certificate's authenticity (without a physical exam).



### ISSUANCE

Upon approval, the individual will receive a revised Certificate of Identity (Form-4) specifying their new gender (male or female) within 15 days. The individual will also receive a new Transgender Identity Card (Form-6).



### UPDATING OFFICIAL DOCUMENTS

With the revised certificate, the applicant can change their gender, name, and photo on official documents. Apply to the issuing authority of each document within 15 days. Importantly, the original document reference number remains unchanged, and any benefits linked to their previous ID card are preserved.

12 - Rule 6 & 7 of the Transgender Rules 2020 read with Section 6 and 7 of the Transgender Act 2019

This guide does not cover the appeal process for rejected applications. Sample of the application form and affidavit in Annexure III Transgender can apply on the National Portal for Transgender Persons<sup>13</sup> to get ID cards without physical interaction with any government officials.

## EQUAL RIGHTS

In *Navtej Singh Johar v. Union of India*,<sup>14</sup>, the Supreme Court stated that LGBTQIA+ people in India have the same rights as everyone else, under the Constitution. These rights include the right to equality (Article 14), non-discrimination (Article 15), equal opportunity in public employment (Article 16), freedom of speech (Article 19(1)(a)), and the right to life (Article 21).



## DECRIMINALISATION OF HOMOSEXUALITY

In *Navtej Singh Johar v. Union of India*<sup>15</sup>, the SC stated decriminalised homosexuality under S.377 of the Indian Penal Code, meaning it decriminalises same-sex adult individuals from entering into a consensual sexual relationship. Therefore, individuals from the LGBTQIA+ community can enter into consensual sexual relationships without being penalised.

13 - National Transgender Portal (<https://transgender.dosje.gov.in/>)

14 - 2018 (10) SCC 1

15 - 2018 (10) SCC 1



## Civil Rights



### RIGHT TO UNION, RELATIONSHIP, AND INTIMACY

The SC affirmed the existence of a fundamental right known as the “right to relationship,” which they specifically identify as falling under Article 21. This right encompasses the freedom to select a partner, reside together, engage in physical intimacy, and lead one’s life according to personal preferences. It also encompasses other entitlements derived from the rights to privacy, autonomy, and dignity. All citizens are entitled to live without interference and express their choices freely within society. The sexual autonomy of an individual to choose his/her sexual partner is an important pillar and facet of individual liberty.

In the Puttaswamy case,<sup>16</sup> the Supreme Court affirmed that everyone has the right to keep their personal life private, including who they love and how they identify their gender.

#### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>17</sup> AND SCOPE FOR ADVOCACY

**The LGBTQIA+ community is prevented from opening joint bank accounts with their partners, taking medical decisions during treatment at hospitals, right to claim bodies for performing the last rites of their partners.**

#### ADVOCACY NEEDS TO BE DONE TO ENSURE:

**The LGBTQIA+ community has access to better social security, support their partners during medical emergencies.**

### RIGHT TO MARRIAGE FOR TRANSGENDER PEOPLE

The Supreme Court said that a transgender man can marry a cisgender woman, and a transgender woman can marry a cisgender man. Also, a transgender man can marry a transgender woman. If intersex individuals identify as either a man or a woman and want to marry someone of the opposite gender, they have the right to do so<sup>18</sup>. The State Government of Kerala has instituted a Scheme offering financial assistance to transgender couples.

16 - K.S. Puttaswamy v. Union of India

17 - Refer to the Community Consultation Report in Annexure I

18 - Supriya Chakraborty v. Union of India



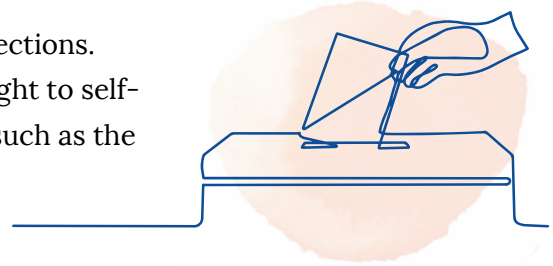
### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>19</sup> AND SCOPE FOR ADVOCACY

#### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **The social, legal and financial benefits available to partners in a marriage such as opening joint bank accounts need to be instituted.**
- **Better clarity on who is eligible to marry should be provided.**

## RIGHT TO VOTE & CONTEST ELECTIONS

Transgender persons have the right to vote and contest elections. The Bombay High Court has also acknowledged that the right to self-identify of transgender persons includes core civic rights such as the right to contest elections and avail reservations.<sup>20</sup>



### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>21</sup> AND SCOPE FOR ADVOCACY

**Despite the Bombay High Court directive, public participation of transgender persons in elections is not visible.**

### ADVOCACY EFFORTS NEED TO FOCUS ON:

- **Pushing for electoral reservations**
- **Promoting transgender persons to contest elections**

19 - Insights gather from Community Consultation, refer to the Report in Annexure I

20 - Anjali Guru Sanjana Jaan v. State of Maharashtra, W.P.NO. 104 OF 2021

21 - Insights gather from Community Consultation, refer to the Report in Annexure I



# Employment & Education



## RESERVATION IN EMPLOYMENT & EDUCATION

The Supreme Court in the NALSA judgment<sup>22</sup> has directed the government to make reservations in public employment and education for the transgender community. In 2021, a contempt petition was filed before the SC citing that the Central Government had not made reservations in public employment which is against the directive under the NALSA judgment. The Central Government told the SC that there would be no separate quota for the transgender community.<sup>23</sup>

However, post the NALSA judgement, some states have proactively provided reservation quotas for the transgender community.

22 - NALSA v. Union of India 2014 (5) SCC 438

23 - The Central government's statement on record before the Supreme Court in *Mx Kamlesh & Ors. v. Niten Chandra & Ors.* | Contempt Petition (Civil) No. 952 of 2023 in Writ Petition (Civil) No. 400 of 2021

24 - *P. Sudha v. Secretary*, W.P. No. 16113 of 2022.

25 - *Swapna v. Chief Secretary of Tamil Nadu*, W.P. 31091 of 2013

26 - *Grace Banu Ganesan and another v State of Tamil Nadu and another*, W.P. No.21631 of 2023

27 - The Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021. In compliance with the Karnataka High Court directive in *Sangama v. State of Karnataka* WP 8511 of 2020

28 - Original notification is not available, please see the report of the news, <https://timesofindia.indiatimes.com/city/bhopal/trans-genders-now-on-obc-list-in-madhya-pradesh-can-avail-of-14-quota/articleshow/99421785.cms>

1. Any transgender person in Tamil Nadu can avail of reservations in education and public appointments under the Most Backward Category (MBC).<sup>24</sup> However, the Madras High Court has held that a percentage or a post-based reservation would empower the transgender community more than the reservation under the MBC category.<sup>25</sup> Further, in an ongoing writ petition, the Madras High Court has directed the Tamil Nadu government to consider implementing horizontal reservation in education and public appointments.<sup>26</sup>
2. Any transgender person in Karnataka can avail of a 1% horizontal reservation but this is limited to public employment.<sup>27</sup> For example, a transgender person belonging to the Scheduled Tribes can get a 1% reservation under the ST category of reservations. This means if there are 100 seats reserved for the ST category, 1 of the seats will be reserved for a transgender person who is from the ST community.
3. Any transgender person in Madhya Pradesh can avail OBC reservation in education and public appointments.<sup>28</sup>

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>29</sup> AND SCOPE FOR ADVOCACY

**Despite the directions under the NALSA judgment, reservations for transgender persons are not implemented in education and public appointments.**

- 1. While Tamil Nadu and Madhya Pradesh have reservations for both education and public appointments, they do not have horizontal reservations.**
- 2. Karnataka has not extended horizontal reservation to education.**
- 3. Other Indian states also have to provide horizontal reservations in education and public appointments.**

### ADVOCACY EFFORTS SHOULD:

- push for horizontal reservation in education and public appointments for transgender persons in all Indian states.**

## RTE QUOTA IN SCHOOL EDUCATION

The NALSA judgment has directed the government to include transgender persons under the socially and educationally backward category [SEBC]. Inclusion of transgender persons in the SEBC category would give them the right to avail of the 25 % reservation for the SEBC category in a neighbourhood school under the Right to Education Act, 2009.<sup>30</sup> Tamil Nadu<sup>31</sup> and Delhi<sup>32</sup> have notified the same.

29 - Insights gather from Community Consultation, refer to the Report in Annexure I

30 Section 12 (1) (c), Right to Education Act, 2009

31 - <https://tnsacs.in/cmsimage//Documents/10072021080712.pdf>

32 - Official notification is unavailable, see report, <https://indianexpress.com/article/cities/delhi/reserved-seats-for-transgender-children-in-schools/>





### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>33</sup> AND SCOPE FOR ADVOCACY

**Despite the mandate under NALSA judgment,**

- 1. Indian States except Tamil Nadu and Delhi are yet to include transgender students under the 25% of the reservation under RTE for disadvantaged groups in neighbourhood schools.**
- 2. However, voices within the transgender community are also divided on the benefit of the RTE quota.** <sup>34</sup>

### ADVOCACY EFFORTS NEED TO FIRST HEAR OUT THE COMMUNITY AND THEN ASCERTAIN IF THE RTE QUOTA IS REQUIRED.

- If the RTE quota is required, then the advocacy efforts need to focus on ensuring all Indian states implement the quota.**

## EQUAL OPPORTUNITY POLICY (DIVERSITY & INCLUSIVE POLICY) UNDER THE TG ACT

In *Shanavi Ponnusamy v. Ministry of Civil Aviation*<sup>35</sup>, the Supreme Court has held that the government needs to make reasonable accommodations for the transgender community in public employment. The Transgender Act, 2019 prohibits denial, discrimination and unfair treatment of transgender persons in employment. All establishments are required to

- (a) appoint an officer to handle complaints on violation of the TG Act<sup>36</sup>
- (b) have an Equal Opportunity Policy.<sup>37</sup>

Transgender persons have the right to expect the employer and company to keep their gender identity confidential based on their individual preferences.<sup>38</sup> Setting an example for other organizations, the Ministry of Social Justice and Empowerment has notified an Equal Opportunity Policy to govern the ministry and its employees.<sup>39</sup>

33 - Insights gather from Community Consultation, refer to the Report in Annexure I

34 - <https://www.newindianexpress.com/cities/bengaluru/2016/feb/11/transgenders-say-quota-under-rte-act-illogical-890964.html?botrequest=true&>

35 - W.P. (C) No. 1033 of 2017

36 - Section 11, Transgender Persons (Protection of Rights) Act 2019 [https://thc.nic.in/Central%20Governmental%20Acts/Transgender%20Persons%20\(Protection%20of%20Rights\)%20Act,%202019.pdf](https://thc.nic.in/Central%20Governmental%20Acts/Transgender%20Persons%20(Protection%20of%20Rights)%20Act,%202019.pdf)

37 - Rule 11, Transgender Persons (Protection of Rights) Rules 2020 <https://translaw.clpr.org.in/wp-content/uploads/2020/10/222096-1.pdf>

38 - Rule 12 (4), Transgender Persons (Protection of Rights) Rules 2020 <https://translaw.clpr.org.in/wp-content/uploads/2020/10/222096-1.pdf>

39 - <https://socialjustice.gov.in/writereaddata/Upload-File/67311708075108.pdf>



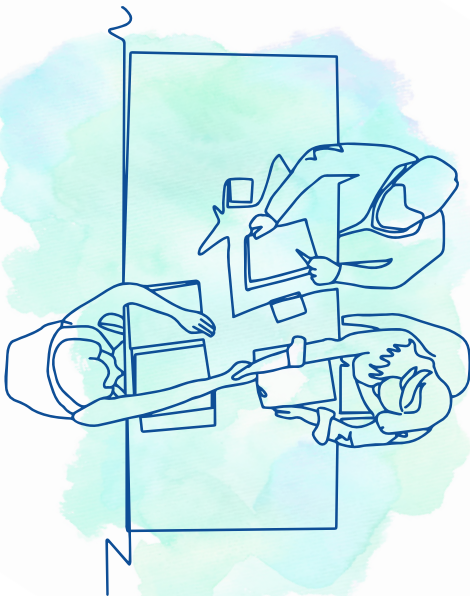
## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>40</sup> AND SCOPE FOR ADVOCACY

**Despite the mandate under the law,**

- 1. The government and corporations merely undertake tokenistic recruitment drives in the transgender community.**
- 2. Due to a lack of inclusion and anti-discrimination measures, within a few days of being hired, the community members are forced to quit because of the discrimination and harassment they face at work.**
- 3. They are also offered only unskilled employment irrespective of their capacity.**

**ADVOCACY NEEDS TO FOCUS ON THE FOLLOWING ASPECTS:**

- Proper sensitization measures need to be implemented in workplaces to ensure the inclusion of transgender persons and the LGBTQIA community as a whole.**
- Gender-neutral PoSH policies.**
- Anti-discrimination laws with strict penal provisions.**
- The government provides vocational training and supports any self-employment by transgender persons.<sup>41</sup>**



40 - Insights gather from Community Consultation, refer to the Report in Annexure I

41 - Rule 10 (2), the Transgender Persons (Protection of Rights) Rules 2020



## INCLUSION IN EDUCATION

The NALSA judgment requires the government to ensure the inclusion of transgender students in education. In *Sumana Pramanik v. Union of India and Ors.*<sup>42</sup> the Calcutta High Court while directing the government to provide reservations for the transgender community also noted that age relaxations and fee concessions for them in their examinations should be made and wherever guidelines issued in this regard, they should be implemented.

### HEI REGULATION BY THE UNIVERSITY GRANTS COMMISSION

The University Grants Commission (UGC) which is the nodal body for Higher Education Institutions (HEIs) has recognized the transgender community as a Socially and Economically Disadvantaged Group (SEDG).<sup>43</sup> The UGC has passed several guidelines to ensure the inclusion of the transgender community in HEIs such as

- the appointment of gender champions<sup>44</sup>
- framed gender-neutral sexual harassment regulations.<sup>45</sup> Under these Regulations, transgender students can approach the Internal Committee of their Universities to report sexual harassment.

- established Equal Opportunity Cells in HEIs to address the needs of disadvantaged groups.<sup>46</sup> Transgender students can approach the Equal Opportunity Cell of their university to report discrimination or seek assistance for any other grievances relevant to their participation in the University.

### SCHOLARSHIPS

In terms of scholarships, the Ministry of Social Justice and Empowerment to transgender students in 9th to 12th standard, undergraduate, postgraduate and diploma programmes.<sup>47</sup> Further, the Tamil Nadu government is supporting transgender students by providing them full scholarships to pursue higher education in government colleges and income generation programmes.<sup>48</sup> The government of Kerala also offers scholarships to transgender students.<sup>49</sup>

#### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>50</sup> AND SCOPE FOR ADVOCACY

##### ADVOCACY EFFORTS NEED TO ENSURE THE FOLLOWING:

- **All educational institutions have gender-neutral PoSH policies, Internal Committees and Equal Opportunity Cells in place and functional.**
- **The government makes the scholarships easily accessible for the transgender students.**

42 - W.P.A 9187 of 2020

43 - [https://www.ugc.gov.in/pdfnews/4649840\\_Draft-Guidelines-for-SEDGs.pdf](https://www.ugc.gov.in/pdfnews/4649840_Draft-Guidelines-for-SEDGs.pdf)

44 - [https://www.ugc.gov.in/pdfnews/5505672\\_Advisory-Gender-Champion-2023.pdf](https://www.ugc.gov.in/pdfnews/5505672_Advisory-Gender-Champion-2023.pdf)

45 - The University Grants Commission (Prevention, protection and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015

46 - [https://www.ugc.gov.in/pdfnews/7894390\\_equal-opportunity-cell.pdf](https://www.ugc.gov.in/pdfnews/7894390_equal-opportunity-cell.pdf)

47 - <https://www.transgender.dosje.gov.in/Applicant/Registration/DisplayForm2>

48 - <https://tg.tnsw.in/webapp/index.aspx>

49 - [https://swd.kerala.gov.in/scheme-info.php?scheme\\_id=IDcy-c1Y4dXFSI3Z5](https://swd.kerala.gov.in/scheme-info.php?scheme_id=IDcy-c1Y4dXFSI3Z5)



## Access to Public Services



51 - <https://tnsocialwelfare.tn.gov.in/en/specialisationswomen-welfare/free-travel-for-women-in-government-buses>

52 - Please note that the official notification could not be found. See the news report of the Shakti Scheme, <https://www.hindustantimes.com/cities/bengaluru-news/karnataka-launches-free-bus-travel-for-women-and-transgender-people-in-government-run-buses-101686482316334.html>

53 - Please note that the official notification could not be found. See the news report of the Scheme, <https://www.thehindu.com/incoming/free-travel-for-transgender-people-in-dtc-cluster-buses-delhi-cm/article67814386.ece>

54 - Insights gather from Community Consultation, refer to the Report in Annexure I

55 - <https://feminisminindia.com/2022/03/02/what-is-it-like-to-ride-public-transport-as-a-trans-person-in-india/>

56 - <https://timesofindia.indiatimes.com/city/bengaluru/shakti-sans-id-cards-useless-say-transpersons/article-show/102737412.cms>

57 - <https://timesofindia.indiatimes.com/city/bengaluru/bus-crew-denying-free-travel-transgenders/article-show/101204057.cms>

## RIGHT TO PUBLIC TRANSPORT

Under the Transgender Act, the transgender persons have the right to not be discriminated against while using public transport.

Further, the State of Tamil Nadu<sup>51</sup>, Karnataka<sup>52</sup> and Delhi<sup>53</sup> has proactively provided free travel on intra-city government buses to transgender persons.



### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>54</sup> AND SCOPE FOR ADVOCACY

**Despite the mandates under the NALSA judgment,**

- 1. The transgender community continues to face discrimination while using public transport.<sup>55</sup>**
- 2. Despite the Shakti Scheme in Karnataka, transgender persons are unable to avail its benefits due to lack of identity documents<sup>56</sup> and inadequate sensitization<sup>57</sup>.**

### ADVOCACY IS REQUIRED TO ENSURE:

- The right against discrimination of transgender persons while using public transport.**
- Easy access to public transport and related welfare schemes**
- Sensitization of conductors, drivers and other personnel working in public transport services.**

**Further, advocacy is also required to ensure that these rights extend to the LGBTQIA+ community as a whole.**

## RIGHT TO ACCOMMODATION



Under NALSA judgment<sup>58</sup> and the Transgender Act there is a mandate that transgender persons should not be discriminated against or be subject to unfair treatment in housing and rent (government provided and private). Further, Ministry of Social Justice and Empowerment has introduced Garima Grehs<sup>59</sup> to provide shelter and other basic facilities to Transgender persons. The Government of Kerala has set up a scheme to provide financial assistance to transgender students towards rent at a hostel/other accommodation.<sup>60</sup>

### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>61</sup> AND SCOPE FOR ADVOCACY

**Despite the mandates under the law,**

- 1. The transgender persons are not included in many existing housing schemes such as Pradhan Mantri Awas Yojana.**
- 2. The transgender persons only get accommodations in slums or outside the city, and they are charged higher amounts of rent.**
- 3. Lack of gender-neutral hostels.**

**The transgender community needs to advocate and sensitize public and authorities to enforce their rights. The rest of the community (LGBQIA+) may also advocate for extending the rights to them.**

58 - NALSA v. Union of India 2014 (5) SCC 438

59 - <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1776457>

60 - [http://swd.kerala.gov.in/scheme-info.php?scheme\\_id=IDE0OHNWOHVx-UiN2eQ==](http://swd.kerala.gov.in/scheme-info.php?scheme_id=IDE0OHNWOHVx-UiN2eQ==)

## RIGHT TO ACCESS PUBLIC SERVICE DOCUMENTATION

Under the NALSA judgment, the Supreme Court has directed the Central Government to ensure that the transgender community has access to welfare measures and access to identity documents. The NALSA judgment recognizes that the access of transgender persons to identity documents is a crucial first step to the community's access to the rights and entitlements available to Indian citizens.

Some state governments have taken measures in compliance with this directive of the NALSA judgment:

The Tamil Nadu government constituted the Transgender Welfare Board<sup>62</sup> to address the inclusion of transgender persons in welfare schemes<sup>63</sup>, and the provision of IDs to them. The Uttarakhand High Court had also directed the State of Uttarakhand to constitute a Transgender Welfare Board.<sup>64</sup>

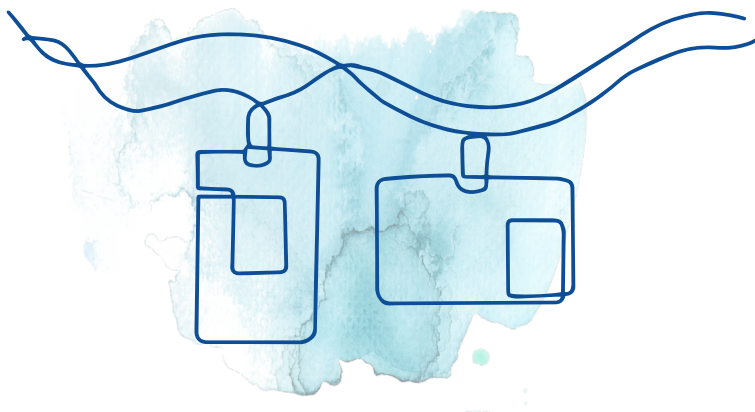
The Government of Kerala has also set up a Transgender Cell to co-ordinate the welfare initiatives of the Government.<sup>65</sup>

### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>66</sup> AND SCOPE FOR ADVOCACY

- 1. Lack of awareness and sensitization among government officials creates hurdles for transgender individuals.**
- 2. Advocacy is needed to educate officials about the rights of the transgender community regarding public services and ID documentation.**
- 3. Many LGBTQIA+ members lose access to IDs when leaving their homes due to unacceptance.**

### ADVOCACY IS NEEDED TO ENSURE:

**Accessible ID and public service documentation for the entire LGBTQIA+ community.**



62 - <https://tg.tnsw.in/webapp/scheme.aspx>

63 - <https://play.google.com/store/apps/details?id=com.isky.admin.tgwelfare>

64 - Rano v. State of Uttarakhand, W.P. (Cri.) No. 1794 of 2018

65 - [http://swd.kerala.gov.in/scheme-info.php?scheme\\_id=ID-E0NHNWOHVxUiN2eQ==](http://swd.kerala.gov.in/scheme-info.php?scheme_id=ID-E0NHNWOHVxUiN2eQ==)

66 - Insights gather from Community Consultation, refer to the Report in Annexure I



## Health



### ACCESS TO HEALTHCARE

Under Section 15 of the Transgender Persons (Protection of Rights) Act, 2019 the government is required to

1. set up separate HIV Sero-surveillance centres for transgender persons.
2. ensure transgender persons receive counselling before and after hormonal therapy<sup>67</sup>
3. and set up a comprehensive medical insurance scheme for transgender persons.<sup>68</sup>

Under the Transgender Rules 2020,

1. The government has to ensure all hospitals have separate wards for transgender persons by 2022. The Rules define medical institutions to include both private and public establishments.
2. The medical insurance schemes should include the transgender community.
3. State medical insurance should cover SRS, hormone therapy and similar procedures for transgender persons.
4. At least one government hospital per State should be equipped with facilities to offer SRS, hormone therapy and other similar procedures.

Some efforts in furtherance of the above are as follows:

LIC<sup>69</sup> and the National Pension Scheme<sup>70</sup> have recognized the transgender community for their insurance schemes.

The State of Kerala offers financial aid for transgender persons who undergo SRS and further treatment required after the surgery.<sup>71</sup>

The Tamil Nadu Government also provides free SRS at two government hospitals.<sup>72</sup>



67 - Refer to Glossary of Terms, Annexure VI

68 - Transgender Persons (Protection of Rights) Act 2019

69 - <https://licindia.in/documents/20121/134762/Underwriting-philosophy-%281%29.pdf/b1e17162-f66b-668f-c09b-22e56b-50c49d?t=1681993691607>

70 - <https://www.npskra.nsdcl.co.in/download/government-sector/central-government/forms/Subscriber%20Registration%20Form.pdf>

71 - [http://swd.kerala.gov.in/scheme-info.php?scheme\\_id=MTQ-5c1Y4dXFSI3Z5](http://swd.kerala.gov.in/scheme-info.php?scheme_id=MTQ-5c1Y4dXFSI3Z5)

72 - <https://tg.tnsw.in/webapp/index.aspx>

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>73</sup> AND SCOPE FOR ADVOCACY

**Despite the mandates and recommendations under the law,**

- 1. Separate wards have not been created for transgender persons in hospitals.**
- 2. SRS, hormonal therapy and similar procedures are offered by few hospitals. The community is unaware of hospitals that do offer these facilities.**
- 3. Not all Indian states have made provisions for free SRS, hormone therapy.**
- 4. The implementation of free SRS faces issues in terms of quality in treatment, lack of pre-operative and post-operative counselling to patients.<sup>74</sup>**

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Implementation of separate wards in hospitals as the mandate specifies this should have been implemented by 2022.**
- **Awareness among the community needs to be created on hospitals that provide free and good quality SRS, hormone therapy.**
- **Government hospitals should ensure adequate counselling of transgender persons before performing SRS and hormone therapy etc.**
- **Comprehensive medical insurance for the transgender community.**

## MENTAL HEALTH

Under Section 18 of the Mental Health Care Act, 2017<sup>75</sup>, individuals including the LGBTQIA+ community have the following rights:

1. The right to avail treatment and counselling for mental healthcare without any discrimination based on their sex, sexual orientation and gender.
2. The mental health care should be affordable, of great quality, sufficient to meet their mental health needs and easily accessible no matter where they live in India.
3. The right to free treatment if a person is below the poverty line, irrespective of whether they have a BPL Card.
4. The right to access medicines free of cost at health centres run or funded by the government. The list of medicines shall be notified by the government through an Essential Drug List.
5. Medicines prescribed by practitioners under AYUSH who are affiliated to the government hospitals shall also be available free of cost at the healthcare centres run or funded by the government.
6. The Government is required to ensure that government hospitals are equipped with these facilities.

73 - Insights gather from Community Consultation, refer to Report in Annexure I

74 - <https://timesofindia.indiatimes.com/city/chennai/transsexuals-avoid-government-hospitals-for-operations/articleshow/60876186.cms>

75 - [https://liddashboard.legislative.gov.in/sites/default/files/A2017-10\\_3.pdf](https://liddashboard.legislative.gov.in/sites/default/files/A2017-10_3.pdf)



## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>76</sup> AND SCOPE FOR ADVOCACY

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Examining the compliance with Section 18 of the Mental Healthcare Act, 2017**
- **Create better awareness among the community on the provisions under the Act.**



## SUICIDE PREVENTION

Under *NALSA v. Union of India*<sup>77</sup>, the Supreme Court directed that specific provisions on suicide prevention of the LGBTQIA youth need to be laid down by the appropriate government. Helplines need to be set up for the same. There is a The National Suicide Prevention Strategy was formulated in 2021 to include transgender persons.

Helpline numbers are being run by many NGOs<sup>78</sup>. SAHAI is a 24x7 helpline for the LGBTQ community. NGO Space is running a specific suicide prevention helpline number for the LGBTQ community. The Government of Kerala has launched a 24x7 transgender helpline - 1800 425 2147.<sup>79</sup>

76 - Insights gather from Community Consultation, refer to the Report in Annexure I

77 - *NALSA v. Union of India* 2014 (5) SCC 438

78 - <https://lgbtqindiaresource.in/helpline/>

79 - [http://sjd.kerala.gov.in/beneficiary-info.php?benef\\_sl=N3NWOHVxUiN2eQ==](http://sjd.kerala.gov.in/beneficiary-info.php?benef_sl=N3NWOHVxUiN2eQ==)

80 - Insights gather from Community Consultation, refer to the Report in Annexure I

81 - <https://www.mhinnovation.net/resources/indias-national-suicide-prevention-strategy>

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>80</sup> AND SCOPE FOR ADVOCACY

### Despite the mandates under law:

1. **The National Strategy reported nil suicides by transgender persons.<sup>81</sup> This demonstrates a lack of data on the number of people in the transgender community.**
2. **There is a heavy reliance on the 2011 Census which does not account for those who realised their transgender identity after the Census.**
3. **Further, not all members of the LGBTQ community are comfortable with disclosing their sexual orientation due to the stigma associated.**

### ADVOCACY EFFORTS NEED TO FOCUS ON:

- **Collect disaggregated data on transgender persons and the LGBTQIA+ community as a whole.**
- **Securing government support and incentives for NGO helplines**

## HIV POSITIVE & AFFECTED PERSONS<sup>82</sup>

Individuals (including members of the LGBTQIA+ community) are protected under the HIV Act.

### **Under the HIV and AIDS Act, 2017:**

Individuals who are HIV positive and/or reside with someone who is HIV positive, have the right to not be discriminated against based on their medical condition.

The right against discrimination under the HIV Act includes protection from the following:

1. Termination, denial or unfair treatment of the employment of a person having HIV or a person living with an HIV-positive person;<sup>83</sup>
2. Denial of accommodation, discrimination/unfair treatment in healthcare facilities and educational institutions.<sup>84</sup>
3. Promoting discrimination or inciting violence or hatred against HIV-positive persons either through spoken or written words is prohibited.<sup>85</sup>

### **Under the HIV Act,**

1. Individuals cannot be subject to HIV testing as a part of their employment or education. Individuals have a right to say no to such requests from their current or prospective employer.<sup>86</sup>
2. HIV tests when conducted should include pre-test and post-test counselling, health care centres are not allowed to conduct tests without counselling the individual undergoing the tests.<sup>87</sup>
3. Individuals are under no obligation to disclose their medical condition unless a court order or a government official requires it for monitoring, evaluation or supervision.<sup>88</sup> However, a healthcare provider may disclose an HIV-positive person's condition to another colleague to consult on the person's treatment. They can also disclose this to an HIV-positive person's partner if they feel their partner is at risk of transmission of HIV.<sup>89</sup>

82 - <https://www.indiacode.nic.in/bitstream/123456789/2254/1/a2017-16.pdf>

83 - Section 3 (a), HIV and AIDS (the Prevention and Control) Act 2017

84 - Section 3 (g), HIV and AIDS (the Prevention and Control) Act 2017

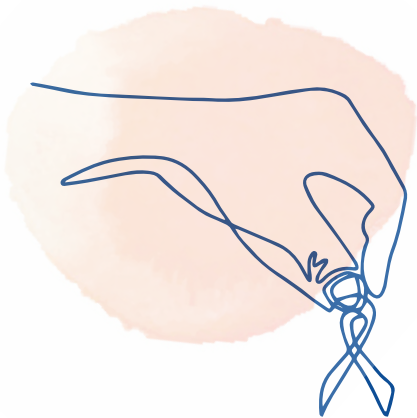
85 - Section 4, HIV and AIDS (the Prevention and Control) Act 2017.

86 - Section 3 (l), HIV and AIDS (the Prevention and Control) Act 2017

87 - Section 5 (2), HIV and AIDS (the Prevention and Control) Act 2017

88 - Section 8, HIV and AIDS (the Prevention and Control) Act 2017

89 - Section 8 r/w 9 of the HIV and AIDS (the Prevention and Control) Act 2017





## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>90</sup> AND SCOPE FOR ADVOCACY

**Despite the mandates under the HIV Act,**

- 1. LGBTQIA persons do not receive counselling related to HIV.**
- 2. Face discrimination such as the blanket ban on blood donation<sup>91</sup>.**

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Implementation of the provisions of the HIV Act in hospitals.**
- **Sensitizing the community to address the stigma and stereotypes surrounding the LGBTQIA+ community.**
- **Support existing advocacy to remove the blanket ban on blood donation by the LGBTQIA community.<sup>92</sup>**

## BAN ON CONVERSION THERAPY<sup>93</sup>

Medical professionals are liable for professional misconduct if they try to change an individual's sexual orientation or gender identity through conversion therapy. State Medical Councils can take severe disciplinary action against them.<sup>94</sup> If an individual from the LGBTQIA+ community finds that a medical practitioner they consult- suggests or administers conversion therapy, such individuals can report the practitioner to the State Medical Council.

As per the National Medical Commission Act, 2019 if an individual who practises conversion therapy is not a registered doctor the punishment of 1 year of imprisonment and a fine of 5 lakh rupees is imposable on such a person.<sup>95</sup> State Medical Councils are required to appoint officers who will file cases against the quacks in appropriate forums.<sup>96</sup>

90 - Insights gather from Community Consultation, refer to the Report in Annexure I

91 - <https://naco.gov.in/sites/default/files/Letter%20reg.%20%20guidelines%20for%20blood%20donor%20selection%20%26%20referral%20-2017.pdf>

92 - [https://www.scoobserver.in/wp-content/uploads/2021/09/PIL\\_Blood\\_Donation1.pdf](https://www.scoobserver.in/wp-content/uploads/2021/09/PIL_Blood_Donation1.pdf)

93 - Refer to Glossary of Terms, Annexure VI

94 - Notified by the National Medical Commission in response to the Madras High Court's directive in S.Sushma v. Commissioner of Police, W.P. No. 7284 of 2021

95 - Section 34, National Medical Commission Act, 2019

96 - Official notification is unavailable, please see the report here, <https://health.economicstimes.indiatimes.com/news/policy/state-medical-councils-asked-to-appoint-officers-for-taking-action-against-quacks/92979365>

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>97</sup> AND SCOPE FOR ADVOCACY

### Despite the laws in place:

1. **Conversion therapy continues to be practised in India.**
2. **Quacks continue to operate despite the bans by the National Medical Commission.**

### ADVOCACY EFFORTS SHOULD FOCUS ON

- **Passing the Conversion Therapy (Prohibition) Bill, 2022 in the Parliament.**
- **More awareness among the community on what constitutes conversion therapy and the appropriate grievance redressal forum.**

## RIGHT TO ABORTION

If an individual is pregnant (including a member of the LGBTQIA+ community) and does not want to give birth, they have the right to get an abortion. Under Section 3 of the Medical Termination of Pregnancy Act, 1971:

An individual can get an abortion within 20-24 weeks from the date they become pregnant.

If the individual requires an abortion

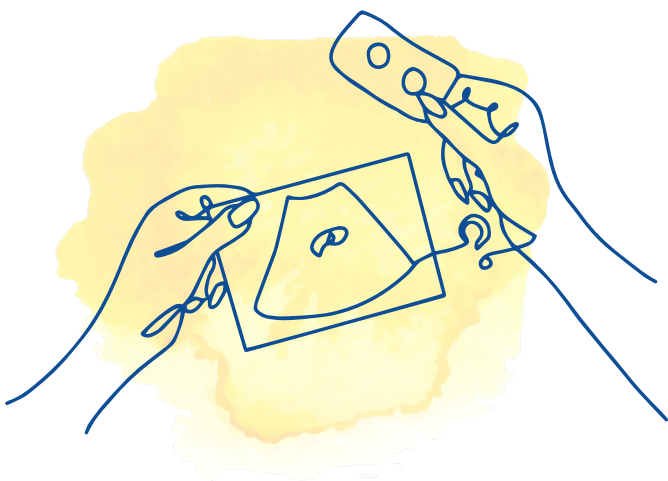
1. within 20 weeks from the date an individual becomes pregnant, they need one registered doctor's opinion.<sup>98</sup>
2. more than 20 weeks from the date an individual becomes pregnant but has not exceeded 24 weeks since the said date, two registered doctors should give their opinion.<sup>99</sup>

Reasons for which abortion is permitted under Section 3 of the above Act:

1. Abortion under the law is allowed if the doctor/(s) feels the pregnancy will affect the health of the child, risking the pregnant individual's physical health/mental health.
2. The pregnant individual can also ask for abortion if the pregnant individual used contraception and it failed, if a pregnant individual has been raped or if the pregnancy will cause the pregnant individual great pain and suffering.

Please note that a pregnant individual cannot be forced to abort their child.

If either the pregnant person or someone else forces an abortion of the child after 24 weeks or without following the procedures, they can be held liable. An abortion that does not follow the guidelines under the Medical Termination of Pregnancy Act, of 1971 is a crime.<sup>100</sup>



97 - Insights gather from Community Consultation, refer to the Report in Annexure I

98 - Section 3 (2) (a) of the Medical Termination of Pregnancy Act, 1971

99 - Section 3 (2) (b) of the Medical Termination of Pregnancy Act, 1971

100 - Section 312-316 of the Indian Penal Code, 1860

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>101</sup> AND SCOPE FOR ADVOCACY

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Sensitization of the community and healthcare providers to comply with the law.**
- **Shut down illegal abortion clinics.**

## RIGHT TO EMERGENCY TREATMENT<sup>102</sup>

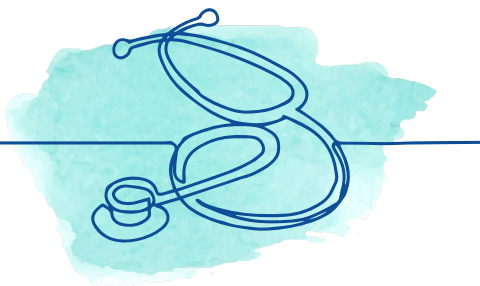
Doctors are required to provide treatment to patients who require emergency medical care and cannot refuse to do so because the patient cannot pay the hospital fees etc. If doctors refuse without any proper justification, they can be punished.

State governments are required to have a reimbursement scheme in place to refund treatment fees for emergency care done by hospitals if the admitted individual is unable to pay the fees.

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>103</sup> AND SCOPE FOR ADVOCACY

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Ensuring State governments have reimbursement schemes in place**
- **Ensure the community is aware of their right to treatment in hospitals during emergencies.**



101 - Insights gather from Community Consultation, refer to the Report in Annexure I

102 - Parmanand Katara v. Union of India: 1989 AIR 2039

103 - Insights gather from Community Consultation, refer to the Report in Annexure I



## Access to Justice



104 - The income ceiling limit varies from state to state, refer: <https://nalsa.gov.in/services/legal-aid/eligibility>

105 - For more information on legal aid please refer to <https://nalsa.gov.in/faqs>

106 - Sushma v. Commissioner of Police, W.P. NO. 7284 OF 2021 has mentioned offering free legal aid to the entire LGBTQIA community.

### BASIC PROVISIONS OF THE INDIAN PENAL CODE (IPC) AND CODE OF CRIMINAL PROCEDURE (CrPC)

If an arrested person does not have adequate finances,<sup>104</sup> they have the right to claim free legal aid<sup>105</sup>. An arrested person can claim free legal aid in both civil and criminal cases. A woman can claim free legal aid irrespective of their financial situation.<sup>106</sup>

An arrested person has the right to appoint a lawyer of their choice to defend them in civil and criminal cases. The Madras High Court in *S. Sushma v Director General of Police*<sup>107</sup>, transgender persons should also be given free legal aid. The Karuthal Scheme for transgender persons instituted by the Kerala Government can be used to avail free legal aid.<sup>108</sup> The KSLSA (Legal Aid and Services to the Transgender Community) Scheme, 2022 promotes the participation of transgender persons in legal service institutions.<sup>109</sup>

#### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>110</sup> AND SCOPE FOR ADVOCACY

**Despite the Madras High Court directive and some existing schemes,**

- 1. Transgender persons do not get free legal aid in all Indian states.**
- 2. Transgender persons are not availing of legal aid even if they are eligible.**
- 3. Transgender persons do not have adequate representation in Legal Service Institutions.**

#### ADVOCACY EFFORTS SHOULD FOCUS ON:

- **Inclusion of transgender persons under Section 12 of the Legal Services Authority Act, 1987 which grants free legal aid to marginalized groups.**
- **Promote participation of the LGBTQIA+ community in Legal Service Institutions as paralegal volunteers.**
- **Increase awareness among the community and sensitization in Legal Service Institutions.**

107 - W.P. No. 7284 of 2021

108 - [http://sjd.kerala.gov.in/scheme-info.php?scheme\\_id=IDE3OXNWOHVxUiN2eQ==](http://sjd.kerala.gov.in/scheme-info.php?scheme_id=IDE3OXNWOHVxUiN2eQ==)

109 - <https://www.newindianexpress.com/states/karnataka/2022/May/02/scheme-evolved-to-help-transgenders-2449096.html>

110 - Insights gather from Community Consultation, refer to the Report in Annexure I

## RIGHTS AGAINST INCARCERATION<sup>111</sup>

Under Article 22 of the Constitution of India, individuals cannot be arrested or held by the police without following proper procedures. The Criminal Procedure Code, 1973 lays down the procedures to be followed by police:

1. If someone is arrested, they have the right to be informed of the grounds of their arrest. If someone has been arrested by the police based on an arrest warrant, they have the right to ask to see the arrest warrant.<sup>112</sup>
2. If the police have arrested someone without a warrant, the police have to produce the arrested person before the magistrate within twenty-four hours of arrest.<sup>113</sup>
3. If someone is arrested, they have the right to know if they are eligible for bail. If they are eligible for bail, they have the right to apply for bail.<sup>114</sup>
4. An individual in police custody shall be examined every twenty hours for injuries and the report of the same needs to be given to their nominated representative.<sup>115</sup> This will help an arrested person report any injuries inflicted on them by the police while in custody.
5. An arrested person has the right to not be subject to physical/mental abuse while in police custody.<sup>116</sup>
6. The police cannot force an arrested person to confess to a crime.<sup>117</sup> A confession before a police officer while in their custody cannot be used as evidence before the court if the arrested person was forced to give the confession.<sup>118</sup> However, if any other evidence against the arrested person is found by the police based on the arrested person's forced confession, that can be used against the arrested person.<sup>119</sup>

For example, if a person is arrested on the suspicion of threat by the police. The police force them to confess the location of the stolen property. The police find the stolen property at the location. The evidence of stolen property can be used against them, their confession of the crime cannot be used against them as they were forced to confess.

111 - <https://liddashboard.legislative.gov.in/sites/default/files/A1974-02.pdf>

112 - Section 50 A of the Criminal Procedure, 1973

113 - Section 57 of the Criminal Procedure, 1973, This applies to those arrested without a warrant

114 - Section 50A of the Criminal Procedure, 1973

115 - Section 54 of the Criminal Procedure, 1973

116 - Section 55 A of the Criminal Procedure, 1973

117 - Article 20 (3) of the Constitution of India

118 - Section 24-26 of the Indian Evidence Act, 1872

119 - Section 27 of the Indian Evidence Act, 1872

## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>120</sup> AND SCOPE FOR ADVOCACY

**The community is not aware of the procedures to be followed by the police.**

### ADVOCACY EFFORTS NEED TO FOCUS ON:

- **Better awareness among the community of their rights.**
- **Sensitization of police officials.**

## SENSITIZATION OF POLICE

In India, LGBTQ+ persons often face mistreatment and discrimination at the hands of police personnel.<sup>121</sup> To address this, the Supreme Court has directed the police machinery to:

1. Avoid harassment of queer couples by summoning them to the police station or visiting their residence solely to interrogate them about their gender identity or sexual orientation.
2. Avoid forcing queer persons to return to their natal families if they do not wish to return to them.
3. Ensure that the freedom of queer persons is not curtailed when investigating complaints by queer persons on their families restraining their freedom of movement.
4. Ensure due protection to queer persons who have filed complaints of violence from family members for the reason that they are queer.
5. In case a complaint has been raised against a queer relationship/ one of the parties in a queer relationship, a preliminary investigation must be completed to ensure that the complaint does not disclose a cognizable offence. If the person is an adult and is in a consensual relationship with another person of the same or different gender or has left the home of their own volition, the police should close the complaint after recording a statement to that effect.



120 - Insights gather from Community Consultation, refer to the Report in Annexure I

121 - Ms. X v. State of Uttarakhand, Writ Petition (Criminal) No. 28 OF 2019

ADVOCACY EFFORTS NEED TO ENSURE THAT:

**Police personnel follow the Supreme Court's directions**

## RIGHTS IN CASE OF SEXUAL ASSAULT

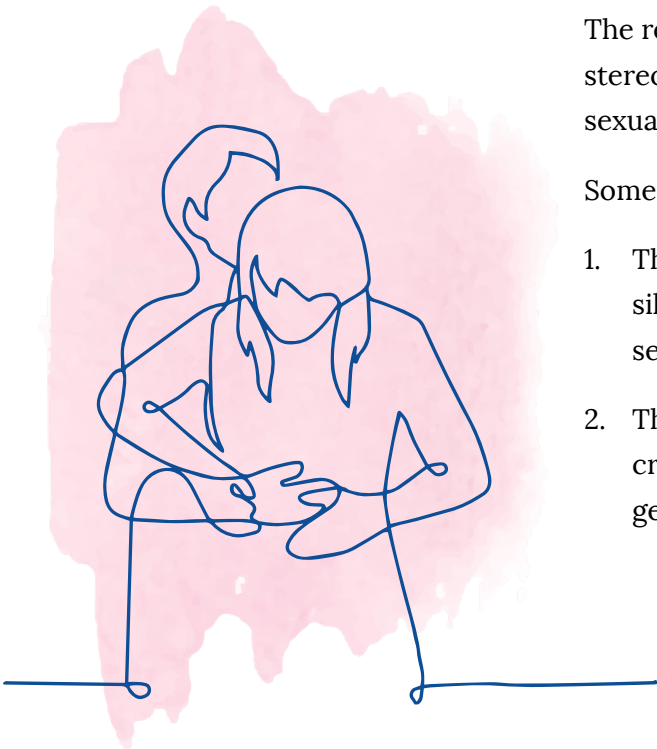
The identity of a victim of sexual assault cannot be revealed to the media, and the court documents cannot mention their name.<sup>122</sup>

The Handbook on Combatting Gender Stereotypes issued by the Supreme Court mentions the need for gender sensitization of the judiciary and the legal fraternity. The consent for the sexual act of a victim of sexual assault cannot be presumed because of their clothing or any moral prejudice of the court, lawyers, police and other stakeholders within the justice system.<sup>123</sup>

The recommendations of the Handbook include addressing stereotypes and discrimination that targets gender and sexual minorities.

Some of these points include:

1. The victim of sexual assault has the right to remain silent about their past sexual relationships and their sexual orientation.
2. That transgender persons are vulnerable to sexual crimes and that rape can occur irrespective of a person's gender identity and sexual orientation.



122 - Section 228 A of the Indian Penal Code 1860

123 - [https://main.sci.gov.in/pdf/LU/04092023\\_070741.pdf](https://main.sci.gov.in/pdf/LU/04092023_070741.pdf)



## CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>124</sup> AND SCOPE FOR ADVOCACY

**Despite the sensitization efforts of the Handbook,**

- 1. Existing legislation including the Bhartiya Nyaya Sanhita, 2023 (to replace the Indian Penal Code, 1860 when notified) consider only sexual offences against women as a crime.**
- 2. Individuals who were previously involved in lavender marriages<sup>125</sup> and are now seeking divorce face a lot of discrimination and prejudice in family court proceedings.**
- 3. Transgender persons continue to be called by their deadnames or are misgendered by the police.**

## ADVOCACY EFFORTS SHOULD FOCUS ON

- **More inclusive and gender-neutral provisions for punishment of sexual crimes.**
- **Better sensitization of court officials, police and the legal fraternity.**

124 - Insights gather from Community Consultation, refer to the Report in Annexure I

125 - Refer to Glossary of Terms, Annexure VI

126 - <https://presscouncil.nic.in/Pdf/RLGBTQ21092023pdf>

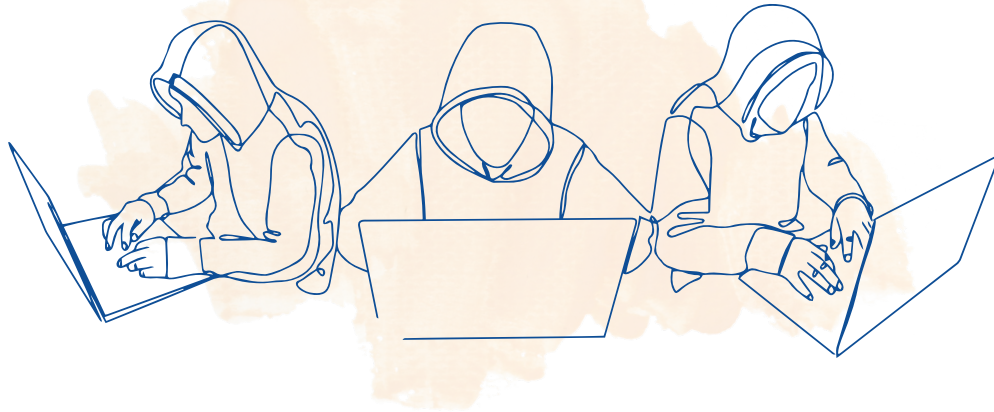
127 - Refer Glossary of Terms, Annexure VI

## LEGAL REMEDIES AGAINST CRIMES

### RIGHTS AGAINST THE SPREAD OF HATE AND DISCRIMINATION ON THE PRINT MEDIA

1. The media portrayal of the LGBTQIA community has not always been sensitive. The Press Council of India released Guidelines to sensitise media on respectful portrayal of the LGBTQIA community:<sup>126</sup>
2. Individuals have the right to insist on proper usage of their preferred pronouns, and not use their dead names.<sup>127</sup>
3. The media is not allowed to use terms that are not inclusive (for example, they should not use “gay community” and instead use “LGBTQIA+ community”) because gender and sexual orientation is a spectrum.
4. The media must not use outdated/abusive words that hurt the community such as “eunuch” and “sex-change.” When they use such words, the individuals concerned or representatives from the community have the right to request the press to issue corrections and apologies for their wrong/hurtful portrayal of the individual as a member of this community or their portrayal of the community as a whole.
5. The media is not supposed to publish an individual’s gender identity, sex, sexual orientation, or any other information that can be used to identify the individual without their consent.





## **RIGHT AGAINST THE SPREAD OF HATE AND DISCRIMINATION ONLINE AND CYBERCRIMES**

1. Individuals from the LGBTQIA community have the right to file a case against a person who is spreading fake or abusive information about an individual from the community or against the LGBTQIA+ community as a whole.<sup>128</sup>
2. The concerned individual can contact the nearest Cyber Crime Cell as well to track down the person/(s) who are doing these crimes.
3. The concerned individual also has the right to have their sexual orientation and gender identity be a secret. Anyone who tries to blackmail an individual using their identity can be punished under criminal law.

### **INTERMEDIARY GUIDELINES**

Under the Information Technology (Intermediary Guidelines and Media Ethics Code), 2021<sup>129</sup>, websites and applications need to publish on their respective platforms:

1. A Privacy Policy
2. Terms of Use
3. The Grievance Officer and their contact information

The Grievance Officer is required to resolve any issue received from an aggrieved person within 24 hours of the receipt.

Individuals including those from the LGBTQIA+ community can approach the Grievance Officer mentioned on the relevant website or application to take down the infringing content and block the infringer.

128 - Daya Gayathri & Ors. v. State of Kerala & Ors.W.P. (C) No. 40030 of 2023

129 - Rule 3 (1) and Rule 3 (2) of the Information Technology (Intermediary Guidelines and Media Ethics Code), 2021

### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>130</sup> AND SCOPE FOR ADVOCACY

**Despite mandates under the law, the community continues to face discrimination in all aspects of their life.**

### ADVOCACY EFFORTS NEED TO FOCUS ON:

- **Better awareness of digital rights and rights against media among the community.**
- **Sensitization of the media and pushing for specific provisions of anti-discrimination that support the LGBTQIA+ community.**



## RIGHTS OF LGBTQIA+ PERSONS IN PRISON

The Ministry of Home Affairs has issued an advisory on treatment of Transgender persons in Prisons.<sup>131</sup> The rights and protections available to transgender persons under the advisory are as follows:

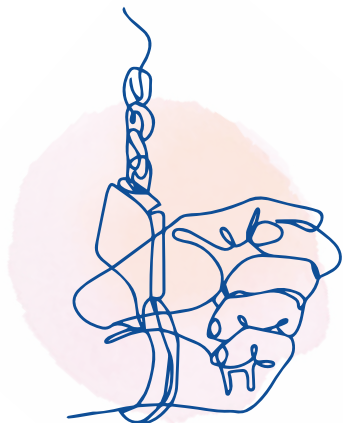
1. Separate wards, toilet facilities and shower facilities for transmen and transwomen in prisons while ensuring they are not isolated.
2. Search of transgender persons shall be done by sensitized and trained medical professionals or by a person belonging to their preferred gender. Searching if required shall be done in a private room or behind a partition.
3. Communication with family, friends and legal advisors must be allowed
4. Prison staff must be sensitized
5. Equal treatment in medical services, rehabilitation and counselling.

The Delhi High Court<sup>132</sup> has directed the NCRB to include transgender statistics in their data.

130 - Insights gather from Community Consultation, refer to the Report in Annexure I

131 - [https://www.mha.gov.in/sites/default/files/2022-09/Advisory\\_TransgenderPersonsInPrisons\\_10012022%5B1%5D.PDF](https://www.mha.gov.in/sites/default/files/2022-09/Advisory_TransgenderPersonsInPrisons_10012022%5B1%5D.PDF)

132 - Karan Tripathi v. NCRB WRIT PETITION (CRIMINAL) NO. 9596 OF 2020



### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>133</sup> AND SCOPE FOR ADVOCACY

**Despite the advisory,**

- 1. Transgender persons are not housed in separate wards and are instead housed along with male prisoners.**
- 2. Their partners are not allowed visitation rights.**

### ADVOCACY EFFORTS SHOULD FOCUS ON:

- Following up on compliance with the Delhi High Court directive to NCRB.**
- Visitation rights for partners to the entire LGBTQIA+ community.**
- Implementation of the advisory in all prisons in India.**

133 - Insights gather from Community Consultation, refer to the Report in Annexure I

## REDRESSAL

The Transgender Persons (Protection of Rights) Act, 2019 established the National Council for Transgender Persons to handle complaints and issues faced by transgender individuals. If any of their Fundamental Rights are violated, they can seek remedy by approaching either the Supreme Court under Article 32 or the High Courts under Article 226. Furthermore, Article 226 also protects other rights guaranteed by various laws.

It is important to note that violating the rights of transgender individuals is considered a human rights violation. Victims of such violations can seek assistance from both the State and National Human Rights Commissions.

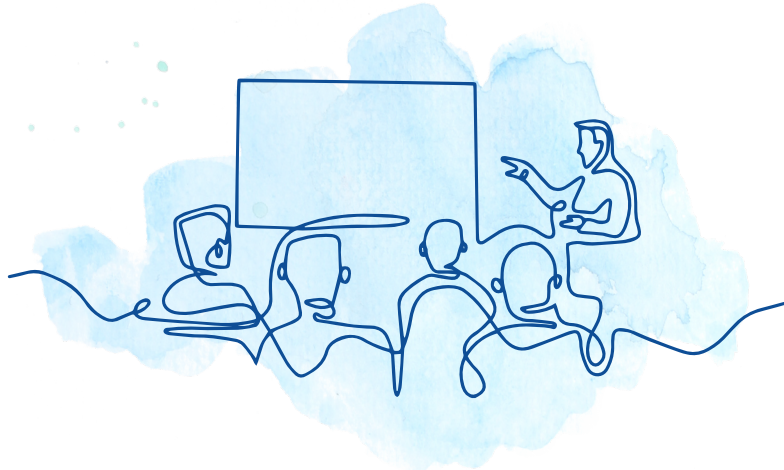
### ROLE OF THE NATIONAL COUNCIL FOR TRANSGENDER PERSONS

The National Council for Transgender Persons has several important responsibilities:

1. Addressing and resolving complaints and concerns raised by transgender individuals. The process for filing is given in Annexure V.
2. Providing guidance, monitoring, and assessing the effectiveness of policies established by the Central Government concerning transgender individuals.
3. Supervising the activities of both governmental and non-governmental organisations involved in issues related to transgender individuals.



## Advocacy



### **SENSITIZATION OF GOVERNMENT OFFICIALS**

#### **CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>134</sup> AND SCOPE FOR ADVOCACY**

In India, the LGBTQ+ community has been granted various rights and protections by the government as well as the courts. Despite legal provisions and directives aimed at safeguarding the rights of LGBTQ+ individuals, the practical realisation of these rights is impeded by social stigma and inadequate understanding of LGBTQ+ issues among officials at various levels of governance. In acknowledgement of this problem, the Chief Justice of India, Supriya Chakraborty case,<sup>135</sup> has directed the Central and State Governments to ensure that the members of the community are not discriminated against in any way, including while accessing goods and services. It is important that the community advocates for such sensitization initiatives to ensure that officials at all levels of governance possess the awareness, understanding, and empathy needed to effectively address the needs and concerns of members of the community.

#### ***Advocacy efforts need to emphasise:***

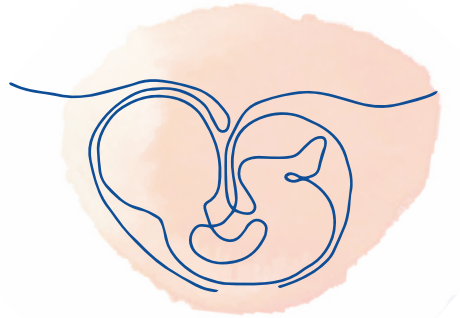
- Emphasise the need for training and sensitization programs for government officials to ensure inclusive and non-discriminatory service delivery.

134 - Insights gather from Community Consultation, refer to the Report in Annexure I

135 - WP (C) 1011/2022

## EMERGING ISSUES & ADVOCACY NEEDS

Based on the community consultation, we also identified the following rights that need to be granted to LGBTQIA+ community through advocacy efforts.



### **RIGHT TO IVF AND ART**

#### **CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>136</sup> AND SCOPE FOR ADVOCACY**

The Assisted Reproductive Technology (Regulation) Act, 2021 covers only women.<sup>137</sup> Cases of transmen giving birth safely have been reported.<sup>138</sup> The possibility of transwomen being able to give birth in future is also a possibility. The right to undergo IVF and ART cannot thus be restricted to cis women.

#### ***Advocacy efforts need to focus on:***

- Making a strong case to ensure these rights for transmen who care capable and desirous of having children.
- We should also build the case for extending the rights to IVF and ART to transwomen as in the future, with medical advancements, transwomen may be able to bear children.

136 - Insights gather from Community Consultation, refer to the Report in Annexure I

137 - [https://www.indiacode.nic.in/handle/123456789/17031?view\\_type=browse&sam\\_handle=123456789/1362#:~:text=An%20Act%20for%20the%20regulation,health%20where%20assisted%20reproductive%20technology](https://www.indiacode.nic.in/handle/123456789/17031?view_type=browse&sam_handle=123456789/1362#:~:text=An%20Act%20for%20the%20regulation,health%20where%20assisted%20reproductive%20technology)

138 - <https://www.hindustantimes.com/india-news/in-a-first-transcouple-welcomes-baby-in-kerala-101675881768079.html>



## RIGHT TO ADOPTION

### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>139</sup> AND SCOPE FOR ADVOCACY

In *Supriya Chakraborty v. Union of India*<sup>140</sup>, the minority judgment by CJI Chandrachud said that the Juvenile Justice Act says unmarried couples can adopt children. Therefore, CARA went beyond its authority by adding the condition of marriage. CARA assumed that only married couples could provide a stable home for a child, but there's no evidence to support this belief.

The stability of a household depends on many factors, and there isn't just one type of stable home. Regulation 5(3) of CARA's rules goes beyond what the law allows and violates Articles 14 and 15. It has been read down to remove the requirement for marriage. The term "couple" in Regulation 5 includes both married and unmarried couples, including queer couples.

**Advocacy efforts need to focus on building a case for:**

- Same-sex partners to adopt children together by reading into existing rights available to them including the right to intimacy and the recognition of atypical family structures under *Supriya Chakraborty* judgment.<sup>141</sup>

## RIGHT TO INHERITANCE

### CHALLENGES FOR PERSONS BELONGING TO LGBTQIA+<sup>142</sup> AND SCOPE FOR ADVOCACY

The National Human Rights Commission has issued an advisory<sup>143</sup> which urges that transgender persons be allowed to inherit ancestral agricultural land. It also recommends treating a transgender person as the unmarried daughter of a deceased government employee or pensioner. This would help the transgender person claim a 'family pension' and other benefits conferred on unmarried daughters of deceased government employees/pensioners.

**Advocacy efforts need to focus on building a case for:**

- Transgender persons inheriting ancestral property through intestate succession.
- Eligibility of transgender persons as nominees for their parents, siblings, spouses in insurance, bank accounts, pension and other welfare schemes, and appointments on compassionate grounds etc.

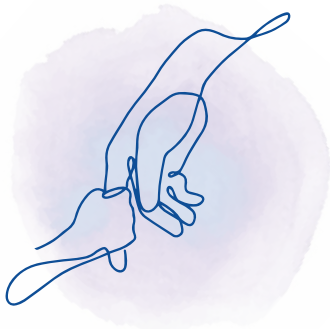
139 - Insights gather from Community Consultation, refer to the Report in Annexure I

140 - WP (C) 1011/2022

141 - WP (C) 1011/2022

142 - Insights gather from Community Consultation, refer to the Report in Annexure I

143 - <https://nhrc.nic.in/media/press-release/nhrc-issues-advisory-ensure-welfare-transgender-persons>





# ANNEXURES

# ANNEXURE I

---

## COMMUNITY CONSULTATION REPORT- LGBTQIA+ COMMUNITY

### Overview

The representatives from Humsafar Trust, Pacta, and Infosem briefed the community on the objective of the community consultation. The purpose of the community consultation is to understand the experiences of the community while accessing the rights and entitlements. This would inform the content of the manual. The outcome of the consultation is a manual to help the community practically use the rights and laws available to them.

Pacta and Humsafar identified a few broad themes to act as discussion prompts for the community. A representative from Pacta and a representative from Humsafar moderated the session to encourage the community to share their experiences. Various members of the community presented their views and opinions. The points put forth by the participants have been compiled in this report.

### Participants

(Geography, affiliated organization)

The consultation via the online conference platform saw around 20 participants including those from Gujarat, Maharashtra, and Punjab.

The participants were affiliated with various NGOs that interact with Infosem including Samarpan Trust, SAARTHI Trust, Lakshya Trust, Mansa Foundation, and Badlav Samhiti.

Our consultation had more representation from transgender persons than from other members of the community.



# 1. Citizen Rights

## 1.1. PUBLIC SPACES

A community representative observed a lack of toilets in public spaces for transgender persons. The representative mentioned that although members have applied for such toilets to be built, the local authorities have not acted upon the petition of the community. Another participant pointed out that while the community has voting rights, the public participation of the transgender community in the elections also needs to be encouraged.

A participant noted the absence of inclusion of the transgender category in booking flight tickets, especially since this causes issues in international airports. The participant mentioned that the community has no other option but to book the tickets under the 'female' category. The participant further elaborated that the CRPF officials raise objections to this at the security check-in at the airport. Another participant chipped in to tell us that international travel becomes hard for transgender persons as visas do not have an entry for 'transgender'.

## 1.2. GOVERNMENT IDS

A Transgender person mentioned how it was difficult to change names in documents from educational institutions because the DEOs are not sensitized, the transgender person told us that they needed to always approach the higher authorities to direct the DEO, which is not feasible for every case.

Another member of the community highlighted that the mere addition of a transgender person to the forms is not inclusion, sensitization is important, the participant drew our attention to an example, the authorities ask insensitive questions such as why did you do the surgery?

A participant also brought to our notice that members of the LGBTQIA+ community often run away from home and do not have access to the documents that require this ID card.

Another participant shed light on why the community found it hard to get BPL documentation- The participant told us that the BPL is given based on the 2011 census, many transgender persons could not avail themselves of the same because they had not transitioned at that time. Further, they added that the BPL certificate is hard to obtain per se, one needs connections, and the criteria are very subjective, said one of the participants.

A member of the community told us that although the Transgender Portal exists, ICT support is required for transgender persons to use the Transgender Portal and apply for IDs. The participant drew our attention to how this is not feasible for all members of the community. Some of them earn their livelihood through begging and do not have ICT skills, hence necessary ICT support is essential, they emphasized.

### **1.3. HOUSING**

One of the participants raised the issue of the non-inclusion of transgender persons in various housing schemes. They observed how existing schemes like the Pradhan Mantri Awas Yojana do not include members from the transgender community. They acknowledged that while there are schemes like Garima Grehs, there are no homes to accommodate transgender persons who are senior citizens.

It was pointed out by one of the participants that transgender persons don't get rooms to rent, they face a lot of difficulties in finding a place to rent. They get accommodation only in slums and are forced to pay higher rents than other people even for the accommodation in slums. For example, if the rent charged to other people is 2000 or 2500 INR, members from the community may be charged anywhere between 6000 to even 8000 for the same place.

One of the participants also pointed out how transgender persons are not able to exercise their right to inheritance. They have filed a case in the sessions court hoping to get justice and receive equal share of their parent's property.

A representative shared an experience faced by her local community: the government agreed to give them accommodation, but it was outside the city, excluding the community but they consoled ourselves by saying at least they were getting accommodation. However, as soon as the government changed, even this was not given. The representative added that three years of advocacy went down the drain with this denial.

### **1.4. RIGHT TO FAMILY**

A representative shed light on how members of the LGBTQIA+ community does not have the right to marry, adopt and open joint accounts together with their partners.

## **2. Livelihood & Employment**

### **2.1. SOURCES OF INCOME**

One of the participants was of the opinion that the focus should not be on the sources of income but on securing more employment opportunities, they felt that only after achieving this could the community move on to the next step of sufficiency of income. Another participant raised the issue that the government has to implement reservations, not only issue quotas but follow up on their fulfilment.

### **2.2. DISCRIMINATION**

A transgender community representative spoke about how corporations and the government would often conduct tokenistic recruitment drives. They would come and take photos with us for publicity and people from the community who join the job leave because of the discrimination they face at the workplace. The representative drew our attention to how the community despite having literate and capable people is never offered skilled work, they get offered only unskilled jobs. Another participant added that even the employment office does not do anything about it, they just make us fill out attendance sheets, and give us biscuits and tea and with that, they feel they have done their part. Another community member observed that job advertisements continue to mention male and female only.

One of the participants also added how their experience in self-employment was successful. The participant said that in their city, the persons from the community they interact with engage in whatever job is available to them.

### **2.3. OPPORTUNITY OF EMPLOYMENT**

One of the participants raised the importance of reservation in government jobs for the community. Another drew our attention to how Setu Kendras are not set up, citing a lack of enough members from the community.

## **3. Health Services**

### **3.1. ACCESS TO HEALTH SERVICES**

A transgender person highlighted the need for trans-specific infrastructure, saying that few hospitals provide surgeries that the community specifically needs, like hormonal therapy and SRS. Further, the transgender person stated that there is less awareness among the community about the few hospitals that do provide these services.

A transgender person emphasised the need for medical insurance for surgeries such as SRS, and hormonal therapy.

One of the participants mentioned that LIC had released a scheme that transgender persons could also avail.

There are no separate wards for transgender persons in hospitals.

One of the participants mentioned that members of the community cannot claim the bodies of their partners and sign the forms when the partner is admitted to the hospital.

### **3.2. ATTITUDES OF HEALTHCARE PROFESSIONALS**

One of the participants told us about how members of the community are not given counselling as part of the HIV detection and diagnosis process. Another participant brought to our attention how community members are not counselled on SRS especially on the fact that is optional and not compulsory for transgender persons.

## **4. Access to Justice**

### **4.1. POLICE TREATMENT**

One of the participants mentioned that having better awareness of procedures while interacting with the police would help them. The police do not have adequate sensitization, a transwoman mentioned how a police official took down her statement addressing her as '<her name> bhai'. She mentioned that the police officials not using preferred pronouns is hurtful. Another participant pointed out that incarcerated transgender persons are held in prisons for men because of the absence of separate cells for transgender persons.

### **4.2. FORMAL AND INFORMAL MEANS OF JUSTICE**

A participant also shared with us how members of the community are treated in courts- Community members who were in lavender marriages face a lot of mis-treatment in family courts when they go for divorce proceedings.

A participant emphasized the need for active participation and representation of the community in DLSA and SLSA. They also pointed how denial of the rights of the community needs a separate grievance redressal process, and there must be punishment for denial.

Many participants felt there needs to be sensitization of the general public and awareness among the community for achieving justice for the community.

## **Broad Issues Highlighted by the Community**

From the many points raised out by the community, we noted two broad issues:

- The heteronormativity exhibited against the community in public services, infrastructure and documentation, and
- The lack of sensitization among the general public and officials

The community also raised an important aspect of their dilemmas. They point out that a person's sex can be ascertained by the doctor but gender is an individual's choice. There is less awareness about the distinction between sex and gender and lesser acknowledgement that a person has the choice of gender other than what they are assigned at birth.

## **Recommendations from the Community**

- Gender budgets to realise and operationalize the rights of the community was stressed by a participant.
- One of the participants strongly felt that a specific law on discrimination would help to make things become better for the community.

# ANNEXURE II

---

## A. Central Laws

1. The Transgender Persons (Protection of Rights) Act, 2019

<https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>

2. The Transgender Persons (Protection of Rights) Rules, 2020

<https://transgender.dosje.gov.in/docs/TG%20RULES,%202020.pdf>

3. Indian Penal Code, 1860

<https://ddashboard.legislative.gov.in/sites/default/files/A1860-45.pdf>

4. The Mental Healthcare Act, 2017

<https://ddashboard.legislative.gov.in/actsofparliamentfromtheyear/mental-healthcare-act-2017>

5. The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

<https://naco.gov.in/hivaids-act-2017>

6. The Medical Termination of Pregnancy Act, 1971

<https://www.indiacode.nic.in/bitstream/123456789/1593/1/A1971-34.pdf>

7. The Adoption Regulations, 2022

[https://cara.wcd.gov.in/PDF/adoption%20regulations%202022%20english\\_27.pdf](https://cara.wcd.gov.in/PDF/adoption%20regulations%202022%20english_27.pdf)

8. The Assisted Reproductive Technologies (Regulation) Act, 2021

<https://www.indiacode.nic.in/bitstream/123456789/17031/1/A2021-42%20.pdf>

9. The Constitution of India

<https://legislative.gov.in/constitution-of-india/>

10. The Criminal Procedure Code, 1973

[https://www.indiacode.nic.in/bitstream/123456789/15272/1/the\\_code\\_of\\_criminal\\_procedure%2C\\_1973.pdf](https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure%2C_1973.pdf)

11. The Indian Evidence Act, 1872

[https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea\\_1872.pdf](https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf)

12. National Medical Commission Act, 2019

[https://www.indiacode.nic.in/bitstream/123456789/11820/1/A2019\\_30.pdf](https://www.indiacode.nic.in/bitstream/123456789/11820/1/A2019_30.pdf)



13. Bhartiya Nyaya Sanhita, 2023 ( has not been notified as on March 26,2024)

[https://prsindia.org/files/bills\\_acts/bills\\_parliament/2023/The%20Bharatiya%20Nyaya%20Sanhita%202023.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2023/The%20Bharatiya%20Nyaya%20Sanhita%202023.pdf)

14. The Right of Children to Free and Compulsory Education Act, 2009

[https://www.indiacode.nic.in/bitstream/123456789/19014/1/the\\_right\\_of\\_children\\_to\\_free\\_and\\_compulsory\\_education\\_act\\_2009.pdf](https://www.indiacode.nic.in/bitstream/123456789/19014/1/the_right_of_children_to_free_and_compulsory_education_act_2009.pdf)

15. Legal Services Authority Act, 1987

[https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal\\_service\\_authorities\\_act%2C\\_1987.pdf](https://www.indiacode.nic.in/bitstream/123456789/19023/1/legal_service_authorities_act%2C_1987.pdf)

16. Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021

<https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf>

## B. Supreme Court Judgments

1. NALSA v. Union of India, 2014 (5) SCC 438

<https://main.sci.gov.in/jonew/judis/41411.pdf>

2. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

[https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_Judgement\\_24-Aug-2017.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf)

3. Navtej Singh Johar v. Union of India, 2018 (10) SCC 1

[https://main.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf)

4. Supriyo@Supriya Chakraborty v. Union of Indi, WP (C) 1011/2022

[https://main.sci.gov.in/supremecourt/2022/36593/36593\\_2022\\_1\\_1501\\_47792\\_Order\\_17-Oct-2023.pdf](https://main.sci.gov.in/supremecourt/2022/36593/36593_2022_1_1501_47792_Order_17-Oct-2023.pdf)

5. Parmanand Katara v. Union of India: 1989 AIR 2039

<https://main.sci.gov.in/jonew/judis/7839.pdf>

6. Shanavi Ponnusamy v. Ministry of Civil Aviation

[https://main.sci.gov.in/supremecourt/2017/30253/30253\\_2017\\_2\\_10\\_38024\\_Order\\_08-Sep-2022.pdf](https://main.sci.gov.in/supremecourt/2017/30253/30253_2017_2_10_38024_Order_08-Sep-2022.pdf)

7. Thangjam Santa Singh @Santa Khurai v. Union of India & Ors WP (C) 275/2021 (pending before the court as on March 26, 2024)

<https://clpr.org.in/wp-content/uploads/2021/06/Santa-Khurai-Blood-transfusion-PIL-1.2.2021.pdf>

## C. State Laws

1. The Karnataka Civil Services (General Recruitment) (Amendment) Rules, 2021.

<https://translaw.clpr.org.in/wp-content/uploads/2021/08/Karnataka-Civil-Services-General-Recruitment-Amendment-Rules-2021.pdf>

## D. High Court Judgments

1. Sangama v. State of Karnataka- Karnataka High Court

[https://karnatakajudiciary.kar.nic.in/karjud/case\\_details\\_hck.php?params=UFdkOmZjM3lKOGY2TFZkZjYvNkVUdDJwWnVUZTFyOW9sSEg-zYjdNcDNOZ0owS3RvbklVjNaUEpLVmxPSHVBbkM2cUVTTUNkNkcvc2RoeDVzRzk0bFE9PQ==](https://karnatakajudiciary.kar.nic.in/karjud/case_details_hck.php?params=UFdkOmZjM3lKOGY2TFZkZjYvNkVUdDJwWnVUZTFyOW9sSEg-zYjdNcDNOZ0owS3RvbklVjNaUEpLVmxPSHVBbkM2cUVTTUNkNkcvc2RoeDVzRzk0bFE9PQ==)

2. Mrs. X v. State of Uttarakhand, WP No. (Cri): 28 of 2019, Uttarakhand High Court

<https://translaw.clpr.org.in/wp-content/uploads/2021/06/Shilpi-Lawrence-Judgment-on-the-issue.pdf>

3. Sushma v. Commissioner of Police- W.P. No. 7284 of 2021 Madras High Court

[https://translaw.clpr.org.in/wp-content/uploads/2021/08/S\\_Sushma\\_v\\_Commissioner\\_of\\_Police.pdf](https://translaw.clpr.org.in/wp-content/uploads/2021/08/S_Sushma_v_Commissioner_of_Police.pdf)

4. Rano v. State of Uttarakhand, W.P. (Cri.) No. 1794 of 2018.- Uttarakhand High Court

<https://translaw.clpr.org.in/wp-content/uploads/2018/12/Rano-V-State-of-Uttarakhand-1.pdf>

5. P. Sudha v. Secretary, W.P. No. 16113 of 2022 -Madras High Court

<https://mhc.tn.gov.in/judis/index.php/casestatus/viewpdf/663369>

6. Daya Gayathri & Ors. v. State of Kerala & Ors.W.P. (C) No. 40030 of 2023-Kerala High Court

<https://hckinfo.kerala.gov.in/digicourt/Casedetailssearch/fileviewcitation?token=MjE1NzAwNDAwMzAyMDIzXzZmucGRm&lookups=b3JkZXI-zLzlwMjM=&citationno=MjAyNDpLRVlGMjllNA==>

7. Karan Tripathi v. NCRB WRIT PETITION (CRIMINAL) NO. 9596 OF 2020.- Delhi High Court

<https://translaw.clpr.org.in/wp-content/uploads/2021/02/Delhi-High-Court-07.12.2020.pdf>

8. Anjali Guru Sanjana Jaan v. State of Maharashtra, W.P.NO. 104 OF 2021

<https://translaw.clpr.org.in/wp-content/uploads/2021/07/Anjali-Guru-Sanjana-Jaan-v-State-of-Maharashtra.pdf>

9. Sumana Pramanik @ Suman Pramanik v. Union of India and Ors. W.P. A. 9187 OF 2020- Calcutta High Court

[https://translaw.clpr.org.in/wp-content/uploads/2021/04/display\\_pdf.pdf](https://translaw.clpr.org.in/wp-content/uploads/2021/04/display_pdf.pdf)

10. Swapna and Ors. v. Chief Secretary of Tamil Nadu and Ors., W.P.No. 31091 of 2013

<https://translaw.clpr.org.in/wp-content/uploads/2020/12/S-Swapna-v-Chief-Secretary.pdf>

## E. Other Legal Documents

1. National Medical Commission notification in response to Madras High Court directive in W.P. No. 7284 of 2021

[https://www.mhc.tn.gov.in/judis/madras-do/index.php/casestatus/viewpdf/WP\\_7284\\_2021\\_XXX\\_O\\_0\\_04102021\\_177.pdf](https://www.mhc.tn.gov.in/judis/madras-do/index.php/casestatus/viewpdf/WP_7284_2021_XXX_O_0_04102021_177.pdf)

2. National Human Rights Commission Advisory for the Protection of the rights of the LGBTQIA Community

[https://nhrc.nic.in/sites/default/files/Advisory\\_for\\_the\\_Protection\\_of\\_the\\_Rights\\_of\\_LGBTQI%2B\\_Community.pdf](https://nhrc.nic.in/sites/default/files/Advisory_for_the_Protection_of_the_Rights_of_LGBTQI%2B_Community.pdf)

3. Press Council of India, Media Guidelines for Covering News on the LGBTQ Community, 2023

<https://presscouncil.nic.in/Pdf/RLGBTQ21092023.pdf>

4. University Grants Commission (Prevention, protection and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015

[https://www.ugc.gov.in/pdfnews/7203627\\_UGC\\_regulations-harassment.pdf](https://www.ugc.gov.in/pdfnews/7203627_UGC_regulations-harassment.pdf)

5. University Grants Commission, Implementation of Gender Champions in Educational Institutions, 2023

[https://www.ugc.gov.in/pdfnews/5505672\\_Advisory-Gender-Champion-2023.pdf](https://www.ugc.gov.in/pdfnews/5505672_Advisory-Gender-Champion-2023.pdf)

6. Karnataka State Policy on Transgender Persons, 2017

<https://translaw.clpr.org.in/wp-content/uploads/2018/10/karnataka-state-transgender-policy-3.pdf>

7. Kerala State Policy on Transgender Persons, 2015

<https://translaw.clpr.org.in/wp-content/uploads/2019/01/State-Policy-for-Transgenders-in-Kerala-2015.pdf>

8. Conversion Therapy (Prohibition) Bill, 2022

<https://sansad.in/getFile/BillsTexts/LSBillTexts/Asintroduced/47%20of%202022%20as%20introduced.pdf?source=legislation#::~:~:text=Any%20person%20or%20a%20professional,extend%20upto%20ten%20lakh%20rupees.>

9. Government of Tamil Nadu, Glossary of LGBTQIA+

<https://www.paalputhumai.com/wp-content/uploads/2022/08/Glossary-for-addressing-LGBTQIA-Community-2022-by-TN-SW-Dept.pdf>

10. Supreme Court of India, Handbook for Combatting Gender Stereotypes

<https://www.paalputhumai.com/wp-content/uploads/2022/08/Glossary-for-addressing-LGBTQIA-Community-2022-by-TN-SW-Dept.pdf>

11. Ministry of Social Justice and Empowerment, Equal Opportunity Policy for Transgenders, 2024 (applicable to employees of the Ministry only)

<https://socialjustice.gov.in/writereaddata/UploadFile/67311708075108.pdf>

12. Ministry of Home Affairs, Advisory on Treatment and Care of Transgender Persons in Prisons

[https://www.mha.gov.in/sites/default/files/2022-09/Advisory\\_TransgenderPersonsinPrisons\\_10012022%5B1%5D.PDF](https://www.mha.gov.in/sites/default/files/2022-09/Advisory_TransgenderPersonsinPrisons_10012022%5B1%5D.PDF)

# ANNEXURE III

---

Please refer to the Transgender Rules 2020 - Schedule for the Form I-VI for the ID cards.

<https://transgender.dosje.gov.in/docs/TG%20RULES,%202020.pdf>

# ANNEXURE IV

---

Grievance Redressal Process of the National Council for Transgender Persons

1. Go to the National Transgender Portal: <https://transgender.dosje.gov.in/>
2. Create an account by registering online.
3. Once registered, access the dashboard and locate the section labelled “Grievance” or “Complaint.”
4. For additional guidance, refer to the NTC’s grievance filing manual: [https://transgender.dosje.gov.in/Applicant/Registration/ApplyNow\\_4](https://transgender.dosje.gov.in/Applicant/Registration/ApplyNow_4) (Look for “Manual.pdf” or similar)

# ANNEXURE V

---

List of Documents for ID Card

1. Birth Certificate
2. Caste/Tribe Certificate
3. Class 10 (Secondary School) certificate or
4. Class12 (Senior Secondary School) certificate or SSLC
6. Election (Photo) Identity Card
7. Aadhaar Card
8. Permanent Account Number (PAN) Card
9. Driving Licence
10. BPL Ration Card
11. Post Office Bank/Bank Passbook with photo
12. Passport
13. Kisan Passbook
14. Marriage Certificate

This is an illustrative list, the individual needs to enquire with the District Magistrate if other documents could be produced for the ID card.

# ANNEXURE VI

---

## Glossary of Terms

1. **Conversion therapy** - means any practice, sustained effort or treatment aiming to change a person's sexual orientation from homosexual or bisexual to heterosexual or his gender identity or gender expression from transgender to cis-gender using psychological, physical, spiritual or other interventions.
2. **Deadname** - A deadname is a name that a person within the LGBTQIA community no longer uses. Usually, it is the name assigned at birth. When someone uses this name, whether intentionally or not, it is referred to as deadnaming. Deadnaming is offensive and hurtful.
3. **Gender identity** - refers to the internal and individual experience of the gender of a person, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender including name, dress, speech and mannerisms
4. **Gender binary** - A rigid and narrow idea of what gender is and how it is expressed, stems from the assumption that there are only two ways of being in the world- i.e. gender binary of male and female
5. **Gender expression** - Gender Expression is how we express ourselves. It's how we communicate and present our gender. This could mean appearances that are visible such as how we do our hair or what we wear, but it could also be the less visible things like our behaviour or mannerisms. There is no set or right way of expressing gender.
6. **Heteronormativity** -Attitudes and behaviours that incorrectly assume everyone is straight, or that being heterosexual is "normal". Heteronormativity also assumes people should and will align with conventional expectations of society for sexual and romantic attraction.

7. **Hormone therapy** - is a gender-affirming therapy used by transgender persons to achieve the desired characteristics of the gender of their choice. For example, transmen would take testosterone therapy to increase their testosterone levels to that of biological men.

8. **Lavender marriages** - this refers to heterosexual marriages of convenience between two individuals where either or both of them are of homosexual orientation. Individuals enter into this arrangement to avoid stigma surrounding their sexual orientation or to avail civil rights or financial benefits available to heterosexual couples.

9. **LGBTQIA** - Abbreviation for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual. The additional "+" stands for all of the other identities not encompassed in the short acronym. An umbrella term that is often used to refer to the community as a whole.

a. **Lesbian** - Usually, someone who identifies as a woman, whose primary sexual and affectional orientation is toward people of the same gender. However, some nonbinary people also identify as lesbians, often because they have some connection to womanhood and are primarily attracted to women.

b. **Gay** - Usually referring to men who have a sexual or affectional orientation towards men, but has been used as an all-encompassing term for any individual who have a sexual and affectional orientation toward people of the same gender.

c. **Bisexual** - A person whose primary sexual and affectional orientation is toward people of the same and other genders, or towards people regardless of their gender. Some people may use bisexual and pansexual interchangeably.

d. **Transgender** - A person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinnar, hijra, aravani and jogta.

e. **Queer** - An umbrella term used to describe gender/sexual/romantic orientations or identities that fall outside of societal norms. Historically, queer has been used as an epithet/slur against the LGBTQ+ community. Some people have reclaimed the word queer and self-identify in opposition to assimilation [adapted from “Queering the Field”]. For some, this reclamation is a celebration of not fitting into social norms. Not all people who identify as LGBTQIA use “queer” to describe themselves. For example, those of earlier generations are typically averse to self-identifying as queer. The term is often considered hateful when used by those who do not identify as LGBTQIA.

f. **Intersex** - An umbrella term to describe a wide range of natural body variations that do not fit neatly into conventional definitions of male or female. Intersex variations may include, but are not limited to, variations in chromosome compositions, hormone concentrations, and external and internal characteristics. Hermaphrodite is an outdated and offensive term that has been used to describe intersex people in the past.

g. **Asexual** - A broad spectrum of sexual orientations generally characterized by feeling varying degrees of sexual attraction or a desire for other individuals. Asexuality is distinct from celibacy, which is the deliberate abstention from sexual activity, despite sexual desire. Some asexual people do have sex and do experience varying levels of sexual attraction. There are many diverse ways of being asexual. A person who does not experience sexual attraction can experience other forms of attraction such as romantic attraction, physical attraction and emotional attraction, as these are separate aspects of a person’s identity.

10. **Sex reassignment/sex reconstruction surgery** - Surgery on a consenting who wishes to align their sexual/reproductive organs to the gender identity they align with.

11. **Sexual Orientation** - refers to an individual’s innate preferences for emotional, affectional and sexual attraction to, and intimate and sexual relations with other individuals; a person’s sexual orientation varies based on the attraction they feel for other individuals across the gender spectrum.



# ANNEXURE VII

---

## Dos and Don'ts for Trainers

1. While briefing the community, please note that:
  - Central Acts and Supreme Court judgments are binding and are applicable throughout India,
  - State Acts and High Court judgments are binding to the applicable State and have persuasive value in other States,
  - Guidelines are not binding and are of persuasive value.
  - Instructions from the nodal body for a particular sector, such as the directive by the National Medical Commission banning conversion therapy is binding on medical practitioners in India.
2. Ask and respect their preferred pronouns, titles, chosen names, and gender identities. Read up and use correct terminology, it's also completely ok to ask a person if you are unsure about the terminology. If the community or one of its members gives you constructive feedback, use this opportunity to reflect on what they are providing, and if you need to apologise, do so.
3. Listen carefully, practice active listening and empathy, and try to put yourself in their shoes while listening and addressing their concerns. Do not take their experiences and concerns lightly.
4. When informing them about their rights, tell them the correct information. For example, transgender persons have the right to marry, but same-sex marriages are still not recognised in India. Do not say, the entire community has the right to marry, instead, state the facts and then invite thoughts on how the entire community can get this right,



5. Clearly distinguish between what they can legally claim and what is yet to be enforced. For example, while transgender persons have the right to reservation in education and employment, this is yet to be enforced in many states.
6. Do not disclose a person's sexual orientation or gender identity without their consent. Do not pressure individuals to disclose their sexual orientation or gender identity if they are not comfortable doing so. Respect their autonomy and boundaries.
7. Recognise that the LGBTQ+ community is diverse and intersectional, with individuals from various backgrounds, cultures, and identities. Avoid generalizations or stereotypes.

# ANNEXURE VIII

Name and Contact Information of the Community Based Organisations (CBO)  
the community can reach out for support

## **Utthaan JSR CBO**

Jamshedpur H.No. 18, Munda Colony  
Old Purliya Road, Jamshedpur 831001  
*utthaanjsr@gmail.com*  
Amarjeet Singh 6202459954

## **Saksham Prakriti Welfare Society Chandigarh**

232/1 Anuj Pandey Marg, Near Sanigawan Police Chowki Kanpur Nagar, Uttar  
Pradesh 208021  
*kanpurqueerlgbtqi@gmail.com*  
8090571020

## **Metpally (MDL) Chetana Non Governmental Organisation**

*chetanamtl@gmail.com*  
Kota Shivakumar 9959871440

## **Snegidhan And Snegidhi Trust 2950**

Anna Street, Sivanthi Adithan Nagar, Redhills, Chennai 400052  
Inba Ignatius 9566200572

## **Transmasculine Initiative, Solidarity, Advocacy And Resistance (TISAR)**

68/142, Jessore Road, Amarpally, Dist North 24 Parganas, Kolkata, West Bengal  
700074  
*thetisar20@gmail.com*  
8910651218

## **Mito Trust (CBO)**

Baripada, Mayurbhanj, Odisha  
Tapan Kumar Behera 9040140168 / Abhijit Kumar Das 9861297708

## **Shakhya Foundation Gandhinagar**

1st Floor NR Tower Police Chowki, Tower Chowk Kalol (NG) 38272  
*shakhyafoundation@gmail.com*  
*kiritnayak8973@gmail.com*  
8780592551

# ANNEXURE IX

No.	STATES/UNION TERRITORIES	INCOME CEILING LIMIT (PER ANNUM)
1.	Andhra Pradesh	Rs. 3,00,000
2.	Arunachal Pradesh	Rs. 1,00,000
3.	Assam	Rs. 3, 00, 000
4.	Bihar	Rs. 1,50,000
5.	Chhattisgarh	Rs. 1,50,000
6.	Goa	Rs.3,00,000
7.	Gujarat	Rs.1,00,000
8.	Haryana	Rs. 3,00,000
9.	Himachal Pradesh	Rs. 3,00,000
10.	Jammu & Kashmir	Rs. 1,00,000
11.	Jharkhand	Rs. 3,00,000
12.	Karnataka	Rs. 1,00,000
13.	Kerala	Rs. 300,000
14.	Madhya Pradesh	Rs. 1,00,000
15.	Maharashtra	Rs. 3,00,000
16.	Manipur	Rs. 3,00,000
17.	Meghalaya	Rs. 1,00,000
18.	Mizoram	Rs. 25,000
19.	Nagaland	Rs. 1,00,000
20.	Odisha	Rs.3,00,000
21.	Punjab	Rs. 3,00,000
22.	Rajasthan	Rs. 1,50,000
23.	Sikkim	Rs. 3,00,000
24.	Telangana	Rs.1,00,000
25.	Tamil Nadu	Rs. 3,00,000
26.	Tripura	Rs. 1,50,000
27.	Uttar Pradesh	Rs. 1,00,000
28.	Uttarakhand	Rs. 3,00,000
29.	West Bengal	Rs. 1,00,000
30.	Andaman & Nicobar Islands	Rs.3,00,000
31.	Chandigarh UT	Rs. 3,00,000
32.	Dadra & Nagar Haveli UT	Rs. 15,000
33.	Daman & Diu	Rs. 1,00,000
34.	Delhi	General – Rs. 1,00,000   Transgender – Rs. 2,00,000   Senior Citizen – Rs. 2,00,000
35.	Lakshadweep	Rs. 9,000
36.	Puducherry	Rs. 1,00,000

# ANNEXURE X

Forums and processes for availing free legal aid

## FORUMS

<b>Jurisdiction</b>	<b>Appropriate Authority</b>
Courts subordinate to district court (at the taluk/ block level)	Taluk legal services committee
District Court	District Legal Services Authority which is in the premises of the District Court in the District Headquarters;
High Court	High Court Legal Services Committee
Supreme Court	Supreme Court Legal Services Committee

## PROCEDURE FOR APPLYING

- All of the above authorities have a front office where an application for free legal aid can be filed.
- Application can be done online or offline. The online application form is available here. Offline application forms are available at the nearest legal service authority office. Applications can also be written on a simple piece of paper with the necessary details such as name, gender, residential address, employment status, nationality, whether SC/ ST (with proof in support), income per month (with affidavit), the case for which legal aid is required, reason for seeking legal aid, etc. and be submitted via post. In case the applicant cannot fill up the form by themselves, paralegal volunteers are also present at Legal Service Authority buildings to fill the application on behalf of the concerned person.
- The application should also be accompanied by identity proofs and requisite certificates of proof of belonging to a category that is eligible for free legal services. For women, there is no requirement to show income.











3rd Floor, Manthan Plaza  
Nehru Road, Vakola  
Santacruz (East)  
Mumbai 400 055  
India

[info@humsafar.org](mailto:info@humsafar.org)

