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Transgender Rights in India: A Critical Analysis of the Transgender Persons (Protection of Rights) Amendment Bill 2026

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The Transgender Persons (Protection of Rights) Amendment Bill passed by the Indian Parliament in late March 2026 constitutes one of the most constitutionally contentious legislative interventions in the domain of gender identity rights in Indian legal history. This paper undertakes a critical analysis of the amendment act by analysing its legislative architecture against settled jurisprudence, landmark precedents of the Supreme Court and obligations of India under the International Human Rights Law. It ponders on the 2026 amendment within the advanced legal framework established by the Transgender Persons (Protection of Rights) Act, 2019, and the Apex Court's ruling in National Legal Services Authority v Union of India (2014) (hereinafter NALSA), which recognised the right to self-identification, as a constitutional peremptory rooted in Articles 14, 19 and 21 of the Constitution of India. The paper comprehensively delineates certain provisions of the amendment act that directly corrode the existing framework, including the narrowed definition of transgender persons, the mandatory process of medical board certification, criminalisation of supportive social networks and the statutory merging of intersex and transgender identities into a single legal classification. The paper further analyses the perspectives of key stakeholders, transgender communities, civil society organisations, opposition legislators and international human rights bodies to provide a holistic picture of the amendment's impact. Relying upon scholarly commentaries, comparative legal analysis and constitutional doctrine, the paper offers evidence-based, rights-oriented recommendations for judicial intervention and legislative reforms. The paper concludes by stating that the 2026 amendment deviates from India's constitutional commitment and argues for a comprehensive reconsideration.

Keywords: *transgender rights, self-identification, gender identity, fundamental rights, medical certification.*

INTRODUCTION

Gender identity is considered to be one of the most fundamental and essential facets of human beings' existence. Hence, in India, legal recognition of this identity is not only a progressive aim but also a constitutional mandate. After the Apex Court's historical ruling in *National Legal Services Authority v Union of India* (2014),¹ the principle of self-identification has been established as the cornerstone of transgender rights jurisprudence in India. The following introduction of the Transgender Persons (Protection of Rights) Act, 2019,² recognised this constitutional principle, even though its implementation was imperfect.

In view of this circumstance, the Union Minister of Social Justice and Empowerment introduced the Transgender Persons (Protection of Rights) Amendment Bill 2026 in Lok Sabha on March, 2026.³ However, this bill has been criticised by various transgender activists, legal experts, and other civil society groups. The bill has been passed by voice vote in both houses and subsequently received assent from the President, significantly reorienting the legal framework of transgender identity in India. The passage of this bill, without referring or consulting the standing committee and affected communities, has resulted in sharp criticism.

The Amendment Act provides a narrower definition and replaces self-identification with a mandatory medical board certification. Additionally, it failed to differentiate between intersex and transgender identities and introduced new criminal provisions that may criminalise transgender support networks.⁴ These changes create a direct conflict with constitutional guarantees under Articles 14, 15, 19, 21 and the Apex Court's decision in the cases of *NALSA* (2014),⁵ *Puttaswamy* (2017),⁶ and *Navtej Singh Johar* (2018).⁷ This paper

¹ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

² Transgender Persons (Protection of Rights) Act 2019

³ Transgender Persons (Protection of Rights) Amendment Bill 2026

⁴ 'India: Presidential approval of regressive Transgender Bill a major step backward for human rights' (*Amnesty International*, 31 March 2026) <<https://www.amnesty.org/en/latest/news/2026/03/india-presidential-approval-of-regressive-transgender-bill-a-major-step-backward-for-human-rights/>> accessed 01 April 2026

⁵ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

⁶ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

⁷ *Navtej Singh Johar & Ors v Union of India Thr Secretary Ministry of Law and Justice* AIR 2018 SC 4321

conducts a comprehensive, legally and evidence-based analysis of the amendment Act. It also critically examines certain provisions, their legal issues, key stakeholders and concludes by delivering well-reformed recommendations.

LITERATURE REVIEW AND METHODOLOGY

Since the *NALSA* judgment, various scholarly works have been significantly developed in the field of Transgender Rights in the Indian legal system. Kothari's *Trans Equality in India: Affirmation of the Right to Self-Identification* discovers the constitutional evolution of gender-identity rights in India by highlighting the Supreme Court's recognition of psychological gender over biological sex. Relying upon the 'Yogyakarta' principles, he argues that Indian constitutional jurisprudence has moved away from the required biological validation as a prerequisite for gender identity.

The Centre for Law and Policy Research (CLPR), Bengaluru, provided reports on transgender rights jurisprudence in India, including a comprehensive report in 2024, and a 2026 blog analysing the Amendment Act. Akshat Agarwal's *Trends in the Legal Uptake of India's Landmark Trans Rights Decision* identifies post-*NALSA* decisions of Indian Courts, wherein they rely on sex reassignment surgery as evidence of trans identity- a trend which the Amendment Act codifies.

One of the scholarly works that was pertinent to the analysis was the International Human Rights Reports from Amnesty International and Human Rights Watch. They offer an authoritative evaluation of the Amendment Act's deviations from India's obligations under the International Covenant on Civil and Political Rights and the principle of Yogyakarta.

This paper utilises a doctrinal legal research methodology and comparative analysis. It uses primary resources such as the Transgender Persons (Protection of Rights) Act 2019, the Amendment Act 2026, the Constitution of India and other significant Supreme Court and High Court decisions. It also focused on secondary resources such as institutional reports from civil society groups, peer-reviewed articles and commentary from legal researchers. The comparative analysis draws upon legal frameworks from Argentina, South Africa and the United Kingdom.

HISTORICAL BACKGROUND

Before 2014, the Indian legal system recognised only the binary genders of male and female, thereby excluding transgender persons entirely outside the framework that governs fundamental rights, marriage, benefits, adoption and civil status. As a consequence, the National Legal Services Authority filed a writ petition before the Supreme Court in 2012, seeking recognition of gender identity.⁸

In the case of *National Legal Services Authority v Union of India*,⁹ it was held by the Supreme Court that transgender persons are qualified for the fundamental rights guaranteed under Part III of the Constitution. Significantly, the court affirmed that the right to self-identification as male, female or third gender is an inherent component of the right to life and personal dignity under Article 21, the right to equality under Article 14 and the right to freedom of expression under Article 19(1)(a).¹⁰ The Court acknowledged psychological tests over biological tests, stating that no person should be compelled to undergo sex reassignment surgery or hormonal therapy as a precondition for their legal recognition of gender identity.¹¹ Furthermore, it also relied upon the Yogyakarta Principles, holding that self-defined identity is an essential component of personality, and no person shall be deprived of it by mandatorily undergoing medical formalities as a precondition for such recognition.

The *NALSA* judgment was translated into a statutory form in the 2019 Act, wherein it provided a broad, inclusive definition of a transgender person as a 'person whose gender does not match with the gender assigned at birth,' which included trans men, trans women and gender queer persons. Also, the right to self-perceived gender identity was guaranteed under section 4(1) of the said Act. Although the Act was criticised for retaining a two-step medical certification, it preserved the essential right to self-identification.

⁸ Danish Sheikh, 'National Legal Services Authority versus Union of India – Preliminary Reactions' (*Lawyering for Change*) <<https://altlawforum.org/publications/national-legal-services-authority-versus-union-of-india-preliminary-reactions/>> accessed 01 April 2026

⁹ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

¹⁰ Tarunabh Khaitan, 'NALSA v Union of India: What Courts Say, What Courts Do' (*UK Constitutional Law Association*, 24 April 2014) <<https://ukconstitutionallaw.org/2014/04/24/tarunabh-khaitan-nalsa-v-union-of-india-what-courts-say-what-courts-do/>> accessed 01 April 2026

¹¹ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

Moreover, the said principle was further reinforced by the Supreme Court in the case of *K.S. Puttaswamy v Union of India*,¹² wherein Justice Chandrachud cited the *NALSA* judgment and expressly opined that ‘gender identity lies at the core of right to privacy’. It was reiterated that discrimination against individuals based on sexual orientation amounts to a grave violation of dignity and self-worth. A similar view can be seen in *Navtej Singh Johar v Union of India*,¹³ where a constitutional bench unanimously upheld the principles of autonomy, self-identification and non-discrimination for gender and sexual minorities.

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026: KEY PROVISIONS AND ANALYSIS

The 2026 Amendment has made the most fundamental and legally consequential change in the statute, wherein it has replaced the broad definition of ‘transgender person’ under the 2019 Act with a narrower and conservative definition. The Amendment removes the definition entirely and lists three classifications:

- i) persons with socio-cultural identities like the kinner, hijra, eunuch, jogra and aravani;
- ii) persons with specific intersex variations;
- iii) persons who were compelled to assume a transgender identity by mutilation, castration, emasculation, surgical, chemical or hormonal procedures. Moreover, the amendment explicitly excludes persons with different sexual orientations and self-perceived sexual identities.¹⁴

However, the said narrow definition will lead to severe legal implications. Trans men, trans women and non-binary persons who do not belong to the recognised socio-cultural communities are excluded from statutory protection. It was noted by Kanmani Ray, a trans woman and advocate practising in the Supreme Court and Madras High Court, that the said definition perversely includes those persons who were forced to be transgender while excluding those who genuinely do. Similarly, Daniella Mendonca, co-founder of Intersex

¹² *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

¹³ *Navtej Singh Johar & Ors v Union of India Thr Secretary Ministry of Law and Justice* (2018) 10 SCC 1

¹⁴ ‘The Trans Amendment Bill: Everything you need to know’ (*idr*, 27 March 2026)

<<https://idronline.org/article/rights/the-trans-amendment-bill-everything-you-need-to-know>> accessed 01 April 2026

Human Rights India, identified that a single legal category fundamentally deviates from the distinction between gender identity and sex characteristics.

Moreover, the Amendment replaces section 6 of the 2019 Act that focuses on an affidavit-based self-identification process with a mandatory certificate from a government-appointed medical board, headed by a Chief Medical Officer or Deputy Chief Medical Officer.¹⁵ It further mandates that any medical institution must report information regarding gender-affirming surgery to the District Magistrate. Hence, the option of attaining a certificate under the 2019 Act has been replaced with a mandatory obligation.

The above-mentioned mandate explicitly violates the *NALSA* judgment, which held that ‘no third gender persons should be subject to any medical examination or biological tests that would interfere with their right to privacy’.¹⁶ The *Puttaswamy* judgment also reinforced this by safeguarding the right to privacy and personal autonomy in decisions about one’s body and identity.¹⁷ As observed by the High Court of Rajasthan, reporting of surgical details to the District Magistrate amounts to state intrusion¹⁸, thereby undermining Constitutional safeguards affirmed in prior Apex Court decisions.

The most alarming provisions of the Amendment Act are the new criminal offences introduced for kidnapping and compelling a person to assume a transgender identity. It prescribes imprisonment ranging from ten years to life for offences involving adults and mandatory life imprisonment for offences concerning children.¹⁹ It was noted by Tripti Tandon of the Lawyers Collective that phrases such as ‘coercing or alluring persons’ could be used to target transgender networks and health care providers offering gender-affirming care.²⁰

¹⁵ Transgender Persons (Protection of Rights) Amendment Act 2026

¹⁶ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

¹⁷ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

¹⁸ Hussin Alameedi, ‘India passes transgender rights amendment, prompting concerns over compliance with Supreme Court precedent’ *JURIST News* (01 April 2026) <<https://www.jurist.org/news/2026/04/india-passes-transgender-rights-amendment-prompting-concerns-over-compliance-with-supreme-court-precedent/>> accessed 01 April 2026

¹⁹ Transgender Persons (Protection of Rights) Amendment Act 2026

²⁰ ‘PUCL statement condemning the Transgender Persons (Protection of Rights) Amendment Bill, 2026 as unconstitutional and demanding its immediate withdrawal’ (*PUCL*, 19 March 2026)

<<https://pucl.org/manage-press-statement/pucl-statement-condemning-the-transgender-persons-protection-of-rights-amendment-bill-2026-as-unconstitutional-and-demanding-its-immediate-withdrawal/>> accessed 01 April 2026

CONSTITUTIONAL VIOLATIONS AND LEGAL DEFECTS

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the law to any individual.²¹ It was held in the *NALSA* judgment that the right to equality applies to transgender persons and discrimination under Article 15 and 16 includes discrimination on the ground of gender identity.²² By restricting the legal definition by excluding trans men, non-binary persons and all those who do not fit within the traditional socio-cultural identities, the Amendment creates an unreasonable and arbitrary classification that fails to satisfy the reasonable classification test under Article 14. It does not create any rational nexus to the objective of safeguarding ‘those in actual need of such protection.’ On the other hand, it denies the protection given to those categories of transgender persons who face discrimination due to their gender identity.

The *NALSA* judgment included the right to express one’s gender ‘through dress, action, words or behaviour’ under the purview of Article 19(1)(a).²³ However, the new criminal provisions, with their broad and undefined scope, create a disproportionate restriction on this fundamental right. This chilling effect creates an impact on trans persons and their families who may fear prosecution for providing social and medical support, as it is considered to be a direct infringement upon the fundamental right to freedom of expression²⁴

Furthermore, the said Amendment violates Article 21, which guarantees the right to life and personal liberty, interpreted in a broad manner to include dignity, privacy and personal autonomy.²⁵ The mandatory medical board, compulsory reporting of surgical procedures and denial of self-identification explicitly violate privacy in its informational, bodily and decisional dimensions as articulated in *Puttaswamy* (2017).²⁶ Simultaneously, they also violate the right to livelihood, which is inseparable from the recognition of an individual’s gender identity.

Moreover, India is also a signatory to the International Covenant on Civil and Political Rights (ICCPR), which protects the right to privacy, equality and freedom of speech and expression

²¹ Constitution of India 1950, art 14

²² *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438

²³ The Constitution of India 1950, art 19(1)(a)

²⁴ *Vyjayanti Vasanta Mogli v State of Telangana, Represented by its Principal Secretary & Ors* (2020) SCC OnLine TS 440

²⁵ Constitution of India 1950, art 21

²⁶ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

without discrimination. The United Nations Human Rights Committee has interpreted these provisions to protect people from being discriminated against due to their sexual orientation and gender identity.²⁷ Several international non-governmental organisations, such as Amnesty International, criticised the Amendment as a 'serious setback for human rights' and advocated to reconsider the law.

ANALYSIS OF STAKEHOLDERS

The transgender community has been the most profoundly affected stakeholder. Various community leaders, including Akkai Padmashali, Laxmi Narayan Tripathi, and Aryan Pasha, have opposed the Amendment in unequivocal terms. It was stated by Padmashali that the bill criminalises and disrespects transgender people's right to exist.²⁸ Out of 487,803 transgender persons recorded in the last census, only 32,500 had obtained Identity cards in accordance with the 2019 Act. The Amendment further threatens to reduce the numbers by restricting access to social security and welfare schemes.

A statutory National Council for Transgender Persons (NCTP) was established under the 2019 Act to advise the government on transgender rights. However, the said council was not consulted while drafting the 2026 Amendment Act. As a consequence, the council members Kalki Subramaniam and Rituparna Neog have resigned their positions, whereby they stated that the said Amendment is a 'step backwards for fundamental rights to self-identification and dignity.'

Moreover, people from the legal community and civil society issued a formal appeal to the President of India to withhold assent and return the bill for reconsideration. The Supreme Court's expert committee on transgender rights explicitly recommended the withdrawal of the bill. Additionally, it also recommended that genuine, community-inclusive consultations have to be done before any legislative actions.

The Amendment has also created new obligations for healthcare institutions. Healthcare providers offering gender-affirming care also come under the purview of the broad and

²⁷ 'International Human Rights Law & Sexual Orientation & Gender Identity' (*Free and Equal*) <<https://www.unfe.org/en/know-the-facts/challenges-solutions/international-human-rights-law-sexual-orientation-gender>> accessed 01 April 2026

²⁸ Jayshree Bajoria, 'India's Transgender Rights Bill a Huge Setback' (*Human Rights Watch*, 26 March 2026) <<https://www.hrw.org/news/2026/03/26/indias-transgender-rights-bill-a-huge-setback>> accessed 01 April 2026

ambiguously drafted criminal provisions.²⁹ This chilling effect could restrict access to medical treatment for transgender persons, thereby affecting public health and mental well-being. Several members from the opposition have raised concerns over the bill's passage without consulting the Parliamentary standing committee. It was also opined by the Rajasthan High Court that legislative changes cannot dilute constitutional guarantees recognised by the Supreme Court. This indicates the potential scope for judicial scrutiny of the Amendment.

COMPARATIVE ANALYSIS

The comparative analysis reveals that the 2026 Amendment Act deviates from the global legal evolution on the recognition of gender. For instance, Argentina's Gender Identity law of 2012 allows individuals to change their legal gender based on self-perception, without any medical intervention or judicial scrutiny.³⁰ The United Kingdom's Gender Recognition Act, 2004, though criticised for its medical intervention, is currently being reviewed to adopt a self-recognition model.³¹

On the other hand, the World Health Organisation in 2019 decided to remove gender discrepancy from the category of mental disorders in the ICD-11.³² This reflects the global perspective that gender identity is a matter of self-determination and not a result of medical diagnosis. Therefore, the 2026 Amendment is not only constitutionally inconsistent but also misaligned with the evolving standards of international law and medical science.

RECOMMENDATION

The preceding analysis indicates that the Amendment Act clearly deviates from the constitutional architecture built by *NALSA*, *Puttaswamy* and *Navtej Singh Johar*. The recommendations given below propose a corrective strategy that interlinks rapid judicial intervention with legislative and administrative reforms in order to ensure that principles such as self-identification, dignity and non-discrimination are restored. There is a need for the Apex Court to immediately hear petitions that challenge the constitutional validity of the

²⁹ Transgender Persons (Protection of Rights) Amendment Act 2026

³⁰ Gender Identity Law 2012

³¹ Gender Recognition Act 2004

³² 'International Statistical Classification of Diseases and Related Health Problems (ICD)' (*World Health Organization*) <<https://www.who.int/standards/classifications/classification-of-diseases>> accessed 01 April 2026

Amendment Act, as there are strong grounds to strike down, especially those provisions that eliminate self-identification, mandate medical certification and impose criminal liability arbitrarily.

The Union Government should withdraw the 2026 Amendment and reconsider it by initiating a comprehensive consultation process that includes the NCTP, representatives of the transgender communities, medical professionals, legal experts and other civil-society organisations that work for transgender rights. Subsequently, the definition of 'transgender persons' has to be inclusive in nature, thereby accommodating the diverse gender identities present in Indian Society. Moreover, the process of obtaining gender identity certification must be decentralised and simplified based on self-identification. This means that medical intervention must be a choice and not a precondition for transgender individuals' legal recognition. Also, a separate provision should be made for non-binary and genderqueer identities to be recognised in official documents.

Most importantly, the revised criminal provisions have to be substantially reconsidered to prevent their misuse towards transgender persons and those individuals who help them. Certain offences, such as emasculation, mutilation and castration, are required to be precisely defined by the legislature. The combination of intersex and transgender identities must be rectified, as intersex persons belong to a distinct community with separate legal rights and needs.³³ Furthermore, India should reaffirm its obligations under the ICCPR and constructively engage in gender identity jurisprudence along with the United Nations Human Rights Committee.

CONCLUSION

The Transgender Persons (Protection of Rights) Amendment Act 2026 is a statute that violates the constitutional validity of transgender rights in India. It replaces the right to self-identification affirmed by the Supreme Court. The Act ignored the recommendations of the Supreme Court's expert committee and simultaneously omitted sustained opposition from the parliamentary standing committee, transgender communities and the legal community.³⁴

³³ The Trans Amendment Bill: Everything you need to know (n 20)

³⁴ *National Legal Services Authority v Union of India & Ors* (2014) 5 SCC 438; *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1; *Navtej Singh Johar & Ors v Union of India Thr Secretary Ministry of Law and Justice* (2018) 10 SCC 1

The passage of this amendment has prompted the resignation of NCTP members and condemnation from various transgender communities across India and International Human Rights Bodies. The legislature has attempted to reverse the settled Indian Constitutional Jurisprudence by imposing mandatory medical examination, a restrictive definition and arbitrary criminal provisions. Hence, there is an urgent need for both the judiciary and the parliament to ensure constitutional promises of equality, dignity and self-identification that are considered to be inalienable.