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FROM SELF-IDENTIFICATION TO STATE RECOGNITION: THE CHANGING LEGAL LANDSCAPE OF TRANSGENDER RIGHTS IN INDIA

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Abstract

There have been substantial developments in the domain of jurisprudence regarding constitutional acceptance of gender identity over the last decade. It was held by the Supreme Court of India in the case of *National Legal Services Authority v. Union of India* (2014), it is one such important landmark decision which held that the right of an individual to determine his or her own gender is part of the right of personal liberty and dignity protected under Article 21 of the Constitution of India. However, the legislative trajectory following in these matters shows the gradual weakening of the concept of self-identification and personal liberty. Even though the Transgender Persons (Protection of Rights) Act, passed in 2019 faced several criticism for incorporating state-administered certification measures that negated some aspects of NALSA guidelines, the recently passed Transgender Persons (Protection of Rights) Amendment Act, 2026 heralds a much more significant move away from the earlier approach. Indeed, this new law in making marks a complete paradigm shift from the existing rights-based and autonomy-driven model of identity recognition towards one that is essentially state-controlled and conditional.

This study analyzes the constitutional ramifications of this paradigm shift along three major axes: first, the restriction on self-identification as a fundamental right; second, the consequent shrinking of protection for transgender people; and third, identity recognition process based on bureaucratization, making individual dignity dependent on administrative approval. In addition, the paper highlights how these developments raise serious constitutional questions under Articles 14, 19, and 21, suggesting that the amendment act not only fails to promote the constitutional values set forth in the NALSA judgment but may lead to the perpetuation of systemic discrimination by making individual identity dependent on the whims of the state.

Keywords – Transgender Rights; Self- Identification; Constitutional Morality; Gender Identity Recognition; Bureaucratisation of Identity.

I. Introduction

The issue of gender identification is fast turning into an important point of constitutional and social change in India. The transgender laws in India have been shaped through a complex relationship between the interpretation of the courts and the enactments made by the legislature.

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Throughout Indian history, there has been a lack of inclusion of transgender people, and in terms of legalities, there has always been a swing between invisibility and some kind of recognition. However, the turning point in this regard has been when the Supreme Court in the case of *NALSA v. Union of India*²¹⁷ ruled that the transgender community be considered as a different gender altogether and people can choose their genders at will. In rejecting a biological construct of gender identity, the Court put gender identity in the realm of individual choice and dignity and thereby brought it under the protective shade of fundamental rights provided by Articles 14²¹⁸, 19²¹⁹, and 21²²⁰ of the Constitution.

To address these issues, The Transgender Persons (Protection of Rights) Act, 2019²²¹ was enacted in order to provide an overall legislative framework for recognition and protection. Although the Act does provide for non-discrimination against the Transgenders, there are procedural aspects of recognition, making one doubt the extent of state interference in this process. Nonetheless, despite its shortcomings, the law still retains the aspect of self-perception of gender identity, thus retaining some link to the NALSA principles. The recent legislative amendments, however, seem to mark a deviation from this principle. The Transgender Persons (Protection of Rights) Amendment Act²²², 2026 introduces a number of changes to the existing legislation, notably including a more restrictive definition of a “transgender person” as well as excluding the self-identification of the transgender person as the basis of such legal recognition.

II. Background

The Transgender Persons (Protection of Rights) Amendment Act, 2026, passed by the parliament, brought major changes to the core provisions of the 2019 Act. But to gain a better understanding of the changes brought, it is crucial to acknowledge the situation as it was before the amendment.

Before the Supreme Court gave its landmark judgment in the case of *NALSA v. UOI*, the transgender community in India was not recognized as a separate gender under any law. They didn't have the right to vote, the right to own property, and they couldn't claim a formal individual identity through official documents, which led to inaccessibility to social welfare schemes. This led to beggary and dancing rituals in marriages becoming a source of livelihood for the members of the hijra community.

India's recognition of only two sexes has led to the marginalization of the third gender.²²³ Since transgender community is not given recognition as part of the system, they are not able to live with dignity, which is contrary to the fundamental rights. The Constitution also didn't provide for any safeguards for the rights of those whose gender is undetermined and uncategorized. This absence of categorization and differentiation deprives the community of its constitutional benefits.

The core issues from the perspective of the transgender community are those of unemployment, discrimination, lack of education and medical facilities, homelessness, hormonal pill abuse,

²¹⁷ *Nat'l Legal Servs. Auth. v. Union of India*, 2014 INSC 275.

²¹⁸ INDIA CONST. art. 14.

²¹⁹ INDIA CONST. art. 19.

²²⁰ INDIA CONST. art. 21.

²²¹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India).

²²² Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026 (India).

²²³ Nick Harvey, *India's transgendered – the Hijras*, The New Statesman (Mar 13, 2008), <https://www.newstatesman.com/long-reads/2008/05/hijras-indian-changing-rights>.

depression, penectomy and other issues like marriage and adoption.²²⁴ They do not have any support, neither from society nor from the government, which has contributed to their struggles to get a proper education and job. Transgender people are pushed to become social outcasts, which also leads to them getting sexually abused and resorting to work as sex workers.²²⁵

III. KEY CHANGES INTRODUCED BY THE 2026 AMENDMENT ACT

The Transgender Persons (Protection of Rights) Amendment Act, 2026²²⁶ has introduced several significant changes to the existing legal framework in India which is governing the recognition and protection of transgender persons in India. These changes reflect a shift in legislative approach, particularly in relation to the definition of transgender identity and the procedural changes for its recognition.

a. *Narrowing of the Definition of “Transgender Person”*

An important change brought about by the 2026 Amendment Act is the replacement of the definition of “transgender person” under Section 2.²²⁷ In the current legal regime, the definition has become more restrictive and categorized in the sense that only persons of specific socio-cultural categories such as Hijra, Kinner, Aravani, and people of intersex varieties or with certain congenital biological features will be eligible for transgender identification.

Furthermore, the proviso clearly states that the “transgender person” does not include a person whose gender identity is self-perceived. The Transgender Persons (Protection of Rights) Act, 2019²²⁸ definition included people who were genderqueer and also who identified themselves differently from what was assigned at their birth.

b. *Removal of Self-Perceived Gender Identity*

The Amendment omits Section 4(2) of the Transgender Persons (Protection of Rights) Act, 2019,²²⁹ which explicitly recognized the right to self-perceived gender identity. This omission of gender identity effectively removes the statutory basis for self-identification and replaces it with a framework that fails to recognize identity as inherently self-determined. The absence and changes in provisions signals a fundamental shift away from the principle that gender identity is a matter of personal autonomy.

c. *Introduction of Medical and Institutional Validation Mechanisms*

The other notable change introduced by the Amendment Act is the introduction of medical and institutional validation mechanisms. It introduces the notion of an “authority” which is described as an independent medical board comprising of senior medical officers whose recommendations have to be taken into consideration by the District Magistrate while awarding the certificate of identification.

Furthermore, it requires the District Magistrate to go through such recommendations and, wherever necessary, take medical advice in order to provide the certificate of identity. Thus, it clearly gives precedence to institutional control over individual-centric determination of gender.

²²⁴ *Nat'l Legal Servs. Auth. v. Union of India*, 2014 INSC 275, ¶ 13 (India).

²²⁵ People's Union of Civil Liberties-Karnataka, *Human Rights Violations Against the Transgender Community: A Study of Kothi and Hijra Sex Workers in Bangalore* (Sept. 2003)."

²²⁶ Transgender Persons (Protection of Rights) Amendment Bill, 2026, Bill No. 79 of 2026 (India).

²²⁷ Transgender Persons (Protection of Rights) Amendment Bill, 2026, § 2, Bill No. 79 of 2026 (India).

²²⁸ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India).

²²⁹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019, § 4(2) (India)."

d. Procedural Changes in Recognition and Certification

Procedurally, Sections 6²³⁰ and 7²³¹ of 2019 Act have been amended to include new requirements for issuance and modification of the identification certificate. While this is not much different from the requirement to scrutinize and consider the application, it now includes the requirement of additional documentation in case of any medical treatment. In fact, medical institutions are now required to give information about the people receiving any surgery or treatment for changing their gender.

e. New Offences and Penalties

Section 18²³² of 2019 Act has been amended with a new Section 18 in the Amendment Act 2026 that defines specific offences along with punishment for these offences. For instance, it has listed down the offences of forcibly altering gender and abducting a person for purposes of exploitation. The offences are punishable with varying degrees of imprisonment, some of them even going up to a life term.

f. Overall Shift in Legislative Approach

Overall, it could be noted that while the amendments introduced many procedural improvements which were correctly required to recognize the rights of transgender community, they have significantly moved away from recognizing and respecting the rights of transgenders in determining their gender.

IV. Judiciary v. Parliament

National Legal Services Authority (NALSA) had filed a writ petition before the Supreme Court of India to address the questions of whether transgender people should be recognized as a third sex and whether such recognition would be ultra vires to the Constitution.

The Supreme Court had declared that Hijras, eunuchs, are to be treated as a third gender for safeguarding their rights. The transgender people's right to decide self-identified gender was upheld, and the center and state-level government was asked to take measures to treat them as a socially and educationally backward class. Reservation in public appointments and admission into educational institutions was extended to them.

The government was also directed to address the issues faced by transgender people, such as shame, gender dysphoria, social pressure, depression, fear, suicidal tendencies, etc. The apex court also asked the central and state governments to frame social welfare schemes for them and also provide separate public toilets to them, along with several other facilities. Public awareness should be spread about them so they are not treated as untouchables and are accepted as a part of the social system.

After the NALSA judgment, the parliament took steps towards social inclusion of the trans community. It introduced the Rights of Transgender Persons Bill in 2014, which was passed by the Rajya Sabha and introduced in the Lok Sabha. It dealt with the rights, financial and legal aids, skill development and education, empowerment, and prevention of abuse and exploitation of transgender people.

Many bills regarding the same issues were introduced, but none were able to get the approval of both houses of the parliament. Finally, in 2019, the Transgender Persons (Protection of Rights)

²³⁰ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019, § 6 (India).

²³¹ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019, § 7 (India).

²³² Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019, § 18 (India).

Bill was passed by both houses, received the president's assent and became an act. It was opposed by the members of the house, but the motion for its scrutiny did not pass, and the bill was finally passed. The 2019 Act prohibited discrimination against members of the transgender community.²³³ Unfair treatment and denial of service in healthcare,²³⁴ education,²³⁵ employment,²³⁶ occupying property,²³⁷ holding private or public office,²³⁸ etc.

V. Social and Practical Implications

Exclusions under the amendment act has limited the definition of transgender person to those who are recognised as trans as per the biological and cultural mandates. The right to choose one's own gender identity has been scraped, which has resulted in exclusion of a percentage of the people who previously came under the Act, like gender queer and non-binary people. Persons who have undergone hormone therapy to change their sex have also been excluded under the amendment.²³⁹

a. Violation of the right to life and personal dignity

Article 21 of the Constitution has been violated by the removal of the right to choose one's own gender identity. The Supreme Court had recognised the right to choose one's own gender identity as part of a person's dignity and autonomy.²⁴⁰ This autonomy has been snatched away from transgender persons and made conditional upon medical certification and bureaucratic approval. This leads to the direct violation of the right of every individual to live with dignity.²⁴¹

b. Privacy breached

Supreme Court laid down that right to privacy under Article 21 protects personal dignity, identity and autonomy of members of the transgender community.²⁴² The amendment has brought in a provision which makes it compulsory for medical institutions to give details to the respective district magistrate of individuals who have undergone gender reassignment surgery.²⁴³ But gender identity and medical records are classified as personal information under the Digital Data Protection Act, 2023, and they cannot be given without the prior consent of the concerned person.²⁴⁴ Hence, the medical institutions would need to get the consent of the concerned persons; otherwise, their privacy would be breached.

c. Ambiguity of classification

Since now there are two categories of identities, one covered by the Act and one not covered by the Act, the institutional framework has to accommodate them respectively. One of the laws affected by this is the Prevention of sexual harassment (POSH) Act, read with Rule 10(8) of Transgender Rules, 2020, which says that educational institutions must establish a committee for

²³³ Transgender Persons (Protection of Rights) Act, No. 40 of 2019, Acts of Parliament, 2019 (India).

²³⁴ *Id.* § 3(b).

²³⁵ *Id.* § 3(a).

²³⁶ *Id.* § 3(b).

²³⁷ *Id.* § 3(g).

²³⁸ *Id.* § 3(h).

²³⁹ Transgender Persons (Protection of Rights) Amendment Bill, No. 79 of 2026, § 2(k) (India).

²⁴⁰ Nat'l Legal Servs. Auth. v. Union of India, *supra* note 1.

²⁴¹ INDIA CONST. art. 21.

²⁴² Nat'l Legal Servs. Auth. v. Union of India, *supra* note 1.

²⁴³ Transgender Persons (Protection of Rights) Amendment Bill § 7(1A), No. 79 of 2026 (India).

²⁴⁴ Digital Personal Data Protection Act, No. 22 of 2023, Acts of Parliament, 2023 (India).

transgender people to address harassment and discrimination. This will have a limited applicability scope now.

VI. Reform or Restriction? A Balanced View

Transgender Persons (Protection of Rights) Amendment Act, 2026²⁴⁵ is one such law whose implications are not limited to legal theory but reach out to the actual experiences of transgender people and need to be looked at in the context of critique.

The transition from self-identification to statutory identification gives rise to genuine questions about the ease of access to these rights. The demands of undergoing an assessment by a medical board and submitting substantial documentation can create barriers, particularly among marginalized sections of society. But on the other hand, it can be argued that a process-driven system protects the credibility of the entire framework and prevents any exploitation of the law. The reduction of the scope of definitions in terms of excluding non-binary and gender-fluid people present several concerns related to legal invisibility and exclusion of protective legislation. Nevertheless, it is possible to assume that more niche categorization can lead to better policy development and easier administration of rules and regulations. This, however, is achieved at the expense of inclusiveness.

The issue of human dignity in relation to those who will have to go through medical examinations to get new documents is no less significant. On the other hand, one may say that if the process of examination is properly done, there should be no problems for individuals applying for such documents. One cannot but agree that the legal problem of whether certificates issued earlier remain valid is relevant. However, from a social point of view, although such strict legal classifications may be perceived as entrenching archaic views on gender differences, a well-implemented law with strong sanctions can concurrently prevent discrimination and violence. In essence, the Amendment creates a conflict between administrative efficiency and personal freedom, a conflict that needs to be delicately balanced by any progressive legal system.

VII. CONCLUSION

The Transgender Persons (Protection of Rights) Amendment Act, 2026²⁴⁶ represents a crucial and troubling milestone in India's developing jurisprudence of gender identity. While over the course of the previous decade, the constitutionally defined framework of protection had increasingly become aligned with the principles of inherent dignity and personal autonomy of transgender people, including the Supreme Court's decision in the historic case of *NALSA v. Union of India*,²⁴⁷ which unequivocally affirmed self-identification as a basic right. The new Amendment Act represents a definite departure from this direction by shifting from the principle of autonomy to that of authority.

As detailed extensively in the body of this essay, the consequences of this paradigm shift are extensive. Restrictive criteria for determining the identity of a "transgender person," the exclusion of self-perceived gender identity from statutory definitions, medical board examinations, and mandatory submission of medical documentation have all been introduced in ways that create obstacles which are more than just procedural and violate the principle of intrinsic dignity. The impact of such legal amendments will be disproportionately detrimental to

²⁴⁵ Transgender Persons (Protection of Rights) Amendment Bill, No. 79 of 2026 (India).

²⁴⁶ *Id.*

²⁴⁷ *Nat'l Legal Servs. Auth. v. Union of India*, *supra* note 1.

the most marginalized subgroups of the transgender population namely those of poorer socio-economic backgrounds, gender-neutral people, and gender-fluid individuals.

Constitutionally speaking, the amendment poses a range of issues that require attention, particularly in terms of Articles 14²⁴⁸, 19²⁴⁹, and 21²⁵⁰. Equality will be selective, expression will become limited, and dignity will be negotiable if one's identity is subject to recognition by an institution a set of developments which are incompatible with the constitutional ethos of the country.

In this regard, it is crucially necessary for the legislature to consider conducting a holistic analysis of the new Act while consulting representatives from the transgender community, constitutional scholars, and civil society groups. The process of legislative reform should be informed by the realization that identity does not depend on what a state grants, but is something that individuals should be allowed to assert. If this constitutional commitment to dignity, equality, and freedom is to materialize, the law should serve to safeguard its most vulnerable constituents and not surveil them.

²⁴⁸ INDIA CONST. art. 14.

²⁴⁹ INDIA CONST. art. 19.

²⁵⁰ INDIA CONST. art. 21.