
CRITICAL ANALYSIS: TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026

Garima Malik, Trinity Institute of Professional Studies, Dwarka

ABSTRACT

The article examines the amendment in the Transgender Persons (Protection of Rights) Act, 2019 and its impact on the rights of the transgender people. The 2019 act gave the broad definition to transgender people but the Transgender Persons (Protection of Rights) Amendment Act, 2026 act is narrow. The amendment act narrowed the definition of “transgender people”, exclusion of self-perceived gender identity and inclusion of mandatory medical certificate. The article introduces the changes and its impact on the rights of the transgender people. It argues that the 2026 amendment act is a violation of the constitutional rights that was upheld by the Supreme Court in 2014 judgment. It compares both the 2019 and the amendment act and how it will impact the rights of the transgender person. It also discusses the new penal provision and how it can be misused against people or communities who support transgender person. The article concludes that only time and judicial scrutiny will tell whether the new amendment law is beneficial for transgender people or not.

Keywords: Gender identity, self-perceived identity, transgender rights, fundamental rights.

1. INTRODUCTION

The Transgender Persons (Protection of Rights) Act, 2019 was precise. It aimed at protecting transgender people self-preserved identity along with issuing a certificate of identity as a transgender person, and that such change in gender and issue of revised certificate did not affected the rights of such person under the act. The 2019 act defined “Transgender person” under Section 2 (k), as a person whose gender does not match with the gender assigned to that person at birth and include trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.¹

The right to self-determination one’s gender identity was upheld in the case of **NALSA v. Union of India**.² This was landmark case where the apex court recognized the third gender/transgender person for the person time and held that the third gender were entitled to fundamental rights. The court also directed the government to make provisions for protection and securing the rights of transgender people. After the Supreme Court judgment the government introduced the Transgender Person (Protection of rights) act, 2019.

The Transgender Persons (Protection of Rights) Amendment Act, 2026 was introduced in the Parliament of India on 13th March, 2026. The bill was passed by both the houses and by the President on 30th March. The amendment act removed the self-identity determination, has made medical board mandatory for certificate process-limiting the number of people who are formally accepted as transgender. The Minister of Social Justice and Empowerment of India in its statement of objects and reason stated that, the purpose of the act was and is not to protect each and every class of person with various gender identities, self-perceived sex/gender identities or gender fluidities. The act was and is intended to protect to protect only those who face severe social exclusion due to biological reason for no fault of their own and no choice of their own.³

¹ <https://socialjustice.gov.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf>

² AIR 2014 SC 1863

³ <https://www.indiacode.nic.in/bitstream/123456789/13091/1/A2019-40.pdf>

1. THE 2026 AMENDMENT ACT: WHAT HAS CHANGED

The 2026 Amendment has made significant changes and also omitted the sections. But the following amendments stand out as particularly significant.

2.1 Amendment of Section 2

The Transgender Persons (Protection of Rights) Amendment Act, 2026 has substituted the definition of “transgender person” of 2019 act. Now transgender person means- person having such socio economic identities such as *kinner*, *hijra*, *aravani*, and *jogta*. It includes person with intersex variations or has a congenital variation at birth and has the following characteristics as compared to male or female characteristics:-

- (a) Primary sexual characteristics- It means someone who is born with reproductive organ that don't fit male or female pattern.
- (b) External genitalia- The outside reproductive part of the body that do not fit male or female appearance.
- (c) Chromosome pattern- Person who has different sex chromosome than just XX and XY.
- (d) Gonadal development- Internal reproductive glands, testes in male and ovaries in female do not develop during the pregnancy. This is known as gonadal variation.
- (e) Endogenous hormone production- Where body does not produce the expected hormone, or either produce them, but the body does not respond to such hormone.

The transgender person now also includes those who by force, inducement, undue influence with or without consent adopt or assume the transgender identity by mutilation, emasculation, castration, amputation, or any surgical, hormonal procedure.

2.2 Removal of right of sexual orientation and self-perceived sexual identities

Section 4 (2) of the 2019 act stated that a person recognized as transgender under the act shall have a right to self-perceived gender identity. But 2026 amendment act has omitted the sub-section. Section 2 proviso of the Transgender Persons (Protection of Rights) Amendment 2026, act states that the act does not nor have been included the person with different sexual

orientation, and self-perceived sexual identities. By this deletion the act is going against the judgment **NALSA 2014** by Supreme Court. The case upheld the right to self-determine one's gender identity and anyone can identify themselves as male or female. These rights are included in Article 14- right to equality, Article 19- the right to expression and Article 21- right to live with dignity.

2.3 Mandatory Medical Certificate

Section 5 of the act states application process and the transgender person may make an application to the District Magistrate for issuing the certificate of identity as a transgender person.

Section 6 of the act states that the District Magistrate shall issue the certificate under Section 5 after following such procedure and in the manner as prescribed.

Under the 2019 act after issuing the certificate under Section 6, if a transgender person undergoes for surgery to change their gender either as a male or female, then such person may make an application to the District Magistrate for revised certificate.

But the 2026 amendment act has added the word “shall” and now it's mandatory for transgender person to make an application to the District Magistrate for revised certificate. Before making an application, the medical institute in which the person had undergone for surgery, to change their gender as male or female, shall furnish the detail of such person to the District Magistrate and the medical board in such manner as prescribe. The District Magistrate on being satisfied with the medical certificate issued by the Medical Superintendent or Chief Medical Officer and the application by such person, shall issue a certificate indication a change in gender.

The 2016 amendment requires the medical institute under which such person has undergone surgery to change their gender has to report the details of such person to the District Magistrate and the medical board. This can lead to violation of Right to privacy under Article 21 of the constitution. These new provisions further undermine the right to self-determination but also constitute a gross breach of the right to privacy upheld in **Puttaswamy v. Union of India**⁴With regards to the medical board, there is no clarity on the scope and procedure it will follow, which

⁴ AIR 2017 SC 4161

could result in invasive examinations and opportunities for harassment.⁵

Section 7 (3) proviso of the 2019 act has been omitted which stated that the person who had undergone surgery and had made an application for revised certificate, their rights and entitlement shall not be affected under the act.

2.4 Offences and Penalties

The Section 18 of 2019 act listed four offences against the transgender person which were whoever,-

- (a) Forces or compel the transgender person in the act of forced or bonded labour except the compulsory services for public purposes imposed by the government.
- (b) Denies the transgender person the right of passage to a public passage or stopping the person from having access to a public place with other members can use.
- (c) Forces the transgender to leave their household, village or any other place of residence.
- (d) Hurt or endangers the life, health, or well-being whether mental or physical of a transgender person

Shall be punishable with six months but may extend to two years and with fine.

The 2026 amendment act added four new offences:-

(i) Kidnapping and abduction adult person

Whoever causes grievous hurt to transgender person, whether by mutilation, emasculation, castration, amputation, or causing permanent bodily injury with the intent of compelling such person to adopt a transgender identity against the will or consent of such person shall be punishable with the imprisonment of ten years but which may extent to imprisonment for life, and also shall be liable to fine up to two lakh rupees.

(ii) Kidnapping and abduction child person

⁵ <https://clpr.org.in/blog/the-2026-transgender-amendment-bill-and-its-roll-back-of-constitutional-rights/>

Whoever causes grievous hurt to such child, whether by mutilation, emasculation, castration, amputation, or causing permanent bodily injury with the intent of compelling such child to adopt a transgender identity by force, or against their consent shall be punishable with rigorous imprisonment for life, and shall be liable to pay fine up to five lakh rupees.

(iii) Forcing an adult person to present as Transgender person

Whoever compels person who is not a transgender person to present themselves as such person (transgender person) against the will of such person, and employs, engages such person in begging, solicitation, or any other forms of forced or bonded labor shall be punishable with rigorous imprisonment for ten years and shall be liable to pay fine up to one lakh rupees.

(iv) Forcing a child person to present as Transgender person

Whoever compels any child, whether such child is a transgender person to dress, present themselves as a transgender person, and employs, engages such child in begging, solicitation, or any other forms of forced or bonded labor shall be punishable with rigorous imprisonment for term ten years which can be extended to fourteen years and shall be liable to fine up to three lakh rupees.

3. NALSA v. UNION OF INDIA

The **NALSA v. UNION OF INDIA**⁶ was filed by the National Legal Service Authority to legally recognized persons who fall outside the male/female gender, including the person who identify themselves as third gender.

This was the landmark case where the court for the first time legally recognized the third person along with transgender person. The court held that the third gender person were entitled to the fundamental rights under the constitution of India and directed the government to take measures regarding the rights of the third gender and transgender person. The court drew attention to the fact that transgender person were subject to discrimination in the society which was violation of right to equality. Further the court said that every gender has the right to

⁶ AIR 2014 SC 1863

represent themselves through dress, word, action, behavior under the freedom of expression.

Under Articles 15 and 16, discrimination on the ground of “sex” is explicitly prohibited. The Court held that “sex” here does not only refer to biological attributes (such as chromosomes, genitalia and secondary sexual characteristics) but also includes “gender” (based on one’s self-perception). Thus, the Court held that discrimination on the ground of “sex” included discrimination on the basis of gender identity⁷

4. CONCLUSION

The Transgender Persons (Protection of Rights) Amendment Act, 2026 states that the object and purpose of the act is to protect a class of persons known as transgender person who face societal discrimination due to biological reasons. The act states that the existing definition of “transgender person” was vague it was not impossible to identify the genuine oppressed persons to whom the benefits of the act are intended to reach. But the exclusion of self-perceived gender identity has narrowed the 2019 act and is against the judgment that the Supreme Court held in the NALSA case.

The NALSA judgment of 2014 held that the transgender person were also entitled to fundamental rights under the constitution of India. The court also recognized the right to self-perceived gender identity but the 2026 amendment act ignored this and stated that the purpose was and is not protect each and every class of persons with various identities, self-perceived sex/gender identities.

The amendment act added offences that are supposed to protect the people from forced and bonded labour, discrimination, mental and physical harassment but in practice, this can also be misused. Parents who support their child identity can be accused of inducing or allurement. A doctor who prescribes hormone therapy to a transgender person can be accused of compelling someone to adopt the transgender identity.

Although the bill was introduced to protect the class of person who faced discrimination on the basis of their gender but certain exclusion of the rights and inclusion of some mandatory procedures that is, medical certificate have violated the rights of the transgender persons. The

⁷ <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

vague language of the act can be used against someone or communities who supports them and fights for their rights.

Only time will tell whether this amendment law is a step forward or a step back for transgender rights in India.