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The Transgender Persons (Amendment) Act 2026 and the I.R. Coelho Doctrine: Can the Parliament Overrule the Supreme Court?

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The Supreme Court of India, in the case of National Legal Services Authority v Union of India, 2014, held that transgender persons have a constitutional right to legal recognition based on their self-identified gender. The 2026 Transgender Persons (Protection of Rights) Amendment Act replaces this clause with the introduction of a District Medical Board to certify a person's transgender status based on medical examination. This article argues that the Amendment Act is a legislative overruling of the Supreme Court's decision in the NALSA judgment. Further, analysing this Act with the basic structure doctrine as per I.R. Coelho v State of Tamil Nadu, 2007 and L. Chandra Kumar v Union of India, 1997, this article states that Parliament cannot use ordinary legislation to nullify fundamental rights recognised by the Supreme Court. The Amendment violates rights under Articles 14, 19(1)(a), and 21 of the Constitution, all of which are a part of the basic structure of the Constitution. The article concludes that the provisions under scrutiny must be struck down as unconstitutional, along with restoring the self-identification clause. This issue raises a broader question of whether the parliament can reverse constitutional interpretations through ordinary law.

Keywords: *transgender rights, self-identification, basic structure doctrine, legislative overruling, fundamental rights.*

INTRODUCTION

The NALSA judgement was a landmark in recognising rights for transgender and non-binary persons in India. This judgement was revolutionary in giving them legal recognition in all government sectors like education and healthcare, without denial of basic dignity and equality or being subjected to discrimination. Twelve years after this progressive leap for Indian society, the Parliament subsequently passed the Transgender Persons (Protection of Rights) Amendment Act, 2026¹ (hereafter, Amendment Act) in March 2026, which mandates medical certification for the verification of transgender status, replacing the fundamental self-identity clause. This amendment has been widely criticized to be regressive, but the question of its constitutional validity remains largely unanswered.

The central question here is simply put as: Can the Parliament, through ordinary legislation, nullify or reverse a constitutional interpretation of the Supreme Court? If the answer is yes, then any fundamental right recognised by the Court, from privacy to free speech, can all be nullified as long as the Parliament labels the law as a 'regulation'. If the answer is no, then the legislation in question must undergo the test proposed by the Basic Structure doctrine, affirmed by the case of *I.R Coelho v State of Tamil Nadu*², to see whether it can fall under possible constitutional scrutiny and judicial review.

This article argues that the Amendment Act is an outright overruling of the NALSA judgment and, thereby, subjecting it to the *I.R Coelho* doctrine test, it can be said that such overruling through ordinary legislation shall be considered constitutionally invalid.

THE NALSA FRAMEWORK: SELF-IDENTIFICATION AND CONSTITUTIONAL RECOGNITION

In the case of *National Legal Services Authority v Union of India*, 2014, a two-judge bench of J. K.S Radhakrishnan and J. A.K Sikri declared, "By recognising transgenders as a third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights."³ To reach this decision, the Court began by recognising that gender identity is one of the most basic aspects

¹ Transgender Persons (Protection of Rights) Amendment Act 2026

² *I R Coelho (Dead) Thru LRs v State of Tamil Nadu & Ors* AIR 2007 SC 861

³ *Ibid*

of self-determination and freedom. The Court further said that self-identified gender identity is a constitutionally protected right, as per Articles 14, 15, 19 and 21 of the Indian Constitution⁴. Along with reaffirming transgender rights, the Court also granted three directives: that hijras were now recognised as third-gender sex, that transgender persons have the right to self-identify between being male, female or belonging to the third gender, and that transgender individuals are to be given affirmative action and benefits as a 'backward class'.⁵ With this, the Court directed the state to legally recognise transgender individuals as a 'third gender' and to uphold their fundamental rights as per the Indian Constitution.

This was a decision given based on multiple constitutional grounds. In *NALSA*, the Supreme Court said that self-identified gender identity is protected under Article 21⁶, which shall be read with Articles 14, 15 and 19⁷. The court mandated that the Union and State governments take valuable steps in recognising transgender persons' self-identified identity in all official procedures.

THE 2026 AMENDMENT: WHAT CHANGED AND WHY IT MATTERS

The Transgender Persons (Protection of Rights) Act 2019 recognised the liberty of every transgender person to have a right to self-perceived gender identity under Section 4(2)⁸. The 2026 amendment removes this crucial provision and replaces it with a requirement that every individual applying for legal recognition must appear before a District Medical Board, which must then certify the person's transgender status based on 'medical examinations'. The Amendment also introduces a new Section 6, which establishes the Medical Boards, headed by Chief or Deputy Chief Medical Examiners. The Magistrate may issue the certificate only after such examination by the Board. Further, under the new Amendment Act, the definition of 'transgender person' was revised into a much narrower one by removing the broader self-identification clause. The new definitions included: Persons of socio-cultural identities like hijra, kinner, etc.

⁴ Constitution of India 1950, arts 14, 15, 19 and 21

⁵ 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 22 May 2026

⁶ Constitution of India 1950, art 21

⁷ Constitution of India 1950, arts 14, 15 and 19

⁸ The Transgender Persons (Protection of Rights) Act 2019, s 4(2)

Persons who have undergone forceful procedures like castrations, mutilations or hormonal procedures; Persons with intersex variations.⁹ This narrow definition results in the outright exclusion of transgender persons who rely on self-identification for their status, having not undergone medical SRS (Sex Reassignment Surgery). The amendment redefines the words 'transgender persons' altogether to mean persons whose gender identities do not match the sex assigned at birth and who have variations in sexual development. This definition connects legal recognition to only biological or medical conditions, and therefore excludes persons whose gender identities cannot be tied to medical variations. Those in support of this amendment may argue that the changes are intended to 'prevent misuse' and 'ensure proper verification'. However, this understanding that self-identification can result in abuse directly contradicts the constitutional explanation that it is a fundamental right, and not a privilege that should be under the state's verification.

WHY THE I R COELHO DOCTRINE?

After the landmark judgement of *Kesavananda Bharti v State of Kerala* 1973, it was understood that the Parliament cannot amend the Constitution in a way that destroys its basic structure. The basic structure here includes fundamental rights, judicial review, rule of law, separation of powers, etc. But what about ordinary laws? Are ordinary laws that do not amend the Constitution but nullify a constitutional right not subject to scrutiny? This question is answered through the judgment of *I.R Coelho v State of Tamil Nadu*. In this case, a nine-judge bench of the Supreme Court held that laws that are placed in the Ninth Schedule of the Indian Constitution are not immune from judicial review on the grounds that they are violative of fundamental constitutional rights.¹⁰ Further, the court said that the validity of ordinary laws that may be violative of fundamental rights is to be tested against the basic structure doctrine. The court also held that whether a statute has to be given protection from judicial review has to be determined by examining the nature and extent of the violation of the fundamental rights by the statute, by applying the right tests.¹¹

⁹ 'Transgender Persons Amendment Bill 2026: Key Changes, Debate, and Impact' (*Vision IAS*, 25 March 2026) <<https://www.visionias.in/blog/current-affairs/transgender-persons-amendment-bill-2026-key-changes-debate-and-impact>> accessed 22 May 2026

¹⁰ *I R Coelho (Dead) Thru LRs v State of Tamil Nadu & Ors* AIR 2007 SC 861

¹¹ *Ibid*

In the case of *L. Chandra Kumar v Union of India*, the court affirmed that the power of judicial review as per Articles 32 and 226 is also part of the basic structure and cannot be ignored by legislation. The court held that the jurisdiction conferred upon the High Court through Articles 226/227 and upon the Supreme Court under Article 32 of the Indian Constitution is a part of the basic structure of our Constitution.¹²

When read together, cases *Coelho* and *Chandra Kumar* establish three main principles: (i) fundamental rights are part of the basic structure; (ii) Parliament cannot use ordinary legislation to nullify or ignore the fundamental rights; and (iii) the Supreme Court has the power to strike down such laws that do violate the basic structure.

LEGISLATIVE RESPONSE OR LEGISLATIVE OVERRULING: WHERE LIES THE LIMIT?

Not every legislative response to a judicial decision is unconstitutional. The Parliament is entitled to amend statutes, create or change legal frameworks, or address issues that arise after a judicial holding. If courts alone had the right to have the final word on matters regarding policies or regulations, then legislative supremacy itself would be meaningless. However, there exists a very thin but critical line between changing the legal basis of a judgment and merely replacing the constitutional interpretation of the Court with a different preference.

The Supreme Court has recognised that while the Parliament can remove the statutory foundation of a judgment, it cannot simply declare the constitutional reasoning of the Court as incorrect through ordinary legislation. Such a practice by the Parliament would mean it is exercising judicial powers under the pretext of legislation. Therefore, while the Parliament may legislate within constitutional boundaries, it cannot substitute its own interpretation of fundamental rights for that of the judiciary.

This distinction becomes crucial in the context of the 2026 Amendment Act. If the Amendment merely established procedural safeguards for the recognition of transgender persons, it could be defended as a valid exercise of legislative power. However, the Act does

¹² *L Chandra Kumar v Union of India and Ors* (1997) 3 SCC 261

not just do that; it replaces the very constitutional standard of self-identified gender identity upon which the right is found.

This substitution that the Parliament does has significant consequences. A transgender person who would have qualified for recognition under the self-identification standard under NALSA may now be denied recognition entirely. The legal effect that this amendment produces is therefore not just a procedural modification. This now amounts to legislative nullification rather than legislative implementation. The question before the Court is therefore whether the Parliament may replace a judicially declared constitutional right with a fundamentally different standard through such ordinary legislation.

WHY THE AMENDMENT IS A LEGISLATIVE OVERRULING

The textual clash between NALSA and the Amendment Act is impossible to overlook. NALSA explicitly held that self-identity is a 'constitutionally valid basis' for recognition. The Amendment Act requires a District Medical Board to certify the transgender status based on a medical examination. The Amendment actively replaces the constitutional standard of self-identification with a new and harsh standard of medical certification. This is an outright nullification of fundamental rights that is impossible to mask as regulation.

Under the Amendment Act, a transgender person who cannot obtain a medical certification because they do not have a medically verifiable variation in sexual development is left without any legal route for achieving recognition. The right declared in NALSA becomes empty words for them as the Amendment Act successfully replaces this NALSA holding for this huge section of the transgender community. The Amendment successfully violates three different fundamental rights recognised in NALSA:

Article 14: The Amendment Act creates an arbitrary differentiation between transgender individuals who can obtain medical certificates and who cannot, with no rational basis. A person whose gender identity cannot get medically verifiable proof is pushed out of the picture entirely, while only those with certification are recognised. This differentiation cannot be relevantly linked to 'preventing fraud'; it simply excludes the persons whose identities are genuine but not verifiable.

Article 19(1)(a): The Amendment Act restricts one's right to expression of their gender identity and makes it contingent on medical certification. The freedom of expression includes the right to express one's gender identity through clothes, speech, mannerisms and much more. Actively dismissing this, failing to recognise self-expression and only recognising medical certification is a major restraint to the fundamental right to expression.

Article 21: The Amendment Act violates the heart of the Constitution itself. It violates the right to dignity and autonomy by requiring a person to submit medical proof of their transgender status to prove who they are. NALSA explicitly held that no third gender persons should be subjected to biological tests that may invade their right to privacy. The Amendment Act goes against the NALSA judgement once again.

APPLYING THE TEST OF PROPORTIONALITY

Even if one were to assume that the Amendment Act has a clear objective, such as preventing misuse through false claims, the legislation must still satisfy the constitutional test of proportionality. Constitutional rights are not always replaced merely because the State wants to achieve a valid purpose. Restrictions upon such rights must also be proportionate to the objective that it aims to achieve.

The first stage of proportionality requires that there be a legitimate aim. Preventing misuse of legal recognition may be a legitimate concern for the government. However, this existence alone cannot call for legislation that infringes upon constitutional rights altogether.

The second stage requires a rational nexus between measures adopted by the government and the objective it aims to achieve. The requirement of a medical certificate may be connected to the objective of verification. But the inquiry does not end there. It is constitutionally mandated for courts to examine whether there can be less strict alternatives that may be pursued.

This is where we once again analyse the Act. The Amendment Act entirely removes self-identification as a basis for recognition and replaces it with medical certification. The State has not shown why less restrictive measures cannot be taken.

Finally, proportionality requires the balancing of benefits for the legislation against harm to constitutional rights. Whatever benefit the administration may get from medical verification

is heavily outweighed by the burden that is imposed on transgender individuals with the introduction of medical certification.

Therefore, even if the Act is examined independently from the legislative overruling doctrine, it still cannot successfully survive constitutional scrutiny when we apply the proportionality test.

TACKLING COUNTERARGUMENTS

One argument in support of the Amendment Act is that Parliament has the power to regulate. Parliament is entitled to regulate the process of recognition, and the Amendment Act is a reasonable measure in doing so. A response that I propose for such an argument is that ‘regulation’ of process is only permissible when it does not actively destroy the rights and livelihood of an identity group. The Act does not ‘regulate’ self-identification; it replaces it absolutely with a medical standard; it is abolition under another name.

Another argument is that the Amendment Act safeguards the livelihood of transgender persons, empowers them and gives them dignity. This argument could not be further from reality. If the Act truly aimed to provide dignity and recognition to transgender persons while simultaneously ‘preventing misuse’, then the first and main change would be to restrict self-identity, and not absolutely replace it. Here, instead of preventing misuse, the Act creates a harsher standard that narrows recognition and curtails the fundamental rights of a large population of the trans community, including those with no medical certification. Therefore, the Amendment directly puts the livelihood and dignity of transgender persons in jeopardy.

A third possible argument may be that the Amendment Act does not overrule NALSA; it merely implements it differently. The Act still advocates for the recognition of transgender persons; it simply now requires verification, and this does not call into question the Parliament’s legislative competence. The only response I have for such an argument is that NALSA’s central argument was that self-identity is fundamental to a transgender person’s life and dignity. It is the only constitutionally valid basis, and a law that replaces it with medical certification is not a different implementation of the judgment; it is simply a different standard that goes against it. It has been judicially declared that the Parliament cannot restrict fundamental rights through ordinary legislation, and cannot substitute its own constitutional interpretation over the Supreme Court’s.

The Court should declare the offensive provisions of the Amendment Act, specifically the removal of Section 4(2) and the mandatory medical certification clause and deem them unconstitutional and void. The Court should reinstate Section 4(2) and direct the Parliament to consult transgender activist groups and the community itself before enacting any amendment to the 2019 Act.

CONCLUSION

The Transgender Persons (Protection of Rights) Amendment Act, 2026 presents a constitutional question that even goes beyond the rights of the transgender community. It presents us with a much-debated question of whether the Parliament can, through ordinary legislation, reverse a Supreme Court judgment that recognises multiple fundamental rights. The answer to this, under I.R Coelho and the basic structure doctrine, is no. The Amendment must be struck down, not only because of its discriminatory nature, but also because of its unconstitutionality as it exceeds the legislative competence of the Parliament. The Court should use this to reaffirm that fundamental rights, once declared as central to the basic structure, cannot be changed legislatively.