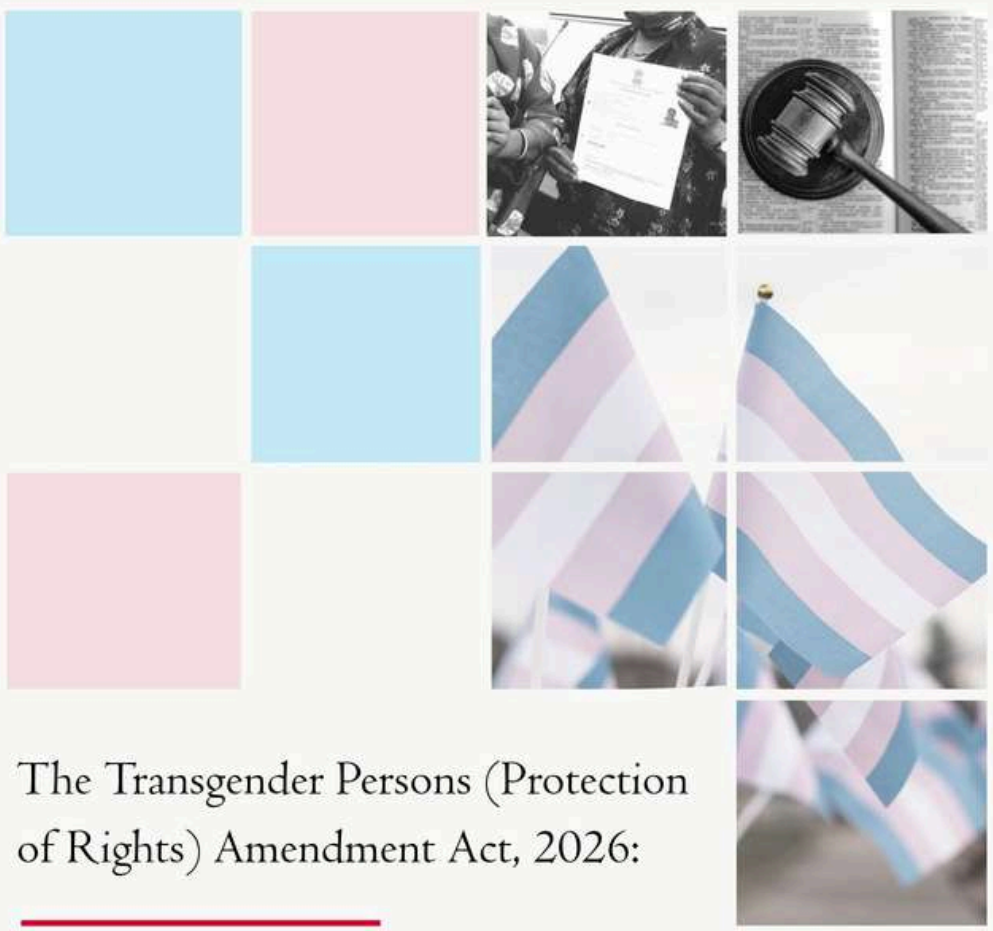

The Transgender Persons (Protection of Rights) Amendment Act, 2026:

WHAT CAN STATE GOVERNMENTS DO?

CASE STUDY
State of Tamil Nadu

VIDHI | Centre for Legal Policy

This is an independent, non-commissioned piece of work by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws.

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The Vidhi Centre for Legal Policy has been an active part of several consultations, webinars and workshops on the Transgender (Protection of Rights) Amendment Act, 2026. These were by diverse stakeholders including doctors, activists, mental healthcare professionals, civil society organisations, community members, and lawyers, The discussions, deliberations and inputs shared during them have played a critical role in informing this report.

Like all of Vidhi's LGBTIQA+ work, this report is built on the collective work done by the movement

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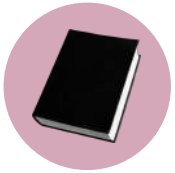

What does the Transgender Persons (Protection of Rights) Amendment Act, 2026 do?

The Transgender Persons (Protection of Rights) Amendment Act, 2026 ('Amendment Act') received the President's assent on 30 March 2026, amidst widespread opposition from transgender persons and civil society[1]. It was notified on May 25, 2026 and is now in force. The Amendment Act is a significant departure from the framework established under the Transgender Persons (Protection of Rights) Act, 2019 ('2019 Act'), and substantially dilutes the rights recognised by the Supreme Court in NALSA v. Union of India ('NALSA')[2], particularly the fundamental right to self-perceived gender identity[3].

[1] Transgender Persons (Protection of Rights) Amendment Act, 2026, available at https://images.assettype.com/barandbench/2026-03-31/x7z6ize9/THE_TRANSGENDER_PERSONS__PROTECTION_OF_RIGHTS__AMENDMENT_ACT__2026.pdf; Abhinay Lakshman, 'Transgender Bill passed by voice vote in Lok Sabha amid walkout by Opposition MPs', (25th March 2026) The Hindu, available at https://www.thehindu.com/news/national/transgender-bill-in-lok-sabha-government-hails-reform-opposition-criticism/article7078 0013.ece; Nikita Yadav & Abhishek Dey, 'New India bill to amend transgender rights sparks protests', (26th March, 2026) The Hindu, available at https://www.bbc.com/news/articles/czx9de4ygl7o accessed 21 May 2026

[2] National Legal Services Authority v Union of India (NALSA) v Union of India, (2014) 5 SCC 438 ('NALSA').

[3] NALSA, Para 129(2).

Briefly, the Amendment Act does the following:[4]

- It narrows the definition of "transgender persons" by restricting it to limited and arbitrarily selected socio-cultural categories such as hijra, kinner, aravani, and jogta; persons with intersex variations, and those who may be compelled into transgender identities.[5] In doing so, it departs from the inclusive approach recognised in NALSA which defined transgender persons as 'any person who does not identify with the sex assigned at birth'.[6] This narrow definition excludes large sections of the transgender community, including transgender men, non-binary transgender persons, and gender-queer persons.

- It omits the right to self-perceived gender identity, which was explicitly recognised by the 2019 Act.[7]

- It introduces a system of medical and administrative certification, under which a District Magistrate may issue a certificate of identity based on recommendations of a medical authority, and if required seek further expert medical opinion. Such a framework transforms gender identity from a matter of personal autonomy to one of medical gatekeeping. Critically, it

[4] For detailed clause by clause analysis, refer Aashna Mansata, Namrata Mukherjee, Jwalika Balaji et al, 'Submissions on the Transgender Persons (Protection of Rights) Bill, 2026, available athttps://vidhilegalpolicy.in/research/submissions-on-the-transgender-persons-protection-of-rights-amendment-bill-2026/ accessed 21 May 2026.

[5] Section 2(k), Transgender Persons (Protection of Rights) Amendment, 2026.

[6] NALSA, Para 11.

[7] Section 4(2), Transgender Persons (Protection of Rights) Act, 2019.

stands contrary to the principles laid down in NALSA which recognised the right to self-identified gender independent of any form of medical intervention.[8]

- It introduces new criminal offences based on harmful stereotypes about the transgender community. Specifically, it criminalises a range of acts, including kidnapping and abduction accompanied by aggravated forms of grievous harm[9] with the intent of 'compelling' a person to 'assume' or 'present' as a transgender person without their consent. Another provision criminalises the act of compelling, through threat, coercion, force, or 'allurement', 'compulsion', or 'inducement', a person to 'dress, present, or conduct themselves' as a transgender person against their will for the purpose of begging, bonded labour, etc. The use of overarching and ambiguous terms make these provisions vulnerable to misuse particularly by natal families. Further, in terms of impact they may end up disproportionately being invoked against transgender kinship units and transgender civil society organisations as they often provide shelter and support to transgender persons who flee their natal homes which can be sites of transphobic violence. These offences can also have a chilling effect on provision of gender-affirming healthcare.[10]

[8] NALSA, Para 20, 78
[9] Aggravated forms of grievous hurt under the Amendment Act include mutilation, emasculation, castration, amputation, or the administration of surgical, chemical, or hormonal procedures. These are all processes transgender persons may undergo to transition to their self-perceived gender identity.
[10] Specifically, s. 18(e) and (f).

Recently, in the landmark judgement of Jane Kaushik v. Union of India,[11] the Supreme Court noted that the 2019 Act has not been effectively implemented by governments and issued binding directions to them towards this end.[12] In addition, the Court constituted an Advisory Committee chaired by Justice (Retd.) Asha Menon and directed it to 'formulate a practical policy draft and/or a report for the consideration of the Union of India, so as to further the transgender rights discourse and give effect to the beneficial provisions of the 2019 Act.'[13] Reiterating NALSA, the Court observed that the right to self-perceived gender identity is critical to a dignified life for transgender persons, noting that the 2019 Act has been criticised for diluting the sanctity of the right to self-determination as envisioned in NALSA.[14] The Court expressed disappointment and observed that it is a matter of grave constitutional concern that members of the transgender community continue to encounter systemic barriers in the ordinary conduct of their lives.[15]

Despite progressive judicial pronouncements, the Amendment Act represents a step back which impacts a decade of forward looking legal developments on transgender rights. While the Act raises constitutional concerns, it also causes harm to the community through exclusion, medical gatekeeping, and by expanding the net of criminalisation.

[11] Jane Kaushik v Union of India, (2026) 1 SCC 336.
[12] Jane Kaushik v Union of India, (2026) 1 SCC 336, para 199.
[13] Jane Kaushik v Union of India, (2026) 1 SCC 336, para 203.
[14] Jane Kaushik v Union of India, (2026) 1 SCC 336, para 178.
[15] Ibid.

ONGOING LITIGATION AGAINST THE AMENDMENT ACT

Multiple constitutional challenges to the Amendment Act are presently under consideration before various courts. The Kerala High Court, in a recent order has permitted continuation of hormone therapy for a transgender person, providing interim relief only for those who had already commenced treatment, before the coming into force of the Amendment Act[16]. Before the Delhi High Court, petitions filed by Chandresh Jain and Lakshay Jain challenge key provisions introduced through the Amendment Act[17]. These petitions raise important constitutional questions, including whether rights recognised by the Supreme Court, particularly the right to a self-perceived gender identity, can be curtailed through ordinary legislation. They further contend that the Amendment Act fundamentally alters the existing statutory framework by replacing self-identification with a regime of medical and administrative verification, including scrutiny by the District Magistrate.[18]

[16] Neethu v. Union of India, WP(C) 14156/2026 (Kerala High Court), 10th April, 2026
[17] Vineet Bhalla, 'Explained: Why the new trans persons law is being challenged in court' (The Indian Express, 9 April 2026) available at https://indianexpress.com/article/explained/explained-law/transgender-persons-act-2026-challenge-explained-10627 581/ accessed 21 May 2026
[18] Dinakar Peri, 'Delhi HC seeks Centre's stand on petitions challenging amended transgender law' (The Hindu, 9 April 2026), https://www.thehindu.com/news/cities/Delhi/delhi-hc-seeks-centres-stand-on-petitions-challenging-amended-transge nder-law/article70838366.ece accessed 21 May 2026

The Karnataka High Court has also sought response from the Union Government in relation to two petitions filed before the Court. One was filed by a transgender woman who has commenced hormone therapy, and the other by a transgender woman undergoing hormone therapy while also engaged in the process of changing her name and gender on official documents, including her passport.[19] These petitions are praying for interim relief before constitutionality of the Amendment Act can be delved into.[20] Petitions have also been filed before the Supreme Court challenging the constitutionality of the Amendment Act.[21] At the time of publication of this report, the Supreme Court has issued notice on a batch of petitions directing that a three judge bench be set up to determine the constitutionality of the Amendment Act.[22]

Taken together, these developments demonstrate that the Amendment Act has not only raised significant constitutional concerns but has also created uncertainty in its implementation, warranting careful reconsideration in consultation with transgender communities.

[19] Sebin James, 'Karnataka High Court seeks Centre's response on plea challenging Transgender Persons Amendment Act 2026' (LiveLaw, 15 April 2026), available at https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-hormonal-therapy-grievous-hurt-transg ender-persons-530380 accessed 21 May 2026
[20] Ibid.
[21] The Times of India 'Petition in Supreme Court flags "erasure" of trans men in new law' (The Times of India, 22 April 2026) available at https://timesofindia.indiatimes.com/india/petition-in-supreme-court-flags-erasure-of-trans-men-in-new-law/articlesh ow/130424521.cms; See also, 'Plea in Supreme Court challenges Transgender Persons Amendment Act 2026, says omitting self-identification violates Art 21' (LiveLaw, 23 April 2026), available at https://www.livelaw.in/top-stories/plea-in-supreme-court-challenges-transgender-persons-amendment-act-2026-saysomitting-self-identification-violates-art-21-528986 accessed 21 May 2026.
[22] Ajitesh Singh, 'Supreme Court issues notice on plea challenging 2026 Transgender Amendment Act; refers matter to three-judge bench' (The Leaflet, 4 May 2026) available at https://theleaflet.in/leaflet-reports/supreme-court-issues-notice-on-plea-challenging-2026-transgender-amendment-ac t-refers-matter-to-three-judge-bench accessed 21 May 2026.

As litigation in relation to the Amendment Act is underway there are three outcomes one can envisage. We use the example of the Supreme Court to outline these outcomes

First, the Supreme Court upholds the constitutionality of the Amendment Act. In this case, this report as a whole will serve as an important advocacy tool for rule-making.

Second, the Supreme Court upholds certain parts of the Amendment Act and strikes down the rest. In this case, recommendations in this report which pertain to provisions which have been upheld will serve as a tool for advocacy.

Third, the Supreme Court strikes down the Amendment Act as a whole. In this case, recommendations in this report which pertain to data protection and informational privacy will serve as a useful tool to advocate for safeguarding personal data of transgender persons (which are processed by authorities and officers under the 2019 Act).

SECTION II

What can the State Government do?

The law does not require Parliament to set out every step in the text of a legislation. Once the legislature 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 other forms of delegated legislation.[23] Courts have recognised this as a normal feature of modern governance, since implementation often requires assessment of local conditions, institutional responsibilities, timelines, and other practical mechanisms such as creation of procedures and forms, that are better designed at the rule-making stage than in the parent statute itself.[24]

> The validity of delegated legislation is tested through the doctrine of ultra vires or whether the rule enacted is within the scope of the parent law, namely the Act. A rule, notification, or government order will be intra vires or within the scope of the parent law if it

[23] Delegated legislation refers to law-making by a subordinate authority other than the legislature, under powers conferred by a parent statute. For example, while an Act is enacted by the Parliament, the Central Government and/or State Government may be given powers to make and issue rules to operationalise the Act. Also, in In re Delhi Laws Act, AIR 1951 SC 332, the Supreme Court recognised that while the legislature must lay down the legislative policy and cannot delegate its essential legislative function, it may authorise another subordinate authority to fill in details and carry the law into effect

[24] In re Delhi Laws Act AIR 1951 SC 332; Hamdard Dawakhana v. Union of India 1959 SCC OnLine SC 38.

remains within the power conferred by it, is reasonably connected to the Act's object, and fills in procedural, administrative, or implementation details necessary to carry the Act into effect. Conversely, it may be ultra vires if it travels beyond the enabling provision, contradicts the text or scheme of the Act, introduces substantive restrictions, liabilities, or disabilities not contemplated by Parliament, or rewrites legislative policy under the guise of implementation.[25] Even where a measure is traceable to the Act, it must comply with constitutional limits, including equality, non-arbitrariness, dignity, privacy, and proportionality.[26]

The key test that emerges is whether the delegated measure is consistent with the intent, purpose, context, and scheme of the parent statute.[27] Delegated legislation and administrative action may therefore be used to make an Act workable in practice: they may create administrative processes, specify authorities, prescribe forms and timelines, and lay down the manner in which rights under the Act are to be exercised and benefits delivered. They may also support ancillary steps needed to give effect to the statute.

[25] Kunj Behari Lal Butail v. State of Himachal Pradesh, (2000) 3 SCC 40; Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516; Union of India v. S. Srinivasan, (2012) 7 SCC 683.
[26] Indian Express Newspapers v. Union of India, (1985) 1 SCC 641; K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[27] Kunj Behari Lal Butail v. State of H.P 1959 SCC OnLine SC 38 "it is very common for the legislature to provide for a general rule making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent act...."

At the same time, there is a clear legal limit. Delegated legislation can operationalise the Act, but it cannot alter what the Act provides. It cannot narrow or expand the scope of the statute in a manner unsupported by its text, purpose, or scheme. In particular, a general power to make rules "for carrying out the purposes of the Act" does not authorise the government to create new disabilities, liabilities, exclusions, or substantive conditions that Parliament itself did not enact.[28]

POWERS OF STATE GOVERNMENT UNDER 2019 ACT

While only Courts can decide whether the Amendment Act is constitutional or not, there is scope for State Governments to put in place measures to operationalise it in a manner that safeguards the rights of the transgender community. Since the 2019 Act is a welfare legislation, it should be interpreted purposively. Purposive interpretation means that the law is read in light of the purpose it was enacted to achieve, rather than in a narrow or technical manner. Courts have adopted this approach for welfare legislation, holding that such laws and rules must be construed to advance the protection they confer rather than defeat it through restrictive interpretation.[29]

[28] Kunj Behari Lal Butail v. State of H.P 1959 SCC OnLine SC 38.; Agricultural Market Committee v. Shalimar Chemical Works Ltd. 1959 SCC OnLine SC 38; Union of India v. S. Srinivasan (2012) 7 SCC 683.
[29] Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation, (1985) 4 SCC 71; Kunal Singh v. Union of India, (2003) 4 SCC 524;

To illustrate, in Kunal Singh v. Union of India,[30] the issue was whether the appellant, who suffered a disability during service, could be treated as permanently 'incapacitated' and terminated with invalidity pension, or whether he was entitled to protection as a 'person with disability' under Section 47 of the Persons with Disabilities Act, 1995. The Supreme Court held that, since the Act was a social welfare legislation, Section 47 had to be read in a manner that advanced its purpose: an employee who acquired a disability during service had to be treated as a 'person with disability', and therefore could not be terminated and had to be retained in the same or similar post. Similarly, given that the 2019 Act is a beneficial legislation, keeping in mind its object to recognise, respect, and provide protections for the transgender community, its provisions and the rules should be interpreted in a manner that are aligned with the object and purpose of the Act.

Section 22 of the 2019 Act and the Amendment Act empowers the State Government to make rules to operationalise the Act. Further, in line with the position mentioned above, 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 protocols for authorities and institutions under the Act.

Implementation-oriented measures under the 2019 Act may be justified where they advance the law's protective object. Rules or executive measures that clarify procedures, preserve continuity of recognition of transgender persons, or make access to entitlements workable can be defended as measures

[30] Kunal Singh v. Union of India, (2003) 4 SCC 524;

that carry the Act into effect. This is consistent with the delegated legislation principle that the executive may fill in operational details, but cannot rewrite the parent statute.[31]

Equally, such measures must remain within the text, scheme, and purpose of the Act, and cannot create new barriers, narrow statutory rights, or travel beyond the rule-making powers.[32] For example, if the Act requires a certain procedure to obtain a certificate recognising gender identity, the rules cannot incorporate additional procedures that increase costs or make it more difficult for transgender persons to obtain such a certificate. On the other hand, the rules can simplify the procedure, clarify what documents are acceptable, and ensure that the procedure is so streamlined as to not make it onerous for transgender persons to apply for the certificate.

TAMIL NADU AS A CASE STUDY

This report uses the state of Tamil Nadu as a case study in light of our extensive work identifying how Tamil Nadu's laws can be made LGBTIA+ inclusive, and in-depth consultations carried out with stakeholders in the State towards this end.

However, the recommendations in this report apply to all State Governments. It is important to note that community consultations must be carried out by the State prior to finalising any rules under the 2019 Act and the Amendment Act.

[31] In re Delhi Laws Act, AIR 1951 SC 332; Hamdard Dawakhana v. Union of India, AIR 1960 SC 554; Devi Das Gopal Krishnan v. State of Punjab, AIR 1967 SC 1895

[32] Kunj Behari Lal Butail v. State of Himachal Pradesh, (2000) 3 SCC 40; Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516; Union of India v. S. Srinivasan, (2012) 7 SCC 683.

TAMIL NADU TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES, 2022

Tamil Nadu enacted the Tamil Nadu Transgender Persons (Protection of Rights) Rules, 2022 ('Tamil Nadu Rules') in pursuance of section 22 of the 2019 Act. The Tamil Nadu Rules demonstrate how State rules can make the Central framework easier to implement.

- Unlike the parent Act and Central Rules, which refer to the District Magistrate as the issuing authority, the Tamil Nadu Rules make the District Collector responsible for receiving applications and issuing certificates of identity [Rules 3-7]. This may make the process easier for applicants, since people in Tamil Nadu would find it easier to access and approach the District Collector, who is the local administrative officer, for welfare schemes, certificates, and district-level grievances, rather than the District Magistrate, who is a judicial officer

- The Rules also allow applications to be made through the Thirunangai mobile application, which can make the process easier to access and track, if offline support is not available [Rule 3].

- The Rules define 'medical institution' broadly to include institutions "whether hospital or clinic, private or public, in rural areas or urban or overseas", so that applicants are not limited to a narrow set of government facilities [Rule 2(i)].

- Importantly, the Rules also keep Section 6 and Section 7 applications separate: medical-history requirements apply only to persons seeking a revised certificate after medical intervention under Section 7 (binary certificate), while Section 6 applications remain based on self-identification through an affidavit (transgender certificate) [Rules 5-7].

- Consultations reveal that in practice the medical intervention requirement has also been substantially diluted through Government Orders even for binary markers of man or woman.

The Tamil Nadu Rules and administrative practices therefore already operationalise the Act in a more streamlined and simplified manner, which is a welcome move. In this spirit, the new rules following the Amendment Act should also be aligned with the object and the purpose of the Act. The rules should seek to maintain the same principle of ensuring that the rights and benefits available to the transgender community under the Act are inclusive and accessible.

SECTION III

Recommendations

ISSUE 1

The Amendment Act narrows the definition of the term transgender persons and omits the right to self-identified gender identity

The Amendment Act narrows the scope of the term 'transgender person' and departs from the inclusive framework under the 2019 Act. While the 2019 Act adopted a broad and identity-based formulation,[33] the Amendment Act limits the definition by referring only to certain socio-cultural categories such as hijra, kinner, aravani and jogta, along with persons with intersex variations and other medically framed categories.[34]

[33] Section 2(k): (k) "transgender person" means 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 kinner, hijra, aravani and jogta."

[34] '(k) "transgender person" means—
(i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development:—
(a) primary sexual characteristics;
(b) external genitalia;
(c) chromosomal patterns;
(d) gonadal development;
(e) endogenous hormone production or response, or such other medical conditions; or
(ii) any person or child who has been, by force, allurement, inducement, deceit or undue influence, either with or without consent, compelled to assume, adopt, or outwardly present a transgender identity, by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure or otherwise: Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.'"

This formulation does not adequately capture the diversity of transgender identities and lived realities. In the context of Tamil Nadu, it also fails to reflect the social and administrative categories through which transgender persons in the State have historically been recognised, including thirunangai and thirunambi.

The Amendment Act also omits Section 4 (2) of the 2019 Act,[35] which expressly recognised the right of a transgender person to self-perceived gender identity. This is a significant departure from the constitutional framework laid down in NALSA v. Union of India.[36] In NALSA, the Supreme Court held that transgender persons have a right to decide their self-identified gender and directed the Union and State Governments to grant legal recognition of that identity as male, female or third gender.[37] The omission of Section 4 (2) in the 2019 Act does not extinguish this constitutional right. The right to self-identified gender identity continues to flow from Articles 14, 19 and 21 of the Constitution as recognised in NALSA.[38] Accordingly, State action under the Act and its rules must continue to be guided by this constitutional position.

In this background, Tamil Nadu can continue to structure its rules

[35] S.4(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity

[36] AIR 2014 SC 1863

[37] Para 129(2): (2) 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.

[38] AIR 2014 SC 1863.

and administrative practice in a manner that remains aligned with NALSA. While the State cannot override the 2019 Act or the Amendment Act, it can adopt an implementation framework that preserves the constitutional protection of self-identified gender identity and ensures that the narrowed terminology in the Amendment Act does not result in exclusion in practice. This is particularly important given Tamil Nadu's existing administrative practice of recognising transgender persons through terms and categories that are locally used and understood. The State has previously adopted an expanded understanding of transgender identity in its executive framework. In particular, G.O. Ms. No. 71,[39] dated 6 November 2015, issued following NALSA, provided that transgender persons would be identified as a distinct 'third gender' apart from the binary. The G.O. clarified that categories such as "hijras, eunuchs, aravani, thirunangai, kothis, jogtas/jogappas, shiv-shakthis, and other names prevalent in Tamil Nadu" would be included within the third gender. It further recognised the right of such persons to identify themselves as male, female, or third gender.

[39] Government of Tamil Nadu, Social Welfare and Nutritious Meal Programme Department, G.O. (Ms.) No. 71, (November 6, 2015), available at: https://cms.tn.gov.in/cms_migrated/document/GO/swnmp_e_71_2015.pdf accessed 21 May 2026.

NODAL AUTHORITY

Department of Social Welfare and Women's Empowerment

PROPOSED STEP

A. *Clarification of the term "aravani" through a government order*

The term 'aravani' used in the definition of a transgender person under the Amendment Act, seemingly refers to a section of the transgender community in Tamil Nadu. Although some transgender persons identify as 'aravanis', the term does not have widespread usage in Tamil Nadu, nor does it adequately capture all transgender persons in Tamil Nadu.[40] The term aravani originated in Tamil Nadu in 1998, meaning a devotee of Lord Aravan, when IPS officer Mr Ravi proposed it at the Koovagam festival as a respectful alternative to certain derogatory terms.[41] While it later acquired official recognition through government schemes and the Aravani Welfare Board, its meaning shifted in the 2000s as government documents used it inconsistently alongside terms such as "eunuch", "transgender" and "woman", often excluding transgender men.[42] By the next decade, the term 'aravani' had fallen out of preferred

[40] Shakthi Nataraj, "The Thirunangai Promise: Gender as a contingent outcome of migration and economic exchange" Anti Trafficking Review< https://www.antitraffickingreview.org/index.php/atrjournal/article/view/647/494 accessed 21 May 2026.
[41] Nina Roy Choudhury and C Harini, 'Aravani as Citizen: The Forging of a Sexual Identity' (2023) 12(1) Advanced Journal of Social Science 30–38.
[42] Shakthi Nataraj, "The Thirunangai Promise: Gender as a contingent outcome of migration and economic exchange" Anti Trafficking Review< https://www.antitraffickingreview.org/index.php/atrjournal/article/view/647/494 accessed 21 May 2026.

usage, with thirunangai emerging as the preferred and more widely-used Tamil term for transgender women.[43] Further, the term 'aravani' was resisted by Dalit and non-Hindu transgender persons as the reference to Hindu mythology to derive a name for the community was seen as non-representative and as an erasure of diversity.[44] Currently, the term 'aravani' has been replaced by the term 'thirunangai' in most official contexts as well.[45]

> The Amendment Act's reference to terms such as kinner, hijra, aravani and jogta to define transgender identity can be best understood as a reference to socio-cultural identities as they are used across different parts of India. However, these are not fixed legal categories with uniform meanings across and even within states; their meaning depends on local usage, community practice, and administrative and bureaucratic history (as seen with the term 'aravani'). State Governments may therefore clarify the locally recognised terms covered within the reference to a specific identity, provided that this is done to preserve and expand access to recognition and welfare, and not to exclude persons otherwise protected by the Act.

[43] Ibid; Aarefa Johari, 'Hijra, kothi, aravani: a quick guide to transgender terminology' (Scroll.in, 17 April 2014) https://scroll.in/article/662023/hijra-kothi-aravani-a-quick-guide-to-transgender-terminology accessed 21 May 2026.
[44] Diya Maria George, 'Identity Pushed Into Identity' (The New Indian Express, 23 March 2026) https://www.newindianexpress.com/cities/chennai/2026/Mar/23/identity-pushed-into-identity accessed 21 May 2026.
[45] Shakthi Nataraj, "The Thirunangai Promise: Gender as a contingent outcome of migration and economic exchange" Anti Trafficking Review< https://www.antitraffickingreview.org/index.php/atrjournal/article/view/647/494 accessed 21 May 2026.

The State Government can clarify that, for the purposes of implementation in Tamil Nadu, the term "aravani" shall be construed broadly so as to include thirunangai, thirunambi, and other names recognised in Tamil Nadu. This would be consistent with the State's prior administrative practice of recognising transgender persons by referring to the socio-cultural names used for them in Tamil Nadu. It would also ensure that the narrowed terminology in the Amendment Act does not exclude persons who have historically been recognised within the State's welfare and identity framework. Accordingly, the following Government Order may be issued,

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GOVERNMENT ORDER
Department of Social Welfare and Women's Empowerment

Subject: Clarification regarding transgender communities in Tamil Nadu

It is clarified that the term 'aravani' in section 2(k) of the Transgender Persons (Protection of Rights) Amendment Act, 2026 for the purpose of Tamil Nadu includes thirunangai, thirunambi, and any other name prevalent for transgender persons in Tamil Nadu.

B. *Defining the term 'sexual orientation' and 'sexual identities'*

The proviso to the definition of the term transgender states, "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. It needs to be noted that the 2019 Act applies only to transgender persons and not to people of different sexual identities. 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 'gender identity' which means one's perception of one's gender. However, the absence of a definition of the term sexual identity may create bureaucratic hurdles in applying and availing a certificate of identity as officers on the ground may interpret the term based on their limited or incorrect understanding of the term.

The State Government must add a definition to the Tamil Nadu Rules defining the term 'sexual orientation' and 'sexual identity' as follows:

2. Definitions -

.....

xx. 'sexual identity' means one's romantic or sexual attraction to one or more sexes and includes heterosexual, homosexual, bisexual and asexual persons.

xx. 'sexual orientation' means a person's enduring physical, romantic and/or emotional attraction to members of any sexes or genders.'

C. *Continuity of access to State benefits for transgender persons recognised as male or female*

The Tamil Nadu Rules may further clarify that holders of a transgender identity card issued by the State, including those recognised as male or female, shall continue to be eligible for welfare measures, reservations, and other entitlements earmarked for transgender persons.

This is necessary because of the omission of the proviso to section 7 of the 2019 Act which provided that despite changing one's gender identity to 'male' or 'female', one would continue to enjoy benefits under the 2019 Act.

The Amendment Act creates uncertainty as to whether a transgender person who is recognised within the binary would continue to have access to benefits available to transgender persons. Such an outcome would be contrary to the constitutional framework in NALSA, which recognised the right of transgender persons to identify as male, female or third gender, and did not make access to rights or entitlements contingent on retaining a particular legal label.

A proviso may be issued to Rule 7(1) of the Tamil Nadu Transgender Persons (Protection of Rights) Rules, 2022:

7. Issue of certificate of identity under Section 7.-

(1) The District Collector shall issue a certificate of identity in Form – IV to the applicant seeking change in gender, indicating the gender of such a person as male or female, as the case may be.

Provided that such change in gender and the issue of revised certificate shall not affect the rights and entitlements of such person under the Rules.

ISSUE 2

The Amendment Act raises concerns about the status of identity cards issued prior to its commencement

There is a lack of clarity about the status of identity cards which have been issued under the 2019 Act or prior. Concerns have also been raised about whether the Amendment Act applies retrospectively. This is because the proviso to section 2 (k) states, 'Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.' As clarified prior, sexual identities and sexual orientation are terms in relation to a person's romantic or sexual attraction to one or more sexes or genders. Gender identity on the other hand refers to a person's perception of their gender as cisgender or transgender and is not sexual identity.

Second, Courts have held that retrospective applicability of a law cannot be interpreted in the absence of clear statutory language expressing the same.[46] A legislation is generally presumed to have prospective application unless expressed otherwise, the basis for which is the principle of fairness.[47] Legislations which modify accrued rights, therefore, must be treated as prospective in the absence of clear legislative intent granting retrospective application.[48]

[46] Excise Commr. v. Esthappan Cherian, (2021) 10 SCC 210
[47] CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1, para 29.
[48] Ibid.

Existing identity certificates, once validly granted under the 2019 Act and relied upon for access to welfare schemes, employment, and legal recognition, can be characterised as vested rights that cannot be treated as automatically extinguished by a later definitional change unless the statute says so in clear, unambiguous terms. The Amendment Act so far does not contain such language permitting retrospective application.

Third, the 2019 Act operationalised parts of NALSA through the provision of a framework that guaranteed the right to a self-perceived gender identity. Over several years, individuals exercised this right and obtained their certificates accordingly. The Supreme Court has, in the past, stated that a legitimate expectation is formed when there exists a clear representation or consistent practice by the State in the realm of public law which is based on a right.[49] While the legislature can change the law, nullifying identity documents obtained under a rights-based statute without an overriding public interest justification, is legally untenable. Thus, identity certificates and benefits accrued by transgender persons under the 2019 Act or prior cannot be retrospectively nullified.

NODAL AUTHORITY

Department of Social Welfare and Women's Empowerment

[49] Army Welfare Education Society New Delhi v. Sunil Kumar Sharma 2024 SCC OnLine SC 1683, para 63.

PROPOSED STEP

Rule 3 of the Tamil Nadu Rules provides for the procedure to be followed to apply for a certificate of identity as a transgender person or as a 'man' or 'woman'. Rule 3 (3) provides that transgender persons who have changed their name and gender prior to the 2019 Act will not be required to apply afresh for a certificate of identity.

The State Government may amend Rule 3 (3) to insert an explanation clarifying that persons who obtained a certificate of identity under Section 6 or Section 7 prior to the commencement of the Amendment Act will remain recognised in the State. This clarification is necessary to preserve continuity of recognition and to avoid any uncertainty regarding the legal status of persons who were issued certificates under the pre-amendment framework.

An explanation may be issued to Rule 3 (3) of the Tamil Nadu Rules:

3. Application for issue of certificate of identity under section 6 or section 7.-

....

3(3) Notwithstanding anything contained in these rules, transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act shall not be required to submit an application for certificate of identity under these rules and all such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act:

Provided that any such person may submit application for the issue of Certificate of identity.

Explanation.—For the removal of doubts, it is clarified that this rule shall also apply to persons who, under section 6 or section 7 of the Act as it stood immediately before the commencement of the Transgender Persons (Protection of Rights) Amendment Act, 2026, had obtained a certificate of identity or had officially recorded their change in gender, whether as male, female or transgender, and all such persons shall continue to be recognised for the purposes of the Act and these rules.

ISSUE 3

The Amendment Act mandates that medical authorities make recommendations as a pre-condition to identifying as a transgender person, raising concerns about informational privacy.

The Amendment Act provides that the District Magistrate will examine the recommendations of a medical authority and if necessary take into account the assistance of medical experts before issuing a certificate of identity to a transgender person. Medical authority has been defined as a medical board headed by an officer as appointed by the Government.[50] Further, Section 7 which provides for the procedure to be followed to be recognised within the binary of man and woman has been amended to provide that instead of the applicant, the medical institution will furnish information to the District Magistrate about surgery.[51] The amendment also makes it mandatory, as opposed to discretionary, for an individual who has undergone gender-affirming surgery to submit an application under Section 7.

These amendments raise multiple constitutional and legal concerns. First, these amendments stand in tension with NALSA which recognised the right to self-identified gender (man, woman or transgender) as independent of any form of medical intervention.[52] Second, constitutional considerations arise regarding the informational privacy of transgender persons. The Supreme Court of India, in K.S.

[50] S. 2(aa), Amendment Act, 2026
[51] S. 7(1A), Amendment Act, 2026.
[52] NALSA, Para 20, 78.

Puttaswamy v Union of India[53] ('Puttaswamy') recognised the right to privacy under Article 21 of the Constitution. As a part of this right, the Court observed that informational privacy is a facet of right to privacy, allowing persons to control the dissemination of information about them and access to such information, subject to reasonable restrictions.

The process under Section 7 as per the Amendment Act creates a mechanism for sharing of details about transgender persons, particularly health information, without their consent. Without procedural safeguards of Article 21, this mechanism may fall foul of the holding in Puttaswamy. In addition to this, it is critical to note that the form and manner in which this data is collected, processed, stored, and shared will be governed by the Digital Personal Data Protection Act, 2023 ('DPDP Act') and the rules drafted under it in 2025.

Therefore, the data transfer framework which may be laid down in the Rules will be subject to the procedures under the DPDP Act and its Rules, and the holding of the Supreme Court in Puttaswamy simultaneously.

NODAL AUTHORITY

Department of Social Welfare and Women's Empowerment

[53] (2017) 10 SCC 1.

PROPOSED STEP

Rule 3 of the Tamil Nadu Rules provides that a transgender person desirous of obtaining a certificate must submit an application in Form-I to the District Collector. The application mandates information pertaining to gender-affirming medical intervention only if a person wants to apply to identify within the binary of man or woman, and not for the purpose of the State TG Card. Under Rule 4, the District Collector has to process the application, subject to its correctness. Further, it explicitly states that the District Collector will not carry out any physical or medical examination of the applicant.

In light of this existing framework, the State Government can do the following:

A. *Define scope of recommendations of Medical Authority*

First, status quo must be maintained in relation to a prohibition on any physical or medical examination being carried out by the District Collector. Second, a new rule may be inserted to define the scope of recommendations of the medical authority as restricted to ascertaining whether the applicant identifies as a transgender person. Further, such an assessment must be only psychological and not involve any intrusive physical or medical procedures. Finally, a timeline must be prescribed for submission of a 'recommendation' failing which the District Collector can go ahead and process the application.

The following rule may be inserted:

4A. Recommendations of Medical Authority.-

(1) The medical authority will submit a recommendation to the District Collector to clarify that a transgender person identifies as a transgender;

(2) A self-declaration that a person identifies as a transgender person is sufficient for the purpose of sub-rule (1) and the medical authority will not carry out any physical examination;

(3) A medical authority must submit her recommendation within seven days from the date on which the person has submitted an application under Section 6;

(4) If a recommendation is not submitted within the timeline provided in sub-rule 3, the District Collector will process the application as per Rule 4 and issue the certificate of identity.

B. *Protocol for submission of information by medical institution*

The data mandated to be shared by the medical institution with the District Magistrate under the Amendment Act qualifies as personal data within the meaning of the DPDP Act.[54] Thus, both the DPDP Act and the principles articulated under Puttaswamy apply to the processing of such data and the rule giving effect to such a mandate must be compliant.

Further, the State Government must in consultation with gender-affirming health practitioners, the transgender community, and lawyers arrive at guidelines which inform the manner in which the medical institution will record, store and furnish such information and a form which specifies the categories of information that the medical institution will be required to furnish. Only those categories of information which are necessary for the purpose of verifying the identity of the applicant and for a change of the gender identity to male or female must be furnished to the District Magistrate.

Consequently, the following rule may be inserted:

7A. Processing of data by medical institutions and the District Collector.-

[54] Digital Personal Data Protection Act, 2023, s. 2(t) "personal data" means any data about an individual who is identifiable by or in relation to such data.

(1) In pursuance of their duty under sub-section 1(A) of section 7 of the Act, the medical institution will -

(a) intimate the person or applicant in relation to whom information is being furnished to the District Collector about such transfer at least seven days before initiating the transfer;

(b) disclose to the person or applicant, the information that is being furnished to the District Collector, at the time of intimation under sub-clause (a) and give them an opportunity to correct any errors, or otherwise update the information;

(c) intimate the person or applicant about when the transfer to the District Collector is complete; and (d) transfer only information necessary for the purpose of verification of identity of the person or applicant, and change of gender identity to male or female on certificate of identity.

(2) Upon an application under Section 7, the medical institution will transfer such information within a period of thirty days of the application.

(3) The medical institution and District Collector will ensure confidentiality of information, ensure it is stored in a secure manner, and will not disclose such information to any third party unless such disclosure is necessary for the purpose of verifying the identity of the applicant or change of gender identity on the certificate of identity.

(4) The medical institution and District Collector will retain the information for a period of [-] days from the date of the issuance of the certificate under Section 7 of the Act, unless such retention is required under any other law.

C. *Insert a stand-alone rule clarifying that all processing of data will comply with data protection laws*

To ensure that personal data including medical data, health data and gender related data is processed aligned with the DPDP Act, a stand-alone clause to the following may be inserted:

7B. Compliance with Data Protection Act.-

The State Government shall issue appropriate technical and organisational measures to ensure that the authority, medical institution and the District Magistrate process the personal data of transgender persons in a manner that is compliant with the Data Digital Personal Data Protection Act, 2023 and rules under it.

ISSUE 4

The Amendment Act has a chilling effect on healthcare providers

The introduction of section 18 (e) and 18 (f) by the Amendment Act which criminalises causing grievous hurt to a person including through surgical, chemical or hormonal procedures and compelling such person to 'to assume, adopt, or outwardly present a transgender identity' against their will through use of 'force, allurement, deceit, (or) undue influence' has a chilling impact on healthcare providers who provide gender-affirming care. Consultations reveal that healthcare providers are worried that this provision may be misused against them. This, in turn, may lead to risk-averse conduct, including hesitation, delay, or discontinuation of gender-affirming interventions across the country. Such a chilling effect undermines access to essential healthcare services for transgender persons and is inconsistent with established medical ethics, internationally recognised clinical standards, and existing legal obligations mandating non-discriminatory and timely care. This chilling effect not only constrains providers but may also foster mistrust and fear within the transgender community, creating hesitancy in approaching healthcare services even for legitimate needs, thereby exacerbating stigma and deepening existing barriers to care.[55]

[55] Chakrapani V and others, 'Experiences of transgender persons in accessing routine healthcare services in India' (2024) PLOS Global Public Health https://journals.plos.org/globalpublichealth/article?id=10.1371/journal.pgph.0002933 accessed 21 May 2026.

NODAL AUTHORITY

Health and Family Welfare Department and Tamil Nadu Medical Council

PROPOSED STEP

India is a member state of the World Health Organisation ('WHO') which develops and maintains harmonised guidelines on standards of care to be followed by its members. One such standard is the International Classification of Diseases 11th Revision ('ICD-11'). Notably, ICD-11 marks a shift from earlier understanding of gender incongruence as a physical or mental disorder and situates it in the sexual health context.[56] The WHO notes, 'Inclusion of gender incongruence in the ICD-11 should ensure transgender people's access to gender-affirming health care, as well as adequate health insurance coverage for such services'. [57] The WHO is also in the process of drafting guidelines for provision of gender-affirming care.[58] The

[56]World Health Organization, 'Gender Incongruence and Transgender Health in the ICD' (World Health Organization) https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-health-in-the-icd accessed 21 May 2026.
[57]World Health Organization, "Gender Incongruence and Transgender Health in the ICD," Frequently Asked Questions, available at : https://www.who.int/standards/classifications/frequently-asked-questions/gender-incongruence-and-transgender-heal th-in-the-icd#:~:text=Transgender%20people%20share%20many%20of,affirm%20an%20individual's%20gender%20identity accessed 21 May 2026.
[58]World Health Organization, "WHO Announces the Development of a Guideline on the Health of Trans and Gender Diverse People," departmental update, June 28, 2023, https://www.who.int/news/item/28-06-2023-who-announces-the-development-of-the-guideline-on-the-health-of-tran s-and-gender-diverse-people accessed 21 May 2026.

Ministry of Health and Family Welfare ('MHoFW') 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 WHO diagnostic protocol,[59] thus indicating India's alignment with the WHO on gender-affirming care. India has also pledged to adopt the Sustainable Development Goals 2030, which aim to provide "ensure healthy lives and promote wellbeing for all at all ages".[60] Further, the National AIDS Control Organisation, a division of the MHoFW, mentions that it is critical to develop an 'Indian Standard of Care' for transgender persons and references the World Professional Association for Transgender Health ('WPATH') standards of care as a benchmark.[61] Thus, WPATH standards have been recognised as a framework that India must seek to adapt for provision of gender-affirming care to transgender and gender non-conforming persons.

Domestically, the professional conduct of healthcare providers is presently governed by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('2002 Regulations') issued under the National Medical Commission Act,

[59]Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India, Standard Operating Procedures for Medical Treatment of Transgender Persons, F. No. Z.28017/43/2024-SAS-III (August 2024), https://dghs.mohfw.gov.in/uploads/assets/Il6MFa9xF7GCeF3jSVvfXLX15WVjlRUoJrIJjTQI.pdf accessed 21 May 2026.
[60]UN Office of the High Commissioner for Human Rights, "Call for Effective Implementation of SDG Goal 3," statement, October 2019 ,https://www.ohchr.org/en/statements-and-speeches/2019/10/call-effective-implementation-sdg-goal-3-removing-bar riers-and
[61]National AIDS Control Organisation, Ministry of Health & Family Welfare, Government of India, "On Comprehensive Health-Related Services for Transgender Persons", 2023.

2019. The 2002 Regulations continue to apply pending implementation of the National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023 ('2023 Regulations'), currently kept in abeyance. The 2002 Regulations impose ethical obligations relating to professional competence,[62] duty to care,[63] non-discriminatory treatment,[64] and duty to respect patient confidences and maintain secrecy[65] regarding information obtained in the course of treatment. The proposed 2023 Regulations sought to elaborate these duties further by expressly recognising principles such as requirements for non-discriminatory treatment and continuation of care,[66] duty of care,[67]patient autonomy,[68] informed consent,[69] and confidentiality.[70] In relation to mental healthcare, the Mental Healthcare Act, 2017, mandates non-discrimination for treatment of transgender persons and provides that 'there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability'.[71]

[62]Regulation 1.2.1; 1.1.2, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[63]Regulation 2.1, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[64]Appendix-1, Declaration, Point (4), Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[65]Regulation 2.2, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.
[66]Point 3, Code of Ethics, National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023: "Must protect patient confidentiality and privacy, and treat every patient equally, without discrimination".
[67]Point 7, Code of Ethics, National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023: "Must not refuse to treat a patient in case of medical emergency, nor discriminate between patients based on gender, race, religion, caste, social, economic or cultural grounds. No patient should be abandoned".
[68]Point 2, Code of Ethics, National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023: "Should be respectful of the patient's rights and opinion, communicate clearly with the patient, and be honest and transparent in all professional interactions".
[69]Regulation 19, National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023; See also: Samira Kohli v. Prabha Manchanda Dr., AIR 2008 SC 138.
[70]Regulation 24, National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023.
[71] S. 21, Mental Healthcare Act, 2017.

There is no provision under the Amendment Act which prohibits or criminalises provision of legitimate gender-affirming care. This has also been clarified by MSJE in their reply to a question raised by Shri Tiruchi Siva (Member, Rajya Sabha) on April 1, 2026.[72] Specifically, the MSJE stated that the criminal provisions under the Amendment Act "are not intended to restrict legitimate gender affirmative care".[73]

Thus, healthcare professionals continue to be bound by domestic laws and regulations which mandate non-discriminatory and inclusive provision of healthcare services and doctor-patient confidentiality. Additionally, Section 3 (d) of the 2019 Act explicitly recognises as discriminatory the 'denial or discontinuation of, or unfair treatment in, healthcare services,' thereby reinforcing the obligation to ensure uninterrupted and equitable access to care.

In pursuance of this obligation to provide universal healthcare, including gender-affirming healthcare, the Tamil Nadu State Medical Council has mandated Continuing Medical Education programmes for all medical practitioners, medical students, and faculty on transgender health and LGBTIA+ rights. The directive is aimed at ethical and legal responsibilities in providing healthcare without discrimination, prohibition of coercive and discredited practices, including "conversion therapy" and promoting the best practices in medical education pertaining to LGBTIA+ health,[74] reflecting an institutional commitment to capacity-building and service delivery in this area.

[72]Written Reply to Unstarred Question No. 4276, answered on 1 April 2026, by the Ministry of Social Justice & Empowerment, Rajya Sabha Debates, Government of India https://sansad.in/getFile/annex/270/AU4276_BWs2tI.pdf?source=pqars, accessed 21 May 2026.
[73]Ibid.
[74]Anuradha Gandhi and Surbhi Gandotra, 'Tamil Nadu Becomes First Indian State to Mandate LGBTQIA+ Sensitisation in Medical Education' (Chambers and Partners, 20 November 2025) https://chambers.com/articles/tamil-nadu-becomes-first-indian-state-to-mandate-lgbtqia-sensitisation-in-medical-edu cation accessed 21 May 2026.

In light of this, the Department of Health and Family Welfare should publish a clarification to affirm that the substituted Section 18 per the Amendment Act is limited to coercive and non-consensual acts. It does not apply to gender-affirming care provided by registered medical practitioners on the basis of informed consent, in accordance with applicable clinical standards, professional conduct regulations, and confidentiality obligations, and to expressly direct all healthcare institutions and personnel to continue the provision of such care without hesitation or delay.

This may take the following form

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GOVERNMENT ORDER Department of Health and Family Welfare

Subject: Clarification regarding provision of gender-affirming care in Tamil Nadu

The Mental Healthcare Act, 2017 recognises that everybody has a right to access mental healthcare and treatment 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 provide highest quality in patient care, respect human rights and patient confidentiality, and provide care without discrimination.

Transgender persons have a fundamental right to health which includes a right to gender-affirming health-care.

It is clarified that the Transgender Persons (Protection of Rights) Amendment Act, 2026 does not impact the provision of legitimate gender-affirming care provided by a medical practitioner who is licensed to practice medicine under the National Medical Commission Act, 2019. Section 18 (e) and 18 (f) of this Act apply only to cases where the person has not given their consent or has been coerced.

It is clarified that all medical practitioners and clinical establishments have a duty to provide discrimination free healthcare to transgender persons under sub-section (d) of Section 3 of the Transgender Persons (Protection of Rights) Act, 2019.

Medical practitioners are advised to continue to provide legitimate gender-affirming care to all transgender persons and respect their right to health.

ISSUE 5

The Amendment Act inserts new offences based on stereotypes about transgender persons which makes transgender CSOs and kinship units vulnerable to prosecution

The Amendment Act inserts new offences which criminalise aggravated criminal acts pertaining to kidnapping, abduction and grievous hurt. However, they use vague language such as "compelling a person to…. adopt a transgender identity" and undefined terms such as 'allurement', 'compulsion' and 'inducement'. Similarly, it criminalises the act of compelling someone to present as transgender for the purpose of begging. All these offences can have a grave impact on transgender civil society organisations, transgender kinship units such as gharanas, and transgender activists. Further, while the 2019 Act recognises a minor's right to identify as a transgender person (through an application made by a parent or guardian) and there is no prohibition on a minor accessing gender-affirming care, the criminal penalties extend up to life imprisonment[75] and imprisonment up to fourteen years[76] in case of offences pertaining to minors. Further, several minors run away from their natal homes and reach out to civil society organisations or

[75]The Transgender Persons (Protection of Rights) Act, 2019, s.18(e).
[76]The Transgender Persons (Protection of Rights) Act, 2019, s. 18(h).

transgender kinship units for help and assistance. This is because natal families often become sites of violence if such a child is transgender or gender non-conforming.[77] Further, as discussed above, the expansion of the net of criminality through the introduction of vague offences also impacts provision of gender-affirming care for transgender and gender non-conforming persons.

NODAL AUTHORITY

Home Department

PROPOSED STEP

The newly inserted offences under the Amendment Act are vulnerable to misuse, especially by natal families who may file frivolous police complaints against persons and civil society organisations and individuals working on transgender rights. Thus, it is critical for the State Government to issue guidelines to the police to differentiate between genuine criminal

[77]People's Union for Civil Liberties (PUCL) and National Network of LBI Women and Trans Persons, Apnon Ka Bahut Lagta Hai (Our Own Hurt Us the Most): Centering Familial Violence in the Lives of Queer and Trans Persons in the Marriage Equality Debates, report of a closed-door public hearing, April 1, 2023 (published April 17, 2023), https://pucl.org/wp-content/uploads/2023/05/Combined_all_2_compressed.pdf, accessed 21 May 2026.

and frivolous complaints to mitigate the scope of misuse of these newly inserted provisions. A precedent for this lies in the Supriyo v. Union of India[78] ('Supriyo') where the Court issued directions to the police to prevent misuse of criminal laws against queer couples and subsequently the Ministry of Home Affairs issued a similar advisory to all State Governments.[79]

In Tamil Nadu, in S. Sushma v. Commissioner of Police[80] ('Sushma'), the Madras High Court mandated sensitisation of the police and police machinery to ensure the LGBTIQA+ community is protected. [81] The Tamil Nadu Government has also amended the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964 prohibiting harassment of the queer community and persons working with the queer community.[82] Aligned with the above, the Home Department must issue the following guidelines to the police in relation to the newly inserted offences by the Amendment Act:

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NOTIFICATION BY GOVERNMENT Home Department

[78]2023 SCC OnLine SC 1348, Para 44.
[79] Ministry of Home Affairs, Government of India, 'F No 11034/26/2024-IS-IV' (Notice, 11 July 2024) https://www.mha.gov.in/sites/default/files/2024-07/NoticeIS1_11072024.pdf, accessed 21 May 2026
[80]2021 SCC OnLine Mad 2096.
[81]Ibid, Para 43(H)(1).
[82]Government of Tamil Nadu, Home Department, "Amendment to the Tamil Nadu Subordinate Police Officers' Conduct Rules," G.O. Ms. No. 52, Home (Police VI), January 29, 2022, Tamil Nadu Government Gazette, Part III, Section 1(a), No. 7 (February 16, 2022), https://www.livelaw.in/pdf_upload/tn-subordinate-police-conduct-rules-amendment-rule-24-c-409952.pdf, accessed 21 May 2026.

Subject: Advisory on sections 18(e), 18(f), 18(g) and 18(h) of the Transgender Persons (Protection of Rights) Amendment Act, 2026

The following guidelines are issued to the police before registering a FIR under sections 18(e), (f), (g) and (h) of the Transgender Persons (Protection of Rights) Amendment Act, 2026

(1) Prior to registering a FIR against any person the police will conduct a preliminary inquiry to ensure that an offence is disclosed under the Act.

(2) The police may summon the alleged victim and the accused for the purpose of such preliminary inquiry.

(3) During the preliminary inquiry, 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.

(4) In cases of complaints against registered civil society organisations that work for the welfare of the LGBTIQA+ community or registered medical healthcare professionals, the investigating officer shall take written permission from an officer at least one rank higher before making any arrest.

(5) If the alleged victim is a minor, then only the Child Welfare Police Officer will 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.

(6) 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.

(7) Confidentiality will be maintained throughout the proceedings.

ISSUE 6

Sensitisation of authorities and officials is critical to prevent misuse of the Amendment Act

The effective implementation of any welfare legislation protecting the rights of any community rests not only on the text of the law but also the manner in which those tasked to execute the law understand and apply it. This is particularly true in the context of the Amendment Act, where officials at multiple levels exercise significant discretionary powers that directly affect the lives of transgender persons.

Constitutional authority supports the mandate for sensitisation practice. The Supreme Court in NALSA expressly directed the Central and State Governments to take steps to create awareness among the public about transgender persons and their rights.[83] This obligation was further grounded in Navtej Singh Johar v. Union of India, where the Court affirmed the dignity and equal citizenship of sexual minorities,[84] and in Supriyo, which, while declining to recognise a constitutional right to marry, nonetheless underscored the State's obligation to protect sexual minorities from discrimination.[85] The

[83] NALSA, Para 135.8.
[84] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, Paras 606, 612, 618.4.
[85] Supriyo v. Union of India, 2023 SCC OnLine SC 1348, Para 44.

judgement in Sushma similarly emphasised that State authorities must not become instruments of harassment. [86] At the statutory level, the 2019 Act and Tamil Nadu Rules impose affirmative obligations on authorities to uphold the rights of transgender persons, which cannot be discharged without adequate understanding of those rights.

NODAL AUTHORITY

Department of Social Welfare and Women's Empowerment

PROPOSED STEP

It is thus critical that all authorities and officers carrying out duties and functions under the 2019 Act are sensitised about the transgender community, the diversity within the community, and their legal rights and entitlements. This is critical given their direct role in the implementation of the Act and Rules. Sensitisation must not be a one time exercise and

[86] S. Sushma v. Commissioner of Police, 2021 SCC OnLine Mad 2096, Para 53.A

necessitates being done periodically to reflect evolving community standards. Crucially the government must partner up with queer-led civil society organisations for the design and delivery of such sensitisation, as lived experience and community knowledge are indispensable to its effectiveness.

Without such sensitisation, there is real risk that the discretionary powers conferred by the Amendment Act, in particular the role of the medical authority and District Magistrate, will be exercised in a manner inconsistent with constitutional framework, and that officials will become, either through ignorance or prejudice, instruments of the very harassment the law seeks to prevent.