

## The Problem Issues with the Trans Rights Amendment Bill 2026 – A note!

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### 1. Administrative Arbitrary Power (Uncontrolled Bureaucratic Discretion)

#### Relevant provisions (indicative):

- Proposed amendments to **Section 5 / Section 6** (procedure for application and grant of certificate of identity)
- Any newly inserted provisions creating **Screening / Verification Committees** or **Medical Boards** (e.g., proposed **Section 6A / Rules thereunder**)

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The proposed amendments shift the power of recognising a person's gender identity from the individual to administrative authorities such as district magistrates, screening committees, or medical boards.

However, the amendments do not clearly define:

- the criteria for recognition
- the evidentiary standards to be applied
- the procedure to be followed in assessing applications

This lack of clear statutory guidance creates **wide and unguided discretion** in the hands of administrative authorities.

In practice, this means:

- Different officials may apply different standards in similar cases
- Decisions may depend on personal bias, lack of awareness, or prejudice
- There is no guarantee of uniformity or predictability

As a result, recognition of gender identity becomes dependent not on the individual's self-identification, but on the subjective satisfaction of an authority.

This converts a **right into a permission**.

From a constitutional standpoint, such unguided discretion is inherently arbitrary. It enables unequal treatment of similarly placed persons without any rational basis, thereby violating **Article 14 (equality before law)**.

Further, when a core aspect of personal identity is made contingent on administrative approval, it undermines **personal autonomy and dignity**, which are protected under **Article 21**.

*➡ In effect, the amendments replace a **rights-based framework grounded in self-identification** with a **discretion-based system controlled by the State**, which is prone to inconsistent application and misuse.*

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## 2. Retrospective Legal Instability (Reopening Settled Rights)

**Relevant provisions (indicative but grounded):**

- Amendments affecting **Section 6 & Section 7** (Certificate of Identity and change of gender)
- Any **transitional or validation clause** permitting **review / re-verification of previously issued certificates** (often placed in a new section, e.g., “Section 6B” or in amendment schedules)

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The proposed amendments appear to permit the State to **re-examine or invalidate identity certificates that were validly issued under the existing law**, particularly those based on self-identification.

This means that individuals who have already been legally recognised as transgender persons may now be required to:

- undergo fresh scrutiny
- reapply under new criteria
- justify identities that were already accepted by the State

This creates a situation where **past legal recognition is no longer secure**.

In practical terms:

- Identity documents already issued (certificates, linked IDs) may lose validity
- Individuals may be pushed back into bureaucratic processes they had already completed
- There is a risk of denial upon re-evaluation, even where recognition was previously granted

This introduces **legal uncertainty and instability** into a domain that requires the highest degree of certainty—personal identity.

From a constitutional perspective, this raises serious concerns:

- It violates the principle of **legal finality**, where decisions made under a valid law should not be arbitrarily reopened
- It undermines **legitimate expectation**, as individuals relied on the existing legal framework to organise their lives, documentation, and access to rights
- It creates scope for **arbitrary deprivation of status**, engaging **Article 14 (equality)** and **Article 21 (dignity and personal liberty)**

Most critically, it signals that **State recognition of identity is provisional and reversible**, rather than stable and rights-based.

👉 The effect is not merely administrative inconvenience—it places individuals in a condition of **permanent legal insecurity**, where their recognised identity can be questioned at any time.

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### 3. Forced Channeling into Traditional Structures (Reinforcing Gharana Control and Exploitation)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 6 / Section 7** introducing stricter verification requirements tied to “community validation” or “established identity norms”
- Any rules or provisions recognising or relying upon **traditional/community-based certification mechanisms** (explicitly or indirectly)
- Provisions that make **medical or third-party endorsement** mandatory, thereby excluding independent self-identification

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The proposed amendments, by removing or weakening self-identification and introducing external validation requirements, effectively push transgender persons toward **traditional community structures**—such as hijra/kinnar gharanas—for recognition and survival.

In the absence of accessible, fair, and individual-centric legal recognition, individuals may be compelled to rely on:

- gurus, nayaks, or community heads
- informal certification or endorsement within these structures

This creates a system where **identity recognition becomes socially mediated rather than individually determined**.

In practice, this can lead to:

- increased dependence on hierarchical community systems
- pressure to conform to specific cultural or occupational roles
- reduced ability to live independently outside these networks

While such communities have historically provided support and solidarity, they are also known to operate through **strict hierarchies and control mechanisms**, including:

- economic extraction
- restrictions on personal autonomy
- enforcement of conformity

By indirectly funneling individuals into these structures, the State:

- strengthens **informal power hierarchies**
- reduces the space for independent, self-defined transgender lives

From a constitutional perspective, this is problematic because:

- It interferes with the individual's right to **choose how to live and associate**, protected under **Article 19(1)(a) and 19(1)(c)**
- It undermines **personal autonomy and dignity** under **Article 21**
- It creates unequal conditions where only those willing or able to align with traditional structures can realistically access recognition, engaging **Article 14**

Most importantly, the State cannot design a system that **indirectly coerces individuals into particular social formations** as a condition for recognition of their identity.

👉 The effect of the amendment is not neutral—it **restructures power within the transgender community**, privileging traditional gatekeepers over individual autonomy.

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## 4. De Facto Denial of Welfare & Entitlements (Through Documentation Instability)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 6 & Section 7** (issuance and revision of certificate of identity)
  - Any provisions enabling **re-verification, cancellation, or suspension** of previously issued certificates
  - Rules linking certificate validity to **eligibility for schemes, reservations, or benefits**
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The proposed amendments, by introducing stricter verification requirements and permitting re-evaluation of existing identity certificates, create a direct risk of **disruption in access to welfare schemes and entitlements**.

Under the current legal framework, access to various benefits—such as reservations, healthcare schemes, pensions, and social welfare programmes—is tied to the possession of a valid transgender identity certificate.

If such certificates are:

- cancelled
- kept pending re-verification
- rejected upon reapplication

then individuals may be **effectively excluded from these benefits**, even if the law does not explicitly remove their eligibility.

In practice, this leads to:

- denial of services due to **document mismatch or invalidation**
- delays in accessing benefits due to **ongoing verification processes**
- loss of continuity in welfare support

This creates a situation where rights continue to exist *on paper*, but become **inaccessible in reality**.

From a constitutional perspective:

- This amounts to **indirect or constructive denial of rights**, which can violate **Article 14 (equality)** when similarly placed persons are excluded due to administrative barriers
- It undermines the right to **live with dignity under Article 21**, especially where access to basic welfare is affected
- It disproportionately impacts economically vulnerable individuals, deepening **structural inequality**

Importantly, the State cannot design a system where access to welfare is made contingent on **unstable or repeatedly contestable identity recognition**.

👉 The effect of the amendment is to create a **pipeline blockage**:

- identity → documentation → entitlement

When the first link is destabilised, the entire chain collapses.

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## 5. Chilling Effect (Deterrence Through Fear, Uncertainty, and Intrusion)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 5 / Section 6** introducing stricter scrutiny or third-party verification
  - Any provisions mandating **medical examination / psychological assessment**
  - Provisions enabling **review, cancellation, or re-verification** of previously granted certificates
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The proposed amendments, by introducing intrusive verification processes and uncertainty around recognition, are likely to create a **chilling effect** on individuals seeking to assert or formalise their gender identity.

A chilling effect arises when individuals refrain from exercising their rights due to:

- fear of harassment or invasive scrutiny
- uncertainty about outcomes
- risk of rejection or exposure

In this context, individuals may avoid:

- applying for identity certificates
- updating their documents
- accessing welfare schemes linked to recognition

This is particularly significant because the recognition process may involve:

- medical or psychological examination
- disclosure of deeply personal information
- interaction with officials who may lack sensitivity or training

For many individuals—especially those in unsupportive family or social environments—this creates a real risk of:

- involuntary outing
- social stigma or violence
- loss of livelihood or housing

As a result, individuals may choose to remain **legally invisible rather than face the process**.

From a constitutional perspective:

- A law that deters individuals from exercising their rights, even without explicitly prohibiting them, can violate **Article 19(1)(a)** (expression of identity)
- It undermines **personal autonomy and dignity under Article 21**
- It results in unequal access to rights, engaging **Article 14**

The Supreme Court has recognised that rights must be **practically accessible**, not merely formally available.

👉 The effect of the amendment is to create a system where:

- rights exist in theory
- but are avoided in practice due to fear and burden

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## 6. Reinforcement of Informal Power Networks (State Abdication to Unregulated Authorities)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 5 / Section 6** replacing or diluting self-identification with **external validation requirements**
- Any provisions requiring **endorsement, certification, or verification** by third parties (medical boards, committees, or indirectly, community actors)
- Absence of safeguards ensuring **individual, independent access** to recognition

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By making legal recognition dependent on third-party validation—whether medical, administrative, or otherwise—the proposed amendments risk strengthening **informal and unregulated power networks** within the transgender community.

When individuals are unable to easily access recognition through a fair and predictable legal process, they may be compelled to rely on:

- community gatekeepers
- traditional authority figures
- intermediaries who can “facilitate” recognition

This creates a system where **access to legal identity is mediated by power, not rights**.

In practice, this can lead to:

- increased dependence on hierarchical structures
- pressure to conform to expected identities or roles
- economic or social exploitation in exchange for support or endorsement

The State, instead of providing a direct and accessible pathway, effectively **outsources control over identity recognition** to actors who are:

- not legally accountable
- not bound by constitutional norms
- not subject to transparency or oversight

From a constitutional perspective:

- The State has a duty to ensure that access to rights is **direct, fair, and non-exploitative**
- By creating barriers that push individuals toward informal systems, the State enables **indirect coercion**, violating **Article 21 (dignity and autonomy)**
- It results in unequal access based on social position or connections, engaging **Article 14**

Importantly, the Constitution does not permit the State to design a system where individuals must **negotiate with private or community power structures** in order to access a legal right.

👉 The effect of the amendment is a **shift of power**:

- from individual → to State → to informal authorities

This weakens both **individual autonomy** and **constitutional accountability**.

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**Note:** This one pairs very well with Point 3 but stands on its own because it frames the issue as **State failure + indirect coercion**, not just cultural regression.

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## 7. Surveillance & Datafication Risks (Creation of Sensitive Identity Databases)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 5 / Section 6** requiring detailed applications and verification records
  - Any provisions mandating **medical reports, psychological assessments, or biometric linkage**
  - Rules enabling **centralised or state-level registries** of transgender persons
  - Linkages with existing identity systems (e.g., Aadhaar) through subordinate rules
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The proposed amendments, by requiring increased documentation, verification, and possible medical assessment, are likely to result in the creation and storage of **highly sensitive personal data** relating to transgender individuals.

This may include:

- gender identity status

- medical or psychological information
- history of transition or treatment
- linked identity documents

If such data is collected and stored in centralised or accessible databases, it creates significant risks of:

- unauthorised access or data breaches
- profiling or targeting
- misuse by officials or third parties

Unlike ordinary personal data, information about a person’s gender identity is **deeply sensitive** and, if disclosed, can expose individuals to:

- stigma
- discrimination
- harassment or violence

Further, if such data is linked across systems (e.g., identity documents, welfare databases), it increases the risk of **traceability and tracking** of individuals based on their transgender status.

From a constitutional perspective:

- The right to privacy, as recognised in , includes:
  - **informational privacy** (control over personal data)
  - **decisional autonomy** (control over personal identity choices)
- Any State action involving collection of sensitive personal data must satisfy:
  - legality
  - necessity
  - proportionality
  - procedural safeguards

The proposed framework appears to expand data collection without clearly establishing:

- limits on use
- safeguards against misuse
- accountability mechanisms

👉 The effect of the amendment is to transform identity recognition into a process of **data capture and potential surveillance**, rather than a limited administrative function.

**Note:** This becomes especially strong if we can show:

- absence of **data protection safeguards** in the Bill/rules
- or risk of **function creep** (data used beyond original purpose)

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## 8. Federal Fragmentation (Uneven Implementation Across States and Districts)

### Relevant provisions (indicative but grounded):

- Amendments to **Section 5 / Section 6** implemented through **State governments and District Magistrates**
- Delegation of procedural details to **Rules framed by Central and/or State Governments** (under rule-making powers of the Act)
- Any provisions permitting **State-specific procedures, forms, or verification mechanisms**

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Although the law is central, its implementation is carried out by State authorities and district-level officials. The proposed amendments, by introducing vague standards and delegating key aspects to rules, create a high risk of **uneven implementation across jurisdictions**.

In the absence of clear, uniform criteria, different States—and even different districts within the same State—may:

- adopt different evidentiary standards
- interpret eligibility requirements differently
- impose varying levels of scrutiny or procedural burden

This results in a situation where a person's ability to obtain recognition of their gender identity depends not on their circumstances, but on **where they live**.

In practice:

- An application accepted in one State may be rejected in another
- Procedures may be more accessible in some regions and more restrictive in others
- Individuals may be forced to relocate or reapply in different jurisdictions

This creates what is effectively a **geographical inequality in the enjoyment of fundamental rights**.

From a constitutional perspective:

- Article 14 guarantees **equality before the law across the territory of India**
- A central law cannot result in arbitrary variation in rights based solely on location
- Delegation of essential decision-making without uniform standards can lead to **unconstitutional arbitrariness**

Further, when identity recognition—a core aspect of personhood—is made dependent on local administrative practices, it undermines the idea of **equal citizenship**.

👉 The effect of the amendment is to create a **postcode lottery of rights**, where outcomes vary unpredictably across regions.

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**Note:** This ground becomes especially strong if we can later show:

- differences in **State rules or circulars**
  - or actual examples of divergent outcomes.
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## 9. Inconsistency with Judicial Precedent and International Commitments (Regressive Departure from Established Standards)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 5 / Section 6 / Section 7** that dilute or replace **self-identification** with third-party verification
  - Any provisions introducing **medical or external certification requirements**
  - Provisions that restrict recognition to narrower categories or impose additional conditions
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The proposed amendments represent a significant departure from the legal principles already recognised by Indian courts and reflected in India’s international human rights commitments.

In particular, the Supreme Court in

affirmed that:

- Gender identity is a matter of **self-identification**
- Legal recognition must not be conditioned on **medical procedures or external certification**
- Transgender persons are entitled to **full dignity, autonomy, and equal protection of the law**

By reintroducing verification requirements—especially those involving medical or administrative scrutiny—the amendments appear to **reverse or dilute these binding principles**.

Further, India has, in various international forums, aligned itself with evolving human rights standards that emphasise:

- self-determined identity
- non-discrimination
- protection from intrusive or coercive procedures

A law that moves in the opposite direction risks placing India in **conflict with its own stated commitments**.

From a constitutional perspective:

- Legislative action that undermines or circumvents binding judicial principles can be challenged as **arbitrary and unconstitutional** under **Article 14**
- Departure from established rights without sufficient justification can violate **Article 21 (dignity and autonomy)**

Importantly, while Parliament has the power to legislate, it cannot enact a framework that effectively **nullifies core constitutional protections recognised by the Supreme Court**.

👉 The effect of the amendment is not merely to change procedure—it represents a **regressive shift away from a rights-based framework already affirmed in law**.

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**Note:** This ground is especially powerful because it says:

👉 *“This is not new law—it is a rollback of settled constitutional principles.”*

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## 10. Litigation Explosion & Absence of Appellate Remedies (Denial of Accessible Justice)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 6 / Section 7** providing for grant, rejection, or modification of identity certificates by designated authorities
  - Any provisions empowering **Screening Committees / Medical Boards / District Magistrates** to make final determinations
  - **Absence of any express appellate provision** within the amended framework (no statutory appeal or review mechanism specified)
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The proposed amendments vest significant decision-making power in administrative authorities to grant, reject, or alter recognition of gender identity. However, the framework does not provide a clear and accessible **statutory mechanism for appeal or review** against such decisions.

As a result, individuals whose applications are:

- rejected
- delayed

- cancelled
- adversely modified

are left without any internal remedy within the system.

In practice, this forces individuals to directly approach:

- High Courts under **Article 226**, or
- the Supreme Court under **Article 32**

even for routine administrative grievances.

This has several serious consequences:

- Courts become the **first, rather than last, forum of redress**
- The judicial system is burdened with a large volume of avoidable litigation
- Individuals must bear the cost, time, and complexity of constitutional proceedings

Access to justice then becomes dependent on:

- financial resources
- legal awareness
- geographical proximity to courts

This creates a **structural exclusion**, where:

- those who can litigate may secure recognition
- those who cannot remain without remedy

From a constitutional perspective:

- A rights-determining framework without **effective remedies** is inherently deficient
- The absence of an appellate mechanism increases the risk of **arbitrary decision-making**, violating **Article 14**
- It undermines the guarantee of **fair procedure under Article 21**, which requires that individuals have a meaningful opportunity to challenge adverse decisions

Further, the lack of an appeal prevents:

- correction of errors at the administrative level
- development of consistent standards through appellate oversight

👉 The effect of the amendment is to create a system where:

- rights are determined administratively
- but can only be meaningfully contested through costly constitutional litigation

**Notr:** This one is especially strong ground for a future challenge because courts are very sensitive to “no remedy” situations.

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## 11. Internal Legal Incoherence (Conflict with Existing Statutory and Legal Framework)

### Relevant provisions (indicative but grounded):

- Amendments to **Section 5 / Section 6 / Section 7** introducing new recognition criteria inconsistent with the existing structure of the Act
- Any newly inserted provisions (e.g., **Section 6A / 6B**) that alter the basis of recognition from **self-identification to verification**
- Continued existence of other provisions in the Act that assume or rely on **self-identified gender status**

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The proposed amendments introduce a framework for recognition of gender identity that appears to be **inconsistent with the structure and assumptions of the existing law**.

The parent Act, as originally enacted, is premised on:

- recognition of transgender identity through **self-identification**
- a facilitative (rather than restrictive) administrative process

However, the amendments introduce:

- external verification requirements
- possible medical or third-party certification
- re-evaluation of previously granted recognition

This creates a situation where different parts of the law are **working on contradictory principles**.

For example:

- One part of the Act may recognise identity based on self-declaration
- Another part may require validation by authorities or experts
- Previously granted certificates may be treated as valid under one provision but subject to review under another

This results in **doctrinal incoherence**, where:

- the law does not speak in one clear voice

- individuals and authorities are left uncertain about the applicable standard

In practice, this leads to:

- confusion in implementation
- inconsistent decision-making
- increased scope for arbitrary interpretation

From a constitutional perspective:

- A law that is internally inconsistent can be challenged as **arbitrary under Article 14**, as it lacks a clear and rational framework
- Legal uncertainty undermines **fair procedure under Article 21**, especially where fundamental aspects of identity are involved

Importantly, the State cannot create a system where:

- rights are granted under one provision
- and undermined or withdrawn under another

👉 The effect of the amendment is to produce a **self-contradictory legal regime**, where the basis of recognition is unclear and unstable.

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## 12. Epistemic Shift: From Self-Identified Identity to State-Certified Status (Redefinition of Personhood in Law)

**Relevant provisions (indicative but grounded):**

- Amendments to **Section 5 / Section 6 / Section 7** replacing or diluting **self-identification** with **verification, certification, or approval mechanisms**
- Any provisions mandating **medical, psychological, or third-party validation** as a condition for recognition
- Provisions enabling **review, reassessment, or withdrawal** of recognised identity

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The proposed amendments fundamentally alter the basis on which gender identity is recognised in law.

Under the existing framework, identity is treated as something that:

- arises from the individual's own sense of self
- is declared by the person

- is acknowledged by the State

The amendments shift this framework to one where identity:

- must be **verified, certified, or approved** by external authorities
- is subject to **evaluation against prescribed standards**
- can be **questioned, reassessed, or withdrawn** by the State

This represents a move from **recognition of identity** to **authorisation of identity**.

In effect, identity ceases to be a matter of personal selfhood and becomes a **status granted by the State upon satisfaction of certain conditions**.

In practical terms:

- the individual is no longer the primary authority on their own identity
- recognition becomes contingent on compliance with institutional processes
- identity becomes conditional and potentially reversible

From a constitutional perspective:

- The Supreme Court in  
recognised gender identity as an aspect of **personal autonomy, dignity, and self-expression**
- A framework that subordinates self-identification to State validation undermines:
  - **dignity and autonomy under Article 21**
  - **freedom of expression under Article 19(1)(a)**
- It also creates the risk of **arbitrary recognition**, engaging **Article 14**

Most importantly, the Constitution does not permit the State to define the **inner identity of a person** through external certification processes.

👉 The effect of the amendment is not merely procedural—it alters the **legal understanding of personhood**, shifting it from:

- *“I am, therefore I am recognised”*  
to
- *“I am only if the State is satisfied that I am”*

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What emerges from all these points, taken together, is not just a set of technical changes, but a **fundamental shift in how the law treats transgender persons**. The amendments move away from a system that recognises identity as something rooted in the individual, and towards one where identity must be **proved, approved, and repeatedly justified** before the State. In doing so, they introduce uncertainty, increase bureaucratic control, open the door to inconsistency and misuse, and make access to basic rights—documentation, welfare, dignity—far more fragile than before. Even where rights are not explicitly taken away, they risk becoming **practically inaccessible** through delay, fear, and procedural burden.

At the same time, the framework weakens accountability: there are no clear safeguards against arbitrary decisions, no proper appeals process, and no uniform standards across regions. This means that individuals are left navigating a system that is not only intrusive but also unpredictable, where outcomes may depend on location, resources, or access to legal remedies. The combined effect is a law that does not just regulate identity, but **controls it**, shifting power away from individuals and toward administrative and informal authorities. This is why the challenge is not about any single provision—it is about resisting a broader transformation from a **rights-based approach to a permission-based regime**, and reaffirming that dignity, autonomy, and identity cannot be made conditional on State approval.

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