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# IDENTITY ON TRIAL: A CRITICAL ANALYSIS OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) AMENDMENT ACT, 2026

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## ABSTRACT

The Constitution of India proudly commits itself to provide the Right to Equality<sup>1</sup> and Right to Freedom<sup>2</sup> to all its citizens. Besides, the Right to Privacy has also been recognized as a fundamental right, protected under Article 21 of the Constitution<sup>3</sup>, established by a unanimous Supreme Court judgment in *Justice K.S. Puttaswamy vs. Union of India*<sup>4</sup>. But are these rights truly universal, or do they come with invisible conditions? We pride ourselves on being an equal society, yet equality often falters when it encounters difference - and nowhere is this more evident than in the lives of **transgender individuals**. It is in the lives of transgender people that the limitations of our understanding of equality truly come to light. Society often refuses to accept identities outside binary. Much of the discrimination stems from ignorance and ingrained stereotypes. The transgender community, in many ways, stands at the intersection of this unfulfilled promise of equality. The recently passed **Transgender Persons (Protection of Rights) Amendment Act, 2026** has only deepened the insecurities.

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<sup>1</sup> Indian Const. art.14.

<sup>2</sup> Indian Const. art.19.

<sup>3</sup> Right to protection of life and personal liberty.

<sup>4</sup> Justice K.S.Puttaswami (retd.) v. Union of India, AIR 2018 SC (SUPP) 1841 (India).

## INTRODUCTION

As defined by American Psychological Association, Transgender is used as an umbrella term for the people whose gender identity (the internal sense of identity) does not match their biological sex as assigned by birth. Here the difference comes between the most commonly confused terms, “sex” and “gender”. While sex is biological and visible, gender is how you feel inside. Gender refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. Moreover, the Trans community is incredibly diverse. Some trans people identify as trans-men or trans-women, while others may describe themselves as non-binary, gender non-conforming, agender, bigender or other identities that reflect their personal experience. Some may take hormones or have surgery as part of their transition, while others may change our pronouns or appearance.

The status of being transgender invites intense social stigma, discrimination and misconception surrounding the transgender identities. Many of them are denied jobs and employment opportunities, open to other ‘normal’ people. They face harassment in schools and public places. Worst of all, transgender individuals are forced again and again to prove, justify and perform their identity to gain legal and social recognition. This creates a sense of “Identity on Trial”. Many individuals live with dual names and dual identity cards when they are unable to easily change official documents

Several legislations have been passed by the governments of various countries to provide a sort of legal protection the rising community. Even India has made significant strides in addressing the historical discrimination against transgender. It has introduced several welfare schemes, legislative procedures and regulations. After a long history of protests for transgender rights, the Supreme Court of India recognised the transgender community for the first time in *NALSA v. Union of India (2014)*<sup>5</sup>, establishing transgender people as the ‘third gender’. The Court affirmed their constitutional rights and upheld the right to self-identification. The Court further struck down Section 377 in *Navtej Singh Johar v. UOI (2018)*<sup>6</sup>, recognising the privacy, dignity and sexual autonomy of Transgender.

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<sup>5</sup> National Legal Service Authority (NALSA) v. Union of India, AIR 2014 SC 1863 (India).

<sup>6</sup> Navtej Singh Johar and Ors. v. Union of India, AIR 2018 SC 4321 (India).

Finally, The Parliament of India passed the Transgender Persons (Protection of Rights) Act<sup>7</sup> in 2019 to give a concrete status to the community. It introduced welfare measures, prohibited discrimination and provided for protection of rights of transgender people. However, it struggled with weak enforcement. Recently, The Government of India has come up with a significant legislative amendment in 2019 Act, aiming to address the concerns. The Act was passed in March 2026 and published in the official Gazette as Transgender Persons (Protection of Rights) Amendment Act, 2026<sup>8</sup>, herein referred to as the “Act of 2026” or simple “the Act”.

The Act of 2026 seeks to introduce certain changes in the definition and categorisation of Trans people. It has also increased the formal complexities in seeking the recognition as transgender. The Government justifies the formal stringent measures as a way to provide protection to the only those who face discrimination due to biological reasons. However, it has been criticised by numerous activists for the potentialities of being misused by the authorities in-charge as a tool to suppress the rights of the Transgender individuals.

Let us dive deeper into the provisions of the Amendment Act.

### **Salient Features of the Act of 2026:**

- **Definition of Transgender and removal of self-identification:** The 2019 Act defined the Transgender person as a person whose gender does not match with gender assigned at birth. The recently passed Act removes this definition and enlists a category of people who will be qualified as transgender, which includes -
  - (a) a person having such socio-cultural identities as kinner, hijra, aravani and jogta, or eunuch,
  - (b) a person with intersex variations specified below or a person who, at birth, has a congenital variation in one or more of the following sex characteristics as compared to male or female development –
    - i) primary sexual characteristics;

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<sup>7</sup> The Transgender Persons (Protection of Rights) Act, 2019, No.40, Acts of Parliament, 2019 (India).

<sup>8</sup> The Transgender Persons (Protection of Rights) Amendment Act,2026, No.3, Acts of Parliament, 2026 (India).

- ii) external genitalia;
- iii) chromosomal patterns;
- iv) gonadal development;
- v) endogenous hormone production or response, or such other medical conditions

Most importantly, the Amendment has removed the concept of self-identification of gender as well as different sexual orientations, which is the root of gender identity.

- **Official Certification:** The Act mandates the official certification of gender by District Magistrate on the recommendation of a designated medical board, headed by a Chief Medical Officer or a Deputy Chief Medical Officer. The District Magistrate is free to discuss with other medical experts. The Act also adds that transgender people would be allowed to change the first name in the birth certificate and other certificates based on certificate of identity.
- **Change of Gender:** The Act necessitates obtaining a revised certificate of identity where a transgender undergoes a surgery to change gender. The concerned medical institution would be required to furnish the details of the surgery to the District Magistrate.
- **Offences and Penalties:** The Act retains the offences listed in the principal Act, each punishable with punishment of imprisonment not less than six months but may extend to two years and with fine;
  - (a) Compelling or enticing to indulge in the act of forced or bonded labour
  - (b) Denying the right of passage or use of public place to a transgender
  - (c) Forcing to leave household, village or place of residence
  - (d) Causing harm or injury to the life or body, mental or physical

The Act also adds some more offences-

- (e) Kidnapping or abducting a child and causing grievous hurt or injury with an intent of

forcing the person to carry transgender identity;

(i) punishable with rigorous imprisonment for life and fine not less than five lakh rupees, if the victim is child

(ii) punishable with rigorous imprisonment for not less than ten years and fine not less than two lakh rupees, if the victim is adult

(f) Forcing a person to present as a transgender person and engage in begging, servitude or bonded labour will be punishable with:

(i) Rigorous imprisonment between five and 10 years and a fine of at least one lakh rupees, if the victim is an adult

(ii) Rigorous imprisonment between 10 and 14 years and a fine of at least three lakh rupees if the victim is a child.

## CONSTITUTIONAL ANALYSIS OF THE ACT

The rights of Transgender are not merely statutory. They are constitutionally embedded in the fundamental rights guaranteed to all the citizens, especially Article 14 (Right to Equality), Article 19 (Right to Freedom) and Article 21 (Right to Privacy as a part of Right to Life and Personal Liberty). Thus it becomes very important to measure the provisions of the Act along the lines of the Constitution.

**a) Violation of NALSA judgement:** The 2014 NALSA judgement<sup>5</sup> by Supreme Court of India established the right to self-identification as a key to preserving the dignity and autonomy of transgender. It explicitly held that gender identity is a matter of self-determination. Transgender persons have the right to identity under Article 14, 19 and 21. The 2019 Transgender Act too provided the provision<sup>9</sup>. But the recent amendment takes away this right from the people on the pretext of providing protection to only those who actually need it. This statement of object is quite vague and ambiguous that puts the vulnerable self-perceived trans men and women in grave danger. Who decides who you are?

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<sup>9</sup> The Transgender Persons (Protection of Rights) Act, 2019, §4(2).

- b) Violation of Article 14:** Article 14 of the Constitution guarantees the right to equal protection before law to all the citizens, irrespective of the colour, caste, gender and place of birth. It prohibits arbitrary and unreasonable classification. The 2026 Act does exactly that. It categorised the “deserving” transgender including hijra, kinner and aravani but entirely excludes the trans and non-binary men and women. The question to be raised is- What is the intelligible differentia for this distinction? After all, trans men and queer face equally severe discrimination.
- c) Violation of Article 21:** Article 21, the bone of the Constitution, was interpreted by Supreme Court to include The Right to Privacy in a landmark judgement<sup>4</sup>. However the recent legislation introduces two contentious provisions that make privacy a matter of discretion. The medical board certification and mandatory hospital reporting creates a system of state surveillance over private medical decisions - a clear violation of privacy.
- d) Criminal Provisions – a clear loophole:** The Act introduces certain offences and penalties for the protection against discrimination. Even though the stringency of the provision is quite progressive but it risks being used as a tool to suppress the trans rights. The vagueness of “alluring” can criminalise NGOs, parents and teachers, who may not even have criminal intent. Who assures that such provisions will not be misused by conservative authorities as a tool to silence the Transgender voices?

Taken together, these provisions do not only make the Act regressive but also constitutionally suspect legislation that warrants urgent judicial scrutiny. While regulations are necessary, they must be for the betterment of the marginal section rather than making their existence more difficult than ever.

## **PUBLIC CONCERNS AND REAL WORLD IMPACT**

The Transgender Protection Amendment Act, 2026 is a major setback for transgender rights in India. The Amendment was introduced on March 13, 2026, and cleared both houses of Parliament in less than two weeks. It was passed without any meaningful consultation with the transgender community. Even the National Council for Transgender Persons, a statutory body set up under the 2019 Act specifically to advise the government on such matters, was not consulted. Two of its members resigned in protest after the bill passed, calling it a step backward for their fundamental rights. The Act was approved despite sustained criticism from

opposition parties. Opposition leaders raised concerns over the government's haste in passing the legislation and urged that it be referred to a standing committee to allow for broader consultation with stakeholders.

Moreover, The Act attempts to erase the identity of queer and non-binary persons as if they don't exist. A research study conducted by NHRC in June 2021<sup>10</sup> brought in light the ground breaking reality of transgender inclusivity after the 2019 Act. The research presented how only 21% of transgender persons held proper identity cards even under the more permissive 2019 Act. The 2026 Amendment will worsen this.

The rules are overly strict and infringe on people's rights and privacy. Putting transgender identities under psychological and medical scrutiny might make them feel sick. It also puts the people who already have legal recognition in danger by making their rights uncertain.

The Act – verification, surveillance, and conditional recognition – will also have a major impact on the rest of the members of society. These amendments in the law make gender roles stricter while also making it difficult for people to trust each other. People, who don't fit into what society conventionally believes to be right, whether they are transgender or cisgender, may be rejected, harassed, or shamed. This takes away people's freedom and makes it tougher for them to express themselves safely.

## **WAY FORWARD**

The 2026 Amendment, in its current form, represents a legislative step backward that demands urgent reconsideration.

- At the outset, Parliament must restore Section 4(2) of the 2019 Act recognising self-perceived gender identity, as its removal directly contravenes the constitutional mandate of *NALSA v. Union of India* (2014) and violates Articles 14, 19, and 21 of the Constitution.
- The medical board requirement must be repealed and replaced with the simpler, rights-compliant process established under the 2020 Rules - an affidavit-based application without medical examination - bringing India in line with international standards, which

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<sup>10</sup> Rajni Singh, *Transgender Inclusivity: A Reality Check* (Principal Investigator, National Human Rights Commission 2021).

categorically prohibit conditioning legal gender recognition on medical procedures or third-party approval.

- The "coercing or alluring" criminal provision, carrying a punishment of up to life imprisonment, must be substantially narrowed with precise definitional boundaries that explicitly exempt supportive parents, NGOs, medical professionals providing gender-affirming care, and traditional community networks.
- The definition of transgender persons must be broadened to restore inclusion of trans men, non-binary persons, and intersex individuals as a separate and distinct category.

Finally, and most fundamentally, no future legislation affecting the transgender community should be enacted without prior, meaningful, and structured consultation with the National Council for Transgender Persons and the community itself – because laws made without the voices of those they govern cannot claim to protect them.

## **CONCLUSION**

The Transgender Persons (Protection of rights) Amendment Act, 2026 is not a reform, it is a regression. The Amendment directly contravenes significant constitutional provisions and reflects a fundamental disregard for dignity and autonomy of transgender persons. While sex is biological, Gender is a matter of internal feelings. Thus the Right to self-determination must not be compromised at all. Legal identity is not just an identity; it is a gateway to numerous opportunities in life – education, jobs, healthcare and social participation. When the law makes identity harder to claim, the most marginalised section pays the highest price. Everyone deserves the equal protection of laws, be it hijra, kinnar or trans men. Equality cannot be conditional upon conformity; it must prevail across all differences. Thus, the Parliament must take the Act in serious consideration to ensure that no one suffers injustice.