

From Recognition to Equality: Evaluating the Transgender Persons (Protection of Rights) Amendment Act, 2026

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Abstract:

Identity constitutes the foundation of an individual's existence and recognition within society. The quest for recognition of their identity has been prolonged and challenging for transgender individuals. A pivotal moment in this conflict occurred with the historic judgment of NALSA (2014), in which the Supreme Court acknowledged the freedom to self-identify gender, so affirming the ideals of dignity and liberty. The passing of the Transgender Persons (Protection of Rights) Act, 2019, advanced this constitutional objective. This was a substantial progression in the rights of third-gender individuals, legitimizing the identification of a broad group that does not identify as either male or female. The recent 2026 update to this statute seeks to enhance protection against social exclusion and improve administrative efficiency. The change restricts the concept of 'transgender persons' by prioritizing biological criteria above self-identified gender, therefore diverging from the NALSA judgment. This article examines the effect of the amendment on constitutional principles and weighs progress against concerns and problems of inclusiveness.

Keywords: NALSA judgement, The Transgender Persons (Protection of Rights) Amendment Act, 2026, Right to Self-identification, Transgender rights, Gender identity.

1. INTRODUCTION

The Transgender Persons (Protection of Rights) Amendment Act, 2026 was presented as a bill in the Lok Sabha on March 13, 2026, by the Union Minister of Social Justice and Empowerment, Dr. Virendra Kumar. The bill was approved by the Lok Sabha on 24 March 2026 and subsequently by the Rajya Sabha on 25 March 2026. It ultimately receives presidential assent on March 30, 2026. It modifies the 2019 legislation, which was established in accordance with the NALSA judgment,¹ by acknowledging the right to self-perceived gender identity under section 4(2)² of the act, offering an expansive definition of transgender individuals, and, crucially, legitimizing their identification. The broad definition thus resulted in challenges regarding the enforcement and implementation of certain laws, as well as the identification of the authentic oppressed class. The recent 2026 amendment has refined the concept of transgender by removing self-identified or self-perceived sexual identities. This has undermined the

¹ National Legal Services Authority v. Union of India, MANU/SC/0309/2014.

² Transgender Persons (Protection of Rights) Act 2019, § 4(2), No. 40, Acts of Parliament, 2019(India).

advancements achieved by the transgender community and has called into question the identities of individuals who determine their own gender identity based on personal autonomy rather than medical validation. The revision has also overturned the significant NALSA judgment by requiring medical verification. This has prompted extensive discourse over the ability to live with dignity, based on self-identified gender identity, vs the legal requirement for medical certification that emphasizes solely biological determinants. Crucially, it provokes a conflict between biological composition and the intrinsic perception and understanding of gender, so calling into question the identity of these individuals.

2. TRACING THE EVOLUTION OF TRANSGENDER RIGHTS IN INDIA: HISTORICAL AND SOCIAL PERSPECTIVES

The notion of transgender individuals is not a novel idea in India. The acknowledgment of the transgender population in India originates from ancient times, as demonstrated by historical literature from that period. Hindu mythology, folklore, and early Vedic literature have addressed the topic of “*Tritiyaprakriti*” or “*Napumsaka*”.³ In the Ramayana, Lord Rama departs for the wilderness to honor his father's commitment, committing to a 14-year exile. At that moment, he turned to his troops and instructed all men and women to return to the city. Among his adherents were hijras who were not constrained by his guidance and chose to remain. Impressed by their dedication, Lord Rama bestowed upon them the capacity to bestow blessings on auspicious occasions.⁴

During the Mughal era, hijras had significant positions in royal courts, as they were perceived as astute, loyal, and reliable.⁵ From the 18th century onward, the status of Hijras underwent significant transformation during colonial control. During the 19th century, the British colonial authorities unequivocally criminalized the people and revoked their civil rights. The Criminal Tribes Act of 1871 classified the hijra community as offenders. The statute was revoked in 1952; yet, its effects persist due to the enforcement of municipal laws founded on analogous discriminatory principles against this community. In the present era, such legislation is strongly disapproved. The Constitution protects the rights of the transgender population, which have been further defined by significant Supreme Court rulings, notably the NALSA judgment.

3. NALSA V. UNION OF INDIA (2014): THE CONSTITUTIONAL FOUNDATION OF GENDER IDENTITY RIGHTS

3.1 Background of the case:

The transgender community's quest for societal acknowledgment of their identity is enduring, persistent, and characterized by entrenched discrimination and rejection from the mainstream, frequently regarded as disabled or untouchable, so constraining their personal development. This neighborhood encounters these obstacles regularly, which prompted the National Legal Services Authority to submit the writ petition. The lawsuit addresses the fundamental issue of the 'identity' of the third gender.

The Supreme Court was tasked with adjudicating the legal acknowledgment of the third gender and the community's entitlement to self-identify their gender, in relation to Articles 14, 15, 16, 19, and 21 of the

³ M. Michelraj, *Historical Evolution of Transgender Community in India*, 4 ARSS 17 (2015), <https://doi.org/10.51983/arss-2015.4.1.1304>.

⁴ *Supra* note 2.

⁵ *Supra* note 4 at 18.

Indian Constitution.

3.2 Judgement analysis:

Justice Radhakrishnan delivered the majority opinion. The court affirmed the freedom to self-identify one's gender. Moreover, it was decided that *hijras* may legally identify as a third gender. The court unequivocally determined that gender identity is an intrinsic feeling of self rather than a biological construct and outlawed mandatory medical examinations for violating the right to privacy.

The court situated gender identification within the expression “dignified life”⁶ as delineated in Article 21. The transgender community has experienced prejudice, contravening Article 14. Moreover, the court safeguarded the right to express gender identification under Article 19(1)(a) via attire, language, actions, and conduct. Derived from the principle of equality in Article 14, Articles 15 and 16 ban discrimination based on “sex”.⁷ The ruling sought to incorporate the gender recognition of third gender within the definition of “sex.” Nevertheless, the judgment does not specifically delineate the distinction between gender and sex concerning Articles 15 and 16.

The court argued that self-defined sexual orientation and gender identity are fundamental to an individual's personality and are essential elements of self-determination, dignity, and freedom. Consequently, it was determined that individuals cannot be compelled to undergo medical procedures, including sex reassignment surgery, sterilization, or hormonal therapy, as a prerequisite for the legal acknowledgment of their gender identification. Consequently, it dismissed the 'Biological Test' derived from the *Corbett v Corbett case*⁸. Additionally, the court acknowledged Principle 3 of the Yogyakarta Principles in support of the judgment. The ruling was a substantial advancement in the progression of transgender rights in India.

4. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019: LEGISLATIVE RECOGNITION AND ITS LIMITATIONS

Subsequent to the NALSA judgment, the Transgender Persons (Protection of Rights) Act, 2019 was enacted by Parliament. The legislation codified the constitutional ideals and principles affirmed in the ruling. The bill was presented in the Lok Sabha on July 19, 2019, by the Minister of Social Justice and Empowerment, Mr. Thaawarchand Gehlot. The bill was approved by the Lok Sabha on August 5, 2019, and subsequently by the Rajya Sabha on November 26, 2019. The measure received presidential assent on December 5, 2019.

The act delineates “transgender person” in section 2(k)⁹ as an individual whose gender identity diverges from the sex assigned at birth, encompassing transmen, transwomen, intersex individuals, genderqueer persons, and those with socio-cultural identities such as *hijra*, *kinner*, *aravani*, and *jogta*, regardless of surgical status. Additionally, the legislation acknowledged the right to self-identified gender identification under section 4(2). According to section 5,¹⁰ the District Magistrate granted the certificate of identity following the submission of an application by the transgender individual. Consequently, adopting an expansive definition for the acknowledgment of this community's identity serves to safeguard it from all forms of discrimination. The act did not mandate

⁶ Maneka Gandhi v. Union of India, MANU/SC/0133/1978.

⁷ M P JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. 2022).

⁸ Corbett v Corbett, [1970] 2 All ER 33.

⁹ *Supra* note 3, § 2(k).

¹⁰ Transgender Persons (Protection of Rights) Act 2019, § 5, No. 40, Acts of Parliament, 2019(India).

a medical certificate for obtaining an initial certificate of identification, so upholding the idea of the right to privacy as articulated in Article 21 of the Constitution. Additionally, the legislation establishes the National Council for Transgender Persons under section 16¹¹ to address the problems of this community, provide counsel to the Central Government for policy formulation, and assess the effects of such policies and programs.

Although the act afforded protection for certain significant rights of transgender individuals, it faced criticism for its broad and unclear definitions and for portraying the community as victims rather than as powerful people.

5. REASSESSING THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026: SCOPE, INNOVATIONS, AND LEGAL IMPLICATIONS

The Transgender Persons (Protection of Rights) Amendment Act of 2026 implemented various revisions to the previous legislation. The primary objective of the legislation is to safeguard individuals experiencing significant social exclusion owing to biological factors, rather than personal fault or decision. This was designed to safeguard individuals genuinely requiring protection by acknowledging a specific category of transgender persons who endure severe and oppressive prejudice from society.

The revision revised the definition of transgender individuals in section 2(k)¹² to exclude those with differing sexual orientations and self-identified sexual identities, hence eliminating section 4(2) of the 2019 act. According to section 6(1),¹³ the legislation requires the medical board's recommendation to be forwarded to the District Magistrate, who may consult other medical experts if deemed necessary or desirable, to issue the certificate of identification. Additionally, under section 7¹⁴, a transgender individual who undergoes gender-affirming surgery, whether male or female, must submit an application—previously not required—along with a certificate issued by the Medical Superintendent of the institution where the surgery was conducted to the relevant District Magistrate. The amendment's objective is not to safeguard all categories of individuals with diverse gender identities, self-identified sex/gender identities, or gender fluidities. Consequently, it employs a narrow criteria for acknowledging the identification of persons within the transgender community. The previous framework provided an ambiguous description of 'transgender persons,' complicating the identification of the authentic victimized class and obstructing the enforcement of many provisions under penal, civil, and personal legislation. Moreover, the members on the National Council for Transgender Persons from states or union territories must possess a minimum rank of Directors, signifying enhanced bureaucratic monitoring, in accordance with clause 16(2).¹⁵ The legislation introduces additional offenses and escalates penalties for serious crimes against transgender individuals. The revisions in the statute aimed to augment the protection and security for individuals classified as transgender persons.

¹¹ *Ibid*, § 16.

¹² Transgender Persons (Protection of Rights) Amendment Act 2026, § 2(k), No. 3, Acts of Parliament, 2026(India).

¹³ *Ibid*, § 6(1).

¹⁴ *Ibid*, § 7.

¹⁵ *Ibid*, § 16(2).

6. BETWEEN IDENTITY AND EQUALITY: CONSTITUTIONAL TENSIONS ARISING FROM THE 2026 AMENDMENT

Gender identity is an essential feature of existence.¹⁶ The 2026 amendment to the Transgender Persons Act aims to resolve current administrative challenges and enhance protections for the transgender population; yet, it also exacerbates the significant issue of identity crisis for individuals with self-perceived sexual identities. This challenges the Supreme Court's understanding of 'transgender' in the NALSA judgment, which defined it as an umbrella term for individuals whose gender identity, gender expression, or behavior does not align with their biological sex, and acknowledged self-determination as a fundamental right. The categorization established by the definition does not meet the standard of reasonableness as stipulated in Article 14.

The right to self-identified gender identity is not statutory; instead, it originates from Articles 14, 19, and 21, which are acknowledged as the golden triangle of the Indian Constitution in the Maneka Gandhi case.¹⁷ Article 21 acknowledges the right to life with dignity, encompassing equality and freedom as its fundamental components. The right to recognize one's gender identity and self-expression are essential components of a dignified existence, since they ensure autonomy and the ability to live in alignment with a self-defined identity, free from discrimination. In addition to the NALSA case, the idea of self-determination was upheld in *Jane Kaushik v. Union of India*.¹⁸ The abrogation of such a fundamental right with retrospective effect contravenes the foundational constitutional principles established in the principal act and results in the exclusion of a significant number of individuals for whom the legislation was intended, namely transmen, transwomen, genderqueer, and non-binary individuals. The compulsory medical certification does not satisfy the proportionality standard established in the *Puttaswamy case*¹⁹, as there is an absence of reasonable connection. The medical board is neither capable of assessing an individual's internal sense of gender nor of preventing bogus claims. It disproportionately infringes upon the dignity, autonomy, and privacy of transgender individuals. Furthermore, the legislation lacks any form of grievance procedure for transgender individuals who are denied an identity certificate. Although Articles 15 and 16 explicitly prohibit discrimination based on 'sex,' the transgender community has endured a prolonged struggle to attain recognition of their identity and to combat systemic barriers to achieve equality, dignity, and inclusion in both legal and societal contexts. However, this legislative exclusion tends to hinder progress.

The statute facilitates administrative efficiency, albeit at the expense of constitutional guarantees. This violates the fundamental guarantee afforded to every individual about their protection, dignity, equality, freedom, and privacy in life. The Statements of Objects and Reasons articulated in the act explicitly indicate that the act is intended solely to safeguard a designated class, rather than all classes indiscriminately. The primary inquiry concerns the safeguarding of the substantial group of individuals whose identity was previously protected and acknowledged by the principal statute but seems to have been significantly compromised by the change. The amendment's retrospective effect has resulted in this group losing its previously obtained legal identity. These groups already encounter challenges in societal acknowledgment, and with the recent amendments to the act, the

¹⁶ *Supra* note 2 at 19.

¹⁷ *Supra* note 7.

¹⁸ *Jane Kaushik v. Union of India*, 2025 INSC 1248.

¹⁹ *Justice K.S. Puttaswamy and Another vs. Union of India*, (2017) 10 SCC 1.

state has effectively rescinded their previously conferred legal legitimacy, exacerbating their marginalization.

The act not only violates fundamental constitutional rights but also exacerbates the potential for excessive governmental authority, relegating the inherent right to maintain one's identity to a constrained position. The authority to delineate our identity and to portray ourselves appropriately within society fosters the concept of selfhood. The amendment fails to include psychological traits, which are fundamental and distinctive aspects of human being closely linked to dignity and liberty, while prioritizing primarily biological factors. This will result in increased discrimination and exclusivity, both socially and legally, against those who identify as a gender different from their biological sex. The amendment has generated numerous unresolved questions for judicial reasoning for a balanced evaluation.

8. CONCLUSION

An individual's existence is profoundly connected to their identity, with gender identity serving as a crucial and foundational element that influences one's internal sense of dignity. Indian society predominantly acknowledges male and female as significant gender identities and has taken much effort to incorporate transgender individuals into their acceptance. This extended acceptance signifies entrenched social bias and systemic exclusion. Their status looked to improve following the NALSA judgment, as their identity was legally recognized, leading to increased protection and societal acceptance. The Transgender Persons Protection Act 2019 significantly improved protections for the community by expanding the definition of 'transgender' to encompass self-perceived gender identity as a fundamental right of choice. The statute additionally provides protection against many serious offenses directed at the community and penalizes any form of prejudice against them. Primarily, the legislation enabled individuals to articulate their existence according to their preferences, exercising their autonomy to select their gender while protecting their rights and dignity. The recent change in 2026 partially reversed the advancements achieved by this community by constricting the definition of 'transgender persons' and removing the right to self-perceived gender identity with retrospective effect. This has prompted a substantial community to confront the difficulty of identity crisis. The measure invalidated the NALSA judgment and presents multiple constitutional challenges, particularly concerning the right to a dignified existence. The primary aim of the act is not to safeguard all demographic groups, but specifically those that experience discrimination and exclusion based on their biological characteristics. Nonetheless, it is imperative to recognize that the entirety of a substantial community's existence and rights should not be jeopardized merely for administrative convenience. In the contemporary legal system, which emphasizes inclusivity, the exclusion of a minority that is already vulnerable and marginalized by society necessitates urgent attention.