

The Transgender Persons (Protection of Rights)
Amendment Act, 2026

What can State Governments do?

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What Can the State Government Do?

The Transgender Persons (Protection of Rights) Amendment Act, 2026 ('Amendment Act') which was passed by the Parliament is a significant departure from the framework established under the Transgender Persons (Protection of Rights) Act, 2019 ('2019 Act'). It substantially dilutes the rights recognised by the Supreme Court in *NALSA v. Union of India* ('NALSA'), particularly the fundamental right to self-perceived gender identity.

It does so by:

- NARROWING** The definition of the term transgender person to certain socio-cultural groups, persons with intersex variations, and persons 'compelled to present as transgender';
- REMOVING** The right to self-perceived gender identity; Mandating a medical recommendation prior to issuance of a transgender identity card; and
- INTRODUCING** A new set of offences based on harmful stereotypes about the transgender community.

¹ AIR 2014 SC 1863.

Do State Governments have the power to continue to protect the rights of transgender persons in their State?

Yes, State Governments can introduce rules in exercise of their rule-making powers under the 2019 Act to continue to recognise and protect transgender rights in their State. In case the State Government has already enacted rules under the 2019 Act, it can amend them.

What are rules?

Laws are made by the legislature. The Parliament makes central laws which apply to the country and the State Legislature makes State laws which apply only to that State. Rules, on the other hand, are made by the executive, which is the Government.

Usually laws empower the Government to make rules to implement it on the ground. **Certain laws such as the Transgender Persons (Protection of Rights) Act, 2019 empowers both the Central Government and the State Government to make rules under it.** The State of Tamil Nadu has in exercise of this power enacted the Tamil Nadu Transgender Persons (Protection of Rights) Rules, 2022 for the State.

The law does not require Parliament to set out every step in the text of a legislation. Once the Parliament has laid down the policy, purpose, and broad framework of a law in a legislation, it may leave the operational details to rules, notifications, and orders which the State Government has the power to issue.

Section 22 of the 2019 Act and the Amendment Act empowers the State Government to make rules to operationalise the Act. Further, the State Government can undertake administrative measures to implement the Act for the state. **Such measures can be clarificatory in nature, be aimed at improving on-ground access and delivery of benefits and services, and to put in place guidelines for authorities and institutions under the 2019 Act.**

As long as they are consistent with the objective and intention of the 2019 Act, the State Government can enact rules or issue orders or clarifications that prescribe procedures, preserve continuity of recognition of transgender persons, or make access to entitlements workable on the ground for transgender persons.

How can one advocate with the State Government?

Just like the Union Government has Ministries which are responsible for administering laws and policies for a specific subject area (for example, Ministry of Social Justice and Empowerment; Ministry of Education; Ministry of Health and Family Welfare, etc.), every State Government has Departments.

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You must identify which Department of your State Government is responsible for administering transgender rights in your State. For example, in Tamil Nadu transgender rights fall within the domain of the Department of Social Welfare and Women's Empowerment. In Karnataka, transgender rights fall within the domain of the Department of Women and Child Development.

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Each Department is headed by a Member of the Legislative Assembly ('MLA') or a Member of the Legislative Council ('MLC') of your State. This person serves as the Minister of that Department (for example: Minister of Social Welfare and Empowerment; Minister of Health; etc.). The Minister is the political head of the Department and is appointed by the Chief Minister of the State.

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Departments also have administrative heads. Administrative heads are senior officers from services such as the Indian Administrative Service ('IAS') or Indian Police Service ('IPS') and are known as the Secretary of that Department (for example, Secretary of the Ministry of Social Justice and Empowerment; Secretary of Health, etc.). In some states, the post may be designated 'Principal Secretary' or 'Additional Chief Secretary'. These senior civil servants are usually chosen by the Chief Minister.

04

The contact details of both the Minister and Secretary are available on the website of the Department. You can write to the Minister and the Secretary of the Department administering transgender rights in your State to make a representation. You can also follow up by calling the Department, the number of which is usually available on the Department website.

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If you cannot get through to the Minister or Secretary's office, most government departments have a 'Who's Who' page where names of other officers in the department (Directors, Additional Directors etc.) are listed. While these officers all serve under the Secretary, they may be receptive to outside input and be willing to be internal advocates.

06

Finally, each state is divided into constituencies. Each constituency has an elected representative who is a Member of the Legislative Assembly ('MLA'). The Legislative Assembly makes laws for the State. The information, including contact information of your constituency's MLA is publicly available. You can also make a representation to the MLA representing your constituency. Your MLA may be from the governing party or the opposition, but even an opposition MLA has the power to raise the issue in the assembly through written or oral questions.



Identify Your Elected Representative

To find your MLA's contact information, navigate to your State from the National Portal of India page (<https://www.india.gov.in/directory/whos-who/mla>) and look up your MLA.



Definition, Self-Identification, and Identity Cards

Do State Governments have the power to continue to protect the rights of transgender persons in their State?

The Amendment Act defines a transgender person as certain socio-cultural groups namely, hijra, kinner, aravani and jogta, persons with intersex variations, and persons 'compelled to present as transgender'.

The terms hijra, kinner, aravani and jogta have no fixed or stable meanings, and neither are these fluid groups nor identities present in every State.



For example, the term aravani seemingly refers to a section of the transgender community in Tamil Nadu. However, the term is contested, has no fixed meaning and does not have widespread prevalence in the State.

The intent of the definition is to cover socio-cultural transgender groups prevalent in India, which vary from region to region.

The State Government can through an order clarify that for the purposes of implementation of the Amendment Act in the State the terms hijra, kinner, aravani or jogta (as relevant) will be construed broadly so as to include socio-cultural groups and names recognised in the State.

This would ensure that the narrowed terminology in the Amendment Act does not exclude persons who have historically and culturally been recognised within the State, and the State Government's welfare and identity framework.

What about the right to self-perceived gender identity which stands omitted by the Amendment Act?

The Amendment Act omits the right to self-perceived gender identity which was provided under the 2019 Act.

The right to self-perceived gender identity has been recognised as a fundamental right by the Supreme Court in *NALSA v. Union of India*. Specifically, the Court directed, 'Transgender persons' right to decide their self identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.' [Para 129(2)].

This fundamental right to self-perceived gender identity cannot be taken away via an amendment to the 2019 Act and continues to be protected under the Constitution.

What about the validity of identity cards issued under the 2019 Act or prior?

For a law, including an amendment to a law, to have retrospective effect there must be clear language in the law which expresses this.

What does retrospective effect mean?

Usually, a law has a **prospective** effect. This means if a law is notified and comes into force on January 1, 2026, it will apply to conduct, actions or events only from January 1, 2026. It will not apply to any conduct, actions or events prior to this cut-off date. It only applies onwards from the date.

When a law has **retrospective** effect, it means the law applies to conduct, actions or events before such law has been notified and comes into force. For example, if a law comes into force on January 1, 2026 but has retrospective effect, it means it will apply to conduct, actions or events even prior to January 1, 2026.

The concern of retrospective effect is because of the following provision which has been added to the definition of transgender persons by the Amendment Act - *“Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.”*

The term 'sexual identities' has not been defined by the Amendment Act. The term 'sexual identity' means one's romantic or sexual attraction to one or more sexes or genders and includes heterosexual, homosexual, bisexual and asexual persons. It is not the same thing as 'self-perceived gender identity' which means one's perception of one's gender. **The 2019 Act applies only to transgender persons and regulates gender identity and not sexual identity.**

Further, over several years, transgender persons have exercised their right to self-perceived gender identity and obtained their certificates under the 2019 Act. Through its consistent practice of issuing and accepting these certificates for official and administrative purposes, the government has created a **legitimate expectation** that these documents will continue to be recognised as valid.

The Supreme Court has clearly stated that such a legitimate expectation is formed when there exists a consistent practice by the State particularly in relation to the exercise of a right by an individual.

In this case, transgender persons have structured their legal identity and accessed a range of rights and entitlements on the basis of certificates issued by the State. Any refusal to recognise such certificates would defeat this reliance and unsettle the legal status that the State itself has consistently affirmed under the 2019 Act and prior.

State Governments must continue to recognise identity cards issued prior to the Amendment Act as valid.



Mandatory Medical Recommendation and Informational Privacy

The Amendment Act makes a medical recommendation mandatory for the issue of a transgender identity card. What can State Governments do to address this?

The rules cannot remove the requirement that the District Magistrate examine the recommendations of a medical authority before issuing a transgender identity card.

However, rules can put in place the process that must be followed by the medical authority to minimise implementation challenges on the ground.

THE RULE MAY:

- Clearly outline the scope of recommendations that the medical authority makes to the District Magistrate. This will ensure that the medical authority cannot act in an arbitrary manner based on her whims or fancies.

- Provide that the medical authority can ascertain that the person is a transgender person based on self-identification and declaration of such person.
- Prohibit any physical examination and intrusive medical procedures and clarify that a psychological assessment is sufficient.
- Prescribe a clear timeline for submission of the recommendation. If the medical authority does not submit the recommendation within such a timeline, the District Magistrate can go ahead and process the application and issue a transgender identity card.

The Amendment Act makes it mandatory for medical institutions to give information to the District Magistrate about the surgery that a transgender person has undergone. What can State Governments do to address this?

The rules cannot remove the requirement that the medical institution share information about a transgender person's gender affirming surgery with the District Magistrate.

However, rules can put in place the process to be followed by the medical institution and District Magistrate, and ensure that the personal information of the transgender person be protected and confidentiality maintained.

The Supreme Court in *Puttaswamy v. Union of India*² has recognised that the right to privacy is a fundamental right protected by the Constitution.

As a part of this right, the Court observed that informational privacy which includes a person's medical information³ is a part of the right to privacy. Thus, the State Government must put in place rules which ensure such medical information is safeguarded and a transgender person's right to privacy is protected.

THE RULE MAY:

- Require that the medical institution notify the person whose medical information is going to be shared with the District Magistrate before sharing it;
- Disclose to the person what information about them is being shared with the District Magistrate and give such person an opportunity to correct any errors, or otherwise update their information;
- Notify the person when their information has been shared with the District Magistrate;
- Only share such information which is necessary for the purpose of verification of identity of the person, and for change of gender marker to male or female on certificate of identity. What categories of information are necessary must be arrived at in

² (2017) 10 SCC 1.

³ Medical information will include information about the gender affirming procedures that a person has undergone.

consultation with the community, gender-affirming healthcare professionals and lawyers.

- Put in place a strict timeline that the medical institution has to follow within which information must be shared with the District Magistrate;
- Make it mandatory for the medical institution and District Collector to maintain confidentiality of information, ensure it is stored in a secure manner, and is not disclosed to any third party unless such disclosure is necessary for the purpose of ascertaining the identity of the applicant or change of gender marker.
- Limit the time-period for which the medical institution and District Magistrate can retain the person's information after the gender marker of the person has been legally changed.
- The State Government must also prescribe a standard form which medical institutions are guided by when sharing information to limit their discretion and avoid arbitrariness in sharing of such sensitive personal information.

Finally, any data that constitutes personal data⁴ as per Digital Personal Data Protection Act, 2023 ('DPDP Act') must be collected, stored and transferred in the manner provided in the Act and rules under it. The State Government must introduce a rule to ensure that personal data including medical data, health data and gender related data processed under the 2019 Act is handled according to the provisions of the DPDP Act to safeguard a transgender person's right to informational privacy.

⁴ Personal data means any data about an individual who is identifiable by or in relation to such data.



Mitigating Misuse of Newly Inserted Offences

What can the State Government do to address the chilling effect of the Amendment Act on gender-affirming healthcare?

The Amendment Act introduces new offences, which criminalise causing grievous hurt through surgical, chemical, or hormonal procedures and compelling a person to assume or present a transgender identity through force, allurement, deceit, or undue influence.

Consultations reveal that healthcare providers fear that these provisions may be misused against practitioners providing legitimate gender-affirming care. This may create a chilling effect on the provision of gender-affirming healthcare, leading to hesitation, delay, or discontinuation of care for transgender persons.

The Mental Healthcare Act, 2017 recognises that everybody has a right to access mental healthcare and prohibits discrimination based on sex, gender identity and sexual orientation.

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 issued under the National Medical Commission Act, 2019 mandates that physicians must provide quality patient care, respect human rights, maintain patient confidentiality, and provide care without discrimination. The 2019 Act prohibits discrimination in matters of healthcare for transgender persons.

The Ministry of Health and Family Welfare has also released the 'Standard Operating Procedures for Medical Treatment of Transgender Persons' in August 2024 and notes that the assessment for 'gender incongruence' by mental healthcare professionals must adhere to the World Health Organisation diagnostic protocol. Critically, the Ministry of Social Justice and Empowerment has clarified that the criminal provisions under the Amendment Act *"are not intended to restrict legitimate gender affirmative care"*.

The Amendment Act does not prohibit or criminalise gender affirming care.

The State Government can through an order clarify that the new offences⁵ inserted by the Amendment Act apply only to coercive and non-consensual acts and do not extend to legitimate gender-affirming care provided by registered medical practitioners. Such an order must clarify the legal and ethical duties of medical practitioners towards transgender patients, and direct them to continue to provide discrimination free gender-affirming care to them.

What can the State Government do to address the chilling effect of the Amendment Act on gender-affirming healthcare?

The Amendment Act introduces new offences relating to kidnapping, abduction, grievous hurt, and compelling a person to assume or present a transgender identity, including for the purpose of begging. These provisions use vague and undefined terms such as "allurement", "compulsion", and "inducement", and impose enhanced criminal penalties, including in cases involving minors.

The broad wording of these offences under the newly inserted section 18, creates significant scope for misuse against transgender persons, transgender kinship structures, civil society organisations, activists, and healthcare providers. Consultations indicate that natal families may use these provisions to file frivolous complaints against persons or organisations assisting transgender and gender non-conforming individuals.

⁵ Specifically, sections 18 (e) and 18 (f) of the Amendment Act.

TO ADDRESS THIS, THE STATE GOVERNMENT CAN ISSUE GUIDELINES TO THE POLICE

- Mandating that a preliminary inquiry be carried out prior to registration of FIRs⁶ to ensure that an offence is disclosed under the Amendment Act.
- If the alleged victim is of age of majority and such person discloses that they are a transgender person who has voluntarily undergone any form of medical intervention or gender-affirming care, the police will close the complaint after recording a statement to that effect.
- Only if during the course of preliminary inquiry a case is made out that the accused used threat, force or coercion against the alleged victim, then the police will register a FIR.
- If the alleged victim is a minor, then only the Child Welfare Police Officer must carry out a preliminary inquiry and also determine if there is a reasonable likelihood of the child being harmed or abused if such child is sent back to their natal home or legal guardian.
- If the preliminary inquiry reveals risk of harm or abuse, then the child shall be produced before the Child Welfare Committee for determining whether the child is a 'child in need of care and protection' under the Juvenile Justice (Care and Protection) of Children Act, 2015.
- Confidentiality must be maintained throughout the proceedings.

⁶ Under the newly inserted sections 18(e), 18(f), 18(g) and 18(h) of the Amendment Act.