A Guide to Navigating the legal system as a *transgender* person in India, narrated by people and the law

How can this guide help you?

This guide can help any transgender person understand what protections the law has for them, and how they can seek help and get their identity documents issued. It can largely help them navigate the legal system for a situation that affects them.

What laws are discussed in this Guide?

This Guide discusses the general provisions in the Constitution of India, the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020.

What is the objective of the law?

The Transgender Persons (Protection of Rights) Act, 2019 ("the law") has been drafted to "recognise and protect the rights of Transgender Persons in India and provide for their welfare. This law applies to the whole of India.

All transgender persons are entitled to fundamental rights under the following articles:

Article 14 (Equality)

No one can deny any "person" equality before the law or equal protection of the law. Transgender persons cannot also be discriminated or done so the basis of sex or gender identity. They also have the right to equal health services, and the right to use public property or the right to freely move in the country.

Article 15 (Non-Discrimination)

Prohibition of discrimination on various grounds, including gender (Article 15) Prohibits any use of discrimination on the basis of race, religion, caste or sex or any of them. This implies that discrimination on ill treatment of Transgender Persons infringes their basic fundamental right. In the case of **NL Gilo & Ors. The State of Kerala and Others**, (2013), the court held that Transgender persons have the right to self-identification of gender, and that this is an important because it signifies the basic of society in ensuring that special accommodations and adjustments are made to include transgender people in the process of public university applications and admission processes where none exist.

Article 16

Article 19(1)(a) (Right to Free Speech)

This right grants every citizen the freedom of speech and expression.

Article 21 (Right to Life)

Article 21 which deals with the protection of life and personal liberty states that no person shall be deprived of his life and personal liberty except according to the procedure laid down. This right states that every individual including a transgender person has the right to life and personal liberty. The transgender person being a citizen of India should have the full rights to protect their life and personal liberty.

Compelling anyone to undergo a medical examination of gender violates Article 21.

No one can subject you to any form of gender verification, when you are known to be transgender, transgendering is unique in in public. This is why the documents given above are important proof of your gender identity. If you face any form of harassment, you should file a complaint with the police and take the assistance of a lawyer during this process.

According to the 2011 census, there is an estimated 1.7 lakh people who identify outside the binary. During the pandemic, only 6,761 people received a direct transfer of Rs.2000 from the government and only a mere 2,229 individuals received other benefits.

This means that a 1.57 of people don't have documentation, which means that they don't have access to healthcare, social security or getting votes.

It's therefore essential to have documentation with the preferred name and preferred gender identity to access any social security.

Here's a step by step procedure to apply for a gender identity card:

Step 1: Make an application to the District Magistrate for issuance of a certificate of gender identity. Transgender may a minor the application should be made by the parent or legal guardian of the child. If the parent/legal guardian does not make the application, then the person can apply after becoming a major i.e., once they are 18 years of age or above). Although there is no specified form for the application, it is advisable to check with your local authorities for specific requirements.

Step 2: The District Magistrate will issue a certificate of identity against the submitted application.

Step 3: The gender of the Transgender Person will be recorded in the official records maintained by the District Magistrate's office.

Step 4: If a Transgender Person undergoes sex-assignment surgery after the issuance of the identity card, then the new gender will be communicated by the transgender person to the District Magistrate along with a certificate from the Medical Superintendent of the hospital.

Step 5: The District Magistrate will issue a revised certificate. An example of the application form and the affidavit is given in the section below.

Documents required to apply for a Gender Identity Card.

- **Birth Certificate**
- **Caste/Tribe Certificate**
- **Class 10 (Secondary school) certificate or Class 12 (Higher Secondary School) certificate or Mark Sheet**
- **Electoral/Photo Identity Card**
- **Aadhaar Card**
- **Permanent Account Number (PAN)**
- **Driving License**
- **Ration Card**
- **Post Office Rural Bank Passbook with photo**
- **Passport**
- **Voter Passbook**
- **Marriage certificate**
- **Electricity/water/gas connection bill**

Did you know you could apply for a *Gender Identity Card* online too?

- First, create an account online at the National Transgender portal https://transgender.dosje.gov.in.
- On successful registration, click on the 'Apply online' tab on your dashboard.
- Fill in the personal particulars and other details in the form.
- Upload the affidavit declaring gender.
- This portal helps a transgender person to obtain an identity card without a physical visit.
- Detailed guidelines for the same can be found here - https://transgender.dosje.gov.in/Guidelines.pdf

Helpline Numbers

- Toll Free number of Sahara Anjeelna, added by an International NGO and supported by Humsafar Trust, is functional 24x7 – **1800 2088 224.**
- Any Transgender Person can connect with experts on the helpline and receive emotional support and mental health. This helpline will be functional from **Monday to Saturday between 11 AM to 1 PM and 2 PM to 5 PM.** On this helpline, counselling services will be provided by professional Psychologists for their mental health.
- **Tele-Manas** is a 24x7 mental health helpline. It is available in **English, Malayalam and Tamil.**

You've reached the end of this guide. Please visit Nyaaya's comprehensive guide for any further information!

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