

## Submissions on the Transgender Persons (Protection of Rights) Amendment Bill, 2026

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### I. BACKGROUND

The Supreme Court in *NALSA v. Union of India*<sup>1</sup> ('NALSA') has held that a transgender person has a right to self-identified gender identity.<sup>2</sup> The Court also held that the right to self-identified gender identity is independent of any form of medical intervention.<sup>3</sup> Specifically, the Court stated, "Gender identity as already indicated forms the core of one's personal self, based on self-identification, not on surgical or medical procedure."<sup>4</sup> On the right to self-identified gender identity the Court held, "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."<sup>5</sup>

Following this judgment, the Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019 ('TG Act, 2019'). Aligned with *NALSA*, this Act defined a transgender person as, "a person whose gender does not match with the gender assigned to that person at birth"<sup>6</sup> and made specific references to groups within the transgender community such as transgender men, transgender women, and socio-cultural transgender groups. The Act also recognised a transgender person's right to self-perceived gender identity<sup>7</sup> and did not mandate any form of medical intervention for an individual to be legally recognised as a transgender person.<sup>8</sup>

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<sup>1</sup> *NALSA v. Union of India*, AIR 2014 SC 1863.

<sup>2</sup> *NALSA v. Union of India*, Para 129(2).

<sup>3</sup> *NALSA v. Union of India*, Paras 20, 76.

<sup>4</sup> *NALSA v. Union of India*, Paras 20, 76.

<sup>5</sup> *NALSA v. Union of India*, Para 129(2).

<sup>6</sup> S. 2(k) of the TG Act, 2019 defines transgender person as, '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.'

<sup>7</sup> S. 4(2), TG Act, 2019.

<sup>8</sup> S. 6, TG Act, 2019.

Under section 7 however, the Act requires a transgender person to undergo surgery to be eligible to identify within the binary genders of man or woman.<sup>9</sup> While the rules enacted under the TG Act, 2019 diluted the requirement for surgery by replacing it with ‘medical intervention’ broadly defined as, “any gender affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to counseling, hormonal therapy, and surgical intervention”,<sup>10</sup> section 7 of the Act stands challenged before the Supreme Court.<sup>11</sup> The ground for challenge is that mandating medical intervention as a prerequisite to legal identification as a man or woman is in violation of the principle of self-determination and autonomy articulated in *NALSA*. Further, there are several transgender persons who do not want to undergo any form of medical procedure or intervention for affirmation of their gender identity whether as a man, woman or a non-binary transgender person (a person who does not identify either as a man or a woman).

The proposed Transgender Persons (Protection of Rights) Amendment Bill, 2026 (‘Amendment Bill’) detracts from *NALSA* on many counts. First, the definition of ‘transgender’ is not aligned with the judgment and excludes several groups within the transgender community. It focuses on those groups that socio-culturally present as trans-feminine, which leads to the exclusion of transgender men and non-binary transgender individuals. Second, by empowering a medical board to influence whether a transgender person can exercise their right to self-identified gender, it stands in tension with the principle of self-determination upheld in *NALSA*. Finally, the proposed amendment, while retaining the present provision on offences committed against transgender persons, seeks to introduce further offences. These pertain to grievous hurt or injury caused with intent to unduly compel persons “to assume, adopt, or outwardly present a transgender identity”.<sup>12</sup> Broad and undefined terms including “allurement, deception, inducement”<sup>13</sup> are used in criminalising begging and solicitation while presenting as a transgender person. Further, it anchors punishment to immeasurable facets such as dress and gender presentation. The offences also criminalise kidnapping or compelling to present as transgender, which can result in older transgender persons being prosecuted for sheltering younger, more vulnerable individuals who are subjected to natal or community-based violence. This can also affect transgender gharanas, as it may implicate the guru-chela system.

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<sup>9</sup> S. 7, TG Act, 2019.

<sup>10</sup> Rule 2(i), Transgender Persons (Protection of Rights) Rules, 2020.

<sup>11</sup> Swati Bidhan Baruah v. Union of India, available at <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

<sup>12</sup> Clause 7(g) & (h), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

<sup>13</sup> Clause 7(g) & (h), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

Further, the transgender community has expressed their concerns and disagreements with the Amendment Bill.<sup>14</sup> This Bill has been met with sustained and visible opposition from the transgender community across the country, including street protests, press conferences, public hearings, op-eds, and direct engagement attempts with the government. Alongside on-ground mobilisation, several community-led statements and op-eds have described the Bill as “regressive” and a rollback of rights. The core reasons for disagreement, articulated consistently across these engagements, is that the Bill undermines self-identification by introducing medical and bureaucratic gatekeeping, narrows the definition of transgender identity, and risks diluting existing legal protections recognised by the Supreme Court.

Consultations also show that the Amendment Bill is already creating fear in the community. Many people are rushing to obtain transgender identity certificates (or “TG cards”) in case legal recognition becomes harder in future. Transgender men are especially worried that the proposed changes will make recognition more difficult and increase medical and bureaucratic scrutiny. The Amendment Bill may also affect healthcare by increasing gatekeeping, discouraging non-transfeminine presenting transgender persons from seeking care, and making gender-affirming treatment harder to access.

## II. RECOMMENDATIONS

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<sup>14</sup> Tanmayee Tyagi, ‘Trans groups, social orgs protest Centre’s new trans bill’ *The Times of India* (23 March 2026) <[http://timesofindia.indiatimes.com/articleshow/129736894.cms?utm\\_source=&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/129736894.cms?utm_source=&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> accessed 23 March 2026; ‘LGBTQIA+ bodies call transgender bill ‘regressive’, demand withdrawal’ *The Times of India* (23 March 2026) <[https://timesofindia.indiatimes.com/city/vadodara/lgbtqia-bodies-call-transgender-bill-regressive-demand-withdrawal/articleshow/129737041.cms?utm\\_source=](https://timesofindia.indiatimes.com/city/vadodara/lgbtqia-bodies-call-transgender-bill-regressive-demand-withdrawal/articleshow/129737041.cms?utm_source=)> accessed 23 March 2026; ‘Transgender Rights Bill row: Opposition MPs, activists seek withdrawal’ *The Times of India* (23 March 2026) <[https://timesofindia.indiatimes.com/india/transgender-rights-bill-row-opposition-mps-activists-seek-withdrawal/articleshow/129736370.cms?utm\\_s](https://timesofindia.indiatimes.com/india/transgender-rights-bill-row-opposition-mps-activists-seek-withdrawal/articleshow/129736370.cms?utm_s)> accessed 23 March 2026; Pheroze L Vincent, ‘Queer groups slam Transgender Persons Amendment Bill, 2026, as scope excludes ‘vulnerable’ sections’ <[https://www.telegraphindia.com/india/queer-groups-slam-transgender-persons-amendment-bill-2026-as-scope-excludes-vulnerable-sections-prnt/cid/2152409?utm\\_](https://www.telegraphindia.com/india/queer-groups-slam-transgender-persons-amendment-bill-2026-as-scope-excludes-vulnerable-sections-prnt/cid/2152409?utm_)> accessed 23 March 2026; Deccan Herald, ‘“They Are Snatching Our Rights”, Protestors Oppose the Bill Amending the Transgender Persons Act’ (Youtube, 18 March 2026) <[https://timesofindia.indiatimes.com/city/pune/pune-based-lgbtqia-members-activists-object-to-transgender-persons-protection-of-rights-amendment-bill/articleshow/129686260.cms?utm\\_s](https://timesofindia.indiatimes.com/city/pune/pune-based-lgbtqia-members-activists-object-to-transgender-persons-protection-of-rights-amendment-bill/articleshow/129686260.cms?utm_s); <https://www.youtube.com/watch?v=IQ8oWcgPZJO>> accessed 23 March 2026; Ambika Pandit, ‘National Council members to govt: ‘Self perceived identity’ must remain foundation for transgender identification’ *The Times of India* (22 March 2026) <[http://timesofindia.indiatimes.com/articleshow/129737382.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/129737382.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> accessed 23 March 2026.

The Government's Pre-legislative Consultation Policy<sup>15</sup> ('Policy') prescribes that every Ministry must publish proposed legislation (which would include amendments) in the public domain and ensure that groups affected directly by such legislation have knowledge of it.<sup>16</sup> Further, the Policy encourages the parent Ministry to carry out public consultations and ensure transparency by disclosing public comments and feedback on its website. It is recommended that this protocol be followed and transgender communities must be engaged in relation to any proposed legal and policy developments directly impacting them. In this context and the legal concerns flagged above, the Amendment Bill must be reconsidered.

Further the following is recommended:

- (a) Standing Committee:** If amendments are deemed to be required, it is recommended that the Amendment Bill be referred to a Parliamentary Standing Committee ('Committee'). The Committee must invite public submissions and comments, carry out consultations, and invite depositions from community members, lawyers and subject matter experts. A similar process was followed for the Transgender Persons (Protection of Rights) Bill, 2016 which led to, amongst other changes, the welcome outcome of the definition in the TG Act, 2019 aligning with the NALSA judgment. Given the legal concerns and community response to the Amendment Bill, establishment of a Committee is recommended.
- (b) Consultations:** It is critical that consultations must be representative of different groups within the transgender community: transgender women, transgender men and non-binary transgender persons. Socio-cultural groups from across the country must also be engaged. The members of the National Council for Transgender Persons, established under the TG Act, 2019, must be actively consulted for their expert opinion. This will ensure that expert opinions and lived experiences inform law and policy on transgender rights such that their fundamental rights can be recognised, protected and realised.

Further, below we present a **clause-by-clause** analysis of the Amendment Bill.

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<sup>15</sup> Chairmanship of Cabinet Secretary on the Pre-legislative Consultation Policy, available at <https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/02/2023021333.pdf>.

<sup>16</sup> Ibid.

### III. CLAUSE-BY-CLAUSE ANALYSIS

Clause	Provision	Vidhi Comment
2	<p>In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—</p> <p>(ii) after clause (a), the following clause shall be inserted, namely:—</p> <p>‘(aa) “authority” means a medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer, as may be appointed by the Central Government, State Government or Union territory Administration;’</p>	<p>NALSA recognised self-identification as central to gender identity and made clear that a person does not require medical validation or external certification to know or assert their own gender identity.<sup>17</sup> Specifically, it states, “Gender identity as already indicated forms the core of one’s personal self, based on self-identification, not on surgical or medical procedure”.<sup>18</sup></p> <p>The Amendment Bill by introducing a medical board which has the power to make recommendations to inform whether a person is entitled to have their gender legally changed to transgender person dilutes the right recognised by <i>NALSA</i>. This is especially significant because the Bill deepens medicalisation and official scrutiny in an area where the Supreme Court has already affirmed autonomy, dignity, and self-determination.</p> <p>The Amendment Bill does so by building on provisions of the 2019 Act that are themselves under constitutional challenge. Section 7 of the 2019 Act, for</p>

<sup>17</sup> *NALSA v. Union of India*, Paras 20, 76.

<sup>18</sup> *NALSA v. Union of India*, Para 76.

		<p>instance, has been challenged before the Supreme Court because it requires proof of “medical intervention” for the issuance of binary identity certificates, such as man or woman.<sup>19</sup> Rather than correcting that flaw, the Amendment Bill appears to carry it forward and strengthen it.</p> <p><b>Recommendation:</b> It is recommended that this clause be deleted and the requirement of a medical board making a recommendation for a person to be able to exercise their self-identified gender identity be removed.</p>
<p>2</p>	<p>In section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as the principal Act),—</p> <p>(iv) for clause (k), the following clause shall be substituted, namely:—</p> <p>‘(k) “transgender person” means—</p> <p>(i) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch, or</p>	<p>The NALSA judgment broadly defined transgender persons as any person who did not identify with the sex assigned to them at birth. NALSA notes, ‘Gender identity refers to each person’s deeply felt internal and individual experience of gender’.<sup>20</sup> It also recognised the right of a transgender person to be legally recognised as per their self-identified gender identity be it man, woman or a transgender person.<sup>21</sup> The 2019 Act under section 2(k) affirmed this.<sup>22</sup></p> <p>The Amendment Bill however restricts the definition of transgender person to include only: members of</p>

<sup>19</sup> Swati Bidhan Baruah v Union of India, available at <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

<sup>20</sup> NALSA v. Union of India, AIR 2014 SC 1863, Para 19.

<sup>21</sup> NALSA v. Union of India, Para 129(1) and (2).

<sup>22</sup> S. 2(k), The Transgender Persons (Protection of Rights) Act, 2019.

<p>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:—</p> <ul style="list-style-type: none"> <li>(a) primary sexual characteristics;</li> <li>(b) external genitalia;</li> <li>(c) chromosomal patterns;</li> <li>(d) gonadal development;</li> <li>(e) endogenous hormone production or response, or such other medical conditions; or</li> </ul> <p>(ii) any person or child who has been, by force, allurements, 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.’</p> <p>Provided that it shall not include, nor shall ever have been so included, persons with different sexual orientations and self-perceived sexual identities.’</p>	<p>certain socio-cultural groups (such as <i>hijras</i>, <i>aravanis</i>, <i>jogtas</i>, and <i>kinners</i>), persons with intersex variations, and persons (including children) who have been unduly compelled to assume, adopt, or outwardly present a transgender identity through surgical, chemical, or hormonal procedures, or otherwise.<sup>23</sup> Further, it uses the word ‘eunuch’ which is an outdated and derogatory term which has been rejected by the transgender community.</p> <p>In relation to clause (iii) namely children and persons who are compelled to present as transgender, it needs to be noted that <i>first</i>, the word ‘compelled’ stands undefined, and <i>second</i>, there is no clarity in relation to what ‘presenting as transgender’ means. Critically, individuals who may be perceived as transgender by certain sections of society (based on a stereotypical understanding of the term) may not identify as transgender and may be cis-gender persons. Thus, clause (iii) suffers on account of vagueness and an incorrect understanding of who a transgender person is.</p> <p>Further, the <i>proviso</i> which clarifies that the Act does not apply to persons with “different sexual orientations and self-perceived sexual identities” is vague and redundant. First, it is clear that the TG Act, 2019 does not cover sexual minorities namely lesbian, gay and</p>
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<sup>23</sup> Clause 2(iv), The Transgender Persons (Protection of Rights) Amendment Bill, 2026.

		<p>bisexual persons and applies only to transgender persons. Second, the term “self-perceived sexual identities” is vague and undefined and may create confusion and exclusion at the stage of implementation.</p> <p>The proposed definition stands in tension with the position of law articulated in the NALSA judgment. Further, it excludes several transgender persons from the ambit of the law especially transgender men, non-binary transgender persons, genderqueer persons, and persons who do not present in a specific, socio-cultural transfeminine manner.</p> <p><b>Recommendation:</b> It is recommended that the definition of ‘transgender person’ under the TG Act, 2019 be retained.</p>
<p><b>3</b></p>	<p>In section 4 of the principal Act, sub-section (2) shall be omitted.</p>	<p>Section 4(2) provides that, “A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.”</p> <p>This was aligned with the binding direction in <i>NALSA</i> where the Court stated, “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.”<sup>24</sup></p>

<sup>24</sup> NALSA v. Union of India, Para 129(2).

		<p>Omission of section 4(2) takes away the constitutionally protected fundamental right of transgender persons to self-identified gender identity.</p> <p><b>Recommendation:</b> Section 4(2) must be retained to ensure the law recognises the fundamental right to self-identified gender identity as upheld in a binding direction of the Supreme Court.</p>
4	<p>In section 6 of the principal Act,—</p> <p>(a) in sub-section (1), for the words “District Magistrate”, the words “District Magistrate, after examining the recommendation of the authority and, if he considers either necessary or desirable, after taking the assistance of other medical experts” shall be substituted;</p>	<p>As explained above, <i>NALSA</i> recognises the right to self-identified gender independent of any form of medical intervention.</p> <p>The Amendment Bill not only requires a medical authority to make recommendations affirming the gender identity of a transgender person but also empowers the District Magistrate to consult other medical experts. This follows the medical model of affirming gender identity which the <i>NALSA</i> judgment has firmly rejected.<sup>25</sup></p> <p><b>Recommendation:</b> A reversion to the original section 6, which was aligned with the position of law in <i>NALSA</i> and did not prescribe any medical inputs for exercise of self-identified gender identity as a transgender person, must be retained.</p>

<sup>25</sup> *NALSA v. Union of India*, Para 76.

<p>5</p>	<p>In section 7 of the principal Act,—</p> <p>.....</p> <p>(b) after sub-section (1), the following sub-section shall be inserted, namely:—</p> <p>“(1A) The medical institution in which the person who has undergone surgery to change gender, either as male or female, shall furnish the details of such person to the concerned District Magistrate and the authority in such form and manner as may be prescribed.”;</p>	<p>Section 7 of the TG Act, 2019 stands challenged before the Supreme Court on the ground that it dilutes the right to self-identified gender identity recognised in <i>NALSA</i>. This is because it introduces the prerequisite of surgical intervention for a transgender person to be able to identify within the binary of man or woman. <i>NALSA</i> has categorically held that the right to gender identity is not contingent on any form of medical intervention.<sup>26</sup></p> <p>Further, the proposed provision mandates medical institutions to share details of transgender persons who have undergone medical intervention with the District Magistrate. Since this involves the personal data of transgender persons, the provision must be assessed against both the Supreme Court's judgment in <i>Justice K.S. Puttaswamy v. Union of India</i><sup>27</sup> (<i>Puttaswamy</i>) and the Digital Personal Data Protection Act, 2023 ("DPDP Act").</p> <p>Under the DPDP Act, processing of personal data requires either the consent of the Data Principal, or a legitimate use ground provided under the Act. At the same time, in <i>Puttaswamy</i>, while recognising the right to privacy under Article 21, the Supreme Court held that State interference may be justified only if it is backed by law, in pursuance of a legitimate aim, and it</p>
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<sup>26</sup> *NALSA v. Union of India*, Paras 20, 76.

<sup>27</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 and (2019) 1 SCC 1.

		<p>is a proportionate measure ('three-part proportionality test'). The proposed amendment must be examined against the Supreme Court's decisions on the right to privacy.</p> <p>The mandatory disclosure requirement under the proposed provision (1A) raises constitutional concerns regarding the informational privacy of transgender persons. The provision will have to withstand scrutiny under the <i>Puttaswamy</i> framework, where it would have to be demonstrated that requiring medical institutions to share such information serves a legitimate state aim, that there is a rational nexus between the mandatory sharing and collection of such data and that aim, and that no less intrusive alternative could have achieved this objective.</p> <p><b>Recommendation:</b> In light of the constitutional concerns outlined above, this amendment must be omitted.</p>
5	<p>In section 7 of the principal Act,—</p> <p>....</p> <p>(c) for sub-section (2), the following sub-section shall be substituted, namely:—</p> <p>“(2) A person referred to in sub-section (1) shall also make an application to the District Magistrate who</p>	<p>The Amendment Bill, like the TG Act, 2019 continues to empower medical authorities to inform whether a transgender person can exercise their right to self-identified gender within the binary of man or woman by requiring them to submit a 'certificate' to the District Magistrate for consideration. This follows the medical model of affirming gender identity which the</p>

	<p>shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.”;</p>	<p>NALSA judgment has firmly rejected.<sup>28</sup> A constitutional challenge to section 7 of the TG Act, 2019 (which requires proof of medical intervention to identify as man or woman) is pending before the Supreme Court on this ground already.<sup>29</sup></p> <p><b>Recommendation:</b> It is recommended that section 7 be amended to align itself with the position of law articulated in NALSA where the right to be recognised as per self-identified gender identity whether man, woman or transgender person is independent of any form of medical intervention. The production of medical certification must be optional and based on the choice of the applicant.</p>
<p>7</p>	<p>For section 18 of the principal Act, the following section shall be substituted, namely:—</p> <p>“....</p> <p>(e) kidnaps or abducts any adult person and causes— (i) grievous hurt to such person, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such person, with the intent of, or in the course of,</p>	<p>While these newly introduced provisions under Section 18 seek to address grave and aggravated criminal acts like abduction and grievous hurt, their practical application on the ground raises serious concerns across clauses (e) to (h).</p> <p>The inclusion of these clauses will invariably target community support structures such as the <i>gharana</i> system. These traditional spaces of belonging, often the only refuge for transgender persons who are rejected by natal families, could be easily</p>

<sup>28</sup> NALSA v. Union of India, Para 76.

<sup>29</sup> Swati Bidhan Baruah v Union of India, available at <https://www.scobserver.in/cases/swati-bidhan-baruah-union-of-india-challenges-to-transgender-persons-act-case-background/>.

	<p>compelling such person to assume, adopt, or outwardly present a transgender identity against the will or consent of such person, whether by force, allurements, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than two lakh rupees;</p>	<p>mischaracterised as sites of "allurement", "inducement" or "compulsion", entangling the community in long, targeted criminal proceedings in response to <i>bona fide</i> actions.</p> <p>In addition to this, the inclusion of several medical procedures, including "hormonal or surgical procedures" under the umbrella of grievous hurt risks criminalising legitimate gender-affirming care, creating a chilling effect where members of the community or medical professionals may fear prosecution for assisting individuals in their voluntary transition process. The provision also carries risk of wrongful application against instances of medical treatment wholly unconcerned with gender identity or presentation (such as hormone therapy for symptoms of Polycystic Ovary Syndrome, menopause, and certain types of cancer).</p> <p>Further, the language of the provision as in the compulsion to "outwardly present a transgender identity" is rooted in arbitrary assumptions, incorrect stereotypes, and the profiling and homogenisation of transgender persons. The use of words such as "assume, adopt, or outwardly present" furthers misleading views of being transgender as a choice of appearance or clothing rather than an inherent identity. This framing treats gender-affirming transition or presentation as inherently suspicious or</p>
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		<p>criminal. It also blurs the distinction between situations involving actual violence or abduction, and those involving voluntary co-opting into community networks and shared kinship structures. These are already dealt with in existing general criminal legislation.<sup>30</sup> The need for separate criminalisation within the TG Act, 2019 must be backed with data or anecdotal evidence in support of the same.</p> <p><b>Recommendation:</b> It is recommended that this clause be reconsidered and revised in deliberation with the larger transgender community. The need for such criminalisation, rooted in evidence of an existing harm, must be established. The language of the clause, if it is to be retained, must be revised in an inclusive and gender-sensitised manner, without reliance on stereotypes. Existing legislations may be adequately relied on until the specific needs and concerns of the community are considered holistically and addressed consultatively.</p>
7	<p>(f) kidnaps or abducts any child and causes— (i) grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or any surgical, chemical, or hormonal procedure; or (ii) permanent or severe injury to the body or bodily functions of such child, with the intent of, or in the course of, compelling such child to assume, adopt, or</p>	<p>In addition to the general concerns for Section 18(e) to (f) identified above, it may be noted that the offences introduced in relation to children under clause (f) are already punished under general criminal law (as in the Bharatiya Nyaya Sanhita, 2023) and existing special legislations (such as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 and the Bonded</p>

<sup>30</sup> S. 117, The Bharatiya Nyaya Sanhita, 2023.

	<p>outwardly present a transgender identity, whether by force, allurements, deceit, undue influence or otherwise, shall be punishable with rigorous imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees;</p>	<p>Labour System (Abolition) Act, 1976).</p> <p><b>Recommendation:</b> Same recommendation as for proposed clause (e) of Section 18.</p>
	<p>(g) by force, threat, coercion, allurements, deception, inducement, or undue influence— (i) compels any person, whether or not such person is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person against the will of such person; and (ii) employs, uses, or causes such person to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine which shall not be less than one lakh rupees; and</p>	<p>The criminalisation of compelling a person to “dress, present, or conduct themselves outwardly as a transgender person” for employment in begging, solicitation or forced labour is overreaching and ambiguous in its scope and meaning, as well as rooted in false stereotypes and artificial homogenisation of transgender identities. Furthermore, it ignores the lived realities of the most socio-economically marginalised groups, including <i>hijra gharanas</i> among others, where begging and solicitation are in light of alternative means of livelihood.</p> <p>The employment of criminal law in relation to begging and solicitation carries a significant likelihood of harassment, arbitrary arrest, illegal detention and custodial violence being committed against transgender persons, and most specifically of leaders of <i>gharanas</i> and other community kinship spaces. The need for such a clause specific to the presentation of a transgender identity remains unclear in the absence of data or anecdotal evidence in support of the same.</p> <p><b>Recommendation:</b> It is recommended that the proposed clause, in its present form, be omitted.</p>

		Existing general <sup>31</sup> as well as special legislation (including the Bonded Labour System (Abolition) Act 1976 <sup>32</sup> ) may be relied on in a gender-agnostic manner to safeguard against forced begging.
7	<p>(h) by force, threat, coercion, allurement, deception, inducement, undue influence or otherwise—</p> <p>(i) compels any child, whether or not such child is a transgender person, to dress, present, or conduct themselves outwardly as a transgender person; and</p> <p>(ii) employs, uses, or causes such child to engage in begging, solicitation, servitude, or any other form of forced or bonded labour while so presenting, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to fourteen years, and shall also be liable to fine which shall not be less than three lakh rupees.”.</p>	<p>In addition to the general concerns for Section 18(e) to (f) identified above, it may be noted that the offences introduced in relation to children under clause (h) are already punished under general criminal law (as in the Bharatiya Nyaya Sanhita, 2023<sup>33</sup>) and existing special legislations (such as the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>34</sup> and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986<sup>35</sup>).</p> <p><b>Recommendation:</b> Same recommendation as for proposed clause (g) of Section 18.</p>

<sup>31</sup> S. 143, The Bharatiya Nyaya Sanhita, 2023.

<sup>32</sup> S. 16, The Bonded Labour System (Abolition) Act, 1976.

<sup>33</sup> S. 139, The Bharatiya Nyaya Sanhita, 2023.

<sup>34</sup> S. 76, The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

<sup>35</sup> S. 3, The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.