

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Beyond Identity: The Changing Legal Landscape for Transgender Persons in India

SIVANGI DUBEY¹

ABSTRACT

The evolution of transgender rights in India showcases a intricate relationship among constitutional values, judicial activism and legislative action. The Transgender Persons (Protection of Rights) Act, 2019 was legislated as a substantial shift towards legal recognition and security of transgender persons. Though, the latest introduced Transgender Persons (Protection of Rights) Amendment Bill, 2026 has ignited widespread debate, disapproval and protests coast-to-coast. This Paper analyzes the hi historical background, major provisions, constitutional drawbacks and socio-legal impact of the 2026 amendment. It historical background, major provisions, constitutional drawbacks and socio-legal impact of the 2026 amendment. It further weighs whether the amendment synchronizes with liberal vision of Supreme Court in NALSA v. Union of India (2014) or represents a retrograde shift in transgender jurisprudence.

Keywords: *Transgender rights Amendment Bill, 2026, Constitutional Validity*

I. INTRODUCTION

The wrestle for transgender rights in India reflects wider interrogation of identity, honour and constitutional equity. For generations, transgender persons have encountered structured elimination from society, opprobrium and legal obscurity. The judiciary influences a revolutionary role in tackling these inequalities, mainly through the landmark judgement in National Legal Services Authority v. Union of India (2014).²

Following the judgement, the Indian parliament passed the Transgender Persons (Protection of Rights) Act, 2019. It aimed to established legislative framework for the security and welfare of transgenders. However, the Transgender Persons (Protection of Rights) Amendment Act, 2026 has considerably modified this framework, rearing severe constitutional and human rights concerns.³

¹ Author is a Student at New Law College, Bharatiya Vidyapeeth Deemed to be University, Pune, Maharashtra, India.

² *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 S.C.C. 438 (India).

³ The Transgender Persons (Protection of Rights) Amendment Act, 2026, No. XX of 2026, India.

II. HISTORICAL EVOLUTION OF TRANSGENDER RIGHTS

The history of trans in India reflects an intricate expedition from cultural identification to colonial exclusion and lately legal redemption of rights. Transgender communities such as Hijras, Kinnars, Jogappas and Aravanis have subsisted in Indian sub-continent for ages. In ancient and medieval India, testimonials to gender multifariousness can be found in scriptures, mythologies and temple traditions. Transgender people often held specific roles in society such as giving blessings to newborn, newly married couples, etc. Their existence was recognized within comprehensive social framework.

One of the known cited ethnic chronicles related to transgenders arises from Ramayana, when lord Ram was leaving for vanvas, he asked men and women of Ayodhya to return home but forgot to mention Hijras, so they stayed back. Impressed by the devotion lord Ram blessed them with the power of propitiousness.⁴ Another reference is from Sanskrit literature; Rig Veda does not expressly talk about transgender, but it reflects an understanding diversity in creation of nature. A commonly cited verse:

“त्रितीयं प्रकृतिं विद्धि”

It means “Recognise the existence of third nature”⁵.

Likewise, later text such as Manusmriti and Kamasutra refer to people who do not comply to binary gender categories, using term such as त्रितीयं प्रकृतिं (third nature).⁶

(a) Pre-Colonial and Colonial Legacy

Transgender community like Hijras have traditionally carried accepted positions within Indian society. Nevertheless, colonial laws, especially the Criminal Tribes Act, 1871, marginalized and penalized these people, deeply embedding discrimination in societal structure.⁷

(b) Judicial Recognition: The NALSA Judgement

The Supreme Court in NALSA V. UOI, recognised transgender as ‘third gender’ and affirmed their fundamental rights⁸. The court underlined that gender identity is integral to personal autonomy and dignity, self-identification must be respected⁹.

⁴ Devdutt Pattanaik, *Shikhandi: And Other Queer Tales They Don't Tell You* (Penguin India 2014).

⁵ See discussion in Ruth Vanita & Saleem Kidwai, *Same-Sex Love in India* (Palgrave 2001).

⁶ Vatsyayana, *Kama Sutra* bk. II, ch. 9.

⁷ Criminal Tribes Act, 1871, No. 27 of 1871 (India) (repealed).

⁸ NALSA, (2014) 5 S.C.C. at 438.

⁹ Id. ¶ 75.

III. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

The enactment of the said Act in 2019, marked a notable legislative step in identifying and shielding the rights of Transgender in India. The main purpose of the 2019 Act is to render for the protection of rights of transgenders and their welfare, safeguarding their inclusion in conventional society. The Act defines transgender person under section 2(k) as an individual whose gender does not match with the gender assigned at birth, comprising of trans-men, trans-women, persons with intersex variations, genderqueer individuals and persons having socio-cultural identities such as Hijras and Kinnars¹⁰. This incorporation specifies endeavour to fascinate the diversity within transgender identities in India.

The main attribute of this Act is the prohibition of discrimination. Section 3 of the Act explicitly forbid injustice against transgender persons in education, employment, healthcare and opportunities to hold office¹¹. Further prominent element is the recognition of gender identity. Section 4 of 2019 Act recognise the right of transgender persons and present them with certificate of identity by the District Magistrate¹². The Act also enforces responsibilities on the government to take necessary measures. Section 8 & 9 mandate the suitable government to draft scheme for the betterment of the transgender community¹³. Moreover, the Act stipulates the establishment for the National Council for Transgender Persons (NCTP)¹⁴. The council is assigned with guiding the government on policies, tracking the implementation of the law and tackling grievances encountered by trans-people.

While the 2019 Act represents the vital watershed in the legislation for the recognition of transgender rights in India, it reflects a stress between progressive aim and practical impediments. Its efficaciousness eventually lies on comprehensive implementation, delicacy in administration and orientation with constitutional principles of dignity and sovereignty.

IV. THE TRANSGENDER PERSONS AMENDMENT ACT, 2026

The Transgender Persons (Protection of Rights) Amendment Act, 2026 denotes a substantial shift in Indian legislation that administers transgender rights. Presented in March 2026 to amend 2019 Act, the changes strive to reframe the scope, acknowledgement and regulations for transgender identity¹⁵. While the government has justified the amendment as a measure to

¹⁰ The Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, sec 2(k), India.

¹¹ Id. § 3.

¹² Id. sec.4–6.

¹³ Id. §§ 8–9.

¹⁴ Id. § 16.

¹⁵ The Transgender Persons (Protection of Rights) Amendment Act, 2026, Bill No. 79 of 2026, India.

enhance administrative lucidity and avert misuse of the law, but it has spawned extensive legal, social and constitutional controversy.

1. Legislative Background and Objective

The amendment bill was introduced by the Ministry of Social Justice and Empowerment with the stated objective of fortifying the execution of the Transgender Persons (Protection of Rights) Act, 2019¹⁶. It was enacted by the parliament in March 2026, amid significant opposition and public protest¹⁷.

The principal rationale sophisticated by the government is the need to assure that advantages intended for transgender persons are not abused and are spearheaded to the genuine recipients. However, commentator contend that this justification comes at the cost of fundamental rights.

2. Salient Features of 2026 Amendment

• Narrowing the definition of Transgender Persons

One of the most disputed facets of the amendment is the redefinition of Transgender Persons. The amendment curbs the definition to:

- Socio-Cultural identities such as Hijras, Kinner, Aravani and Jogta
- Persons with intersex diversity or biological malady.

It specifically omits individuals based on self-perceived gender identity or sexual orientation, thus significantly constricting the ambit of law.

This marks the departure from the inclusive definition under the 2019 Act and has been extensively reprimanded for excluding non-binary persons and transgender individuals.

• Elimination of the Right to Self-identification

The amendment abolishes the principle of Self-identification of gender, which had been acknowledged under Section 4(2) of the 2019 Act¹⁸. Rather, it introduces a system where gender selfhood must be validated through state-controlled procedures, competently displacing personal autonomy with institutional persistence. This alteration directly negates the principle laid down by Supreme Court in *NALSA v. UOI* (2014), which approved Self-identification as a fundamental right.

• Introduction of Medical Certificate

The amendment directs the initiation of medical boards to verify contends of transgender

¹⁶ Ministry of Social Justice and Empowerment, Statement of Objects and Reasons, 2026.

¹⁷ Parliament passes Transgender Amendment Bill, *TIMES OF INDIA* (Mar. 2026).

¹⁸ Transgender Persons Amendment Bill Analysis, *INDIAN EXPRESS* (2026).

identity. Under the modified framework:

- A person must undergo medical examination to identify themselves as Transgender.
- An identification certificate is issued to them only upon the recommendation of medical board.
- Legal recognition is grant by District Magistrate based on medical certificate.

This brings a process of medicalised gender identity and this has been criticised as invasive and paradoxical.

- **Alteration in procedure for Gender Recognition**

The amendment made changes in the procedure for acquiring identity documents:

- A certificate of identity becomes contingent on medical verification.
- In cases of gender-affirming surgeries, medical institutions are required to inform authorities.
- Individuals are required to obtain revised certificate following the said procedure.
- Such alterations augment administrative control over identity recognition.

- **Punitive Provisions and Enforcement**

This amendment introduces stringent penalties for certain offences, including:

- Coercing individual into transgender identity.
- Exploitation, trafficking or bonded labour.

However, sanctions for some offences have enhanced, while critics argued that protection-oriented provisions remain inadequate¹⁹.

V. CONFLICT WITH JUDICIAL PRECEDENT

The Transgender Persons (Protection of Rights) Amendment Act, 2026 has developed extreme legal scrutiny due to its evident exodus from established constitutional jurisprudence. While the government has justified the amendment, but it raises serious concerns about its congeniality with earlier judicial precedent and evolving global norms.

The most significant disagreement arises with the landmark case of *NALSA v. UOI* (2014), in this case Supreme Court expressly recognised Transgender persons as ‘third gender’ and

¹⁹ ThePrint, Transgender Amendment Bill Explained (2026).

asserted that the determination of gender identity is an integral part of an individual identity and personal dignity and autonomy. The court declares that the individual has the right of self-identification of their very own gender as male, female, or trans-male/trans-female.

The 2026 amendment intrinsically departs from this principle by eliminating statutory recognition of self-identification of gender and superseding it with medical verification and medical certificate as a prove²⁰. This substitution effectively reintroduces government control over gender determination, thereby nullifying the essence of NALSA judgement. Public at large opposing the new amendment stating that it directly contradicts to binding precedent.

- **Equality jurisprudence under Article 14 and 15**

The NALSA judgement amplified the interpretation of 'SEX' under Article 15 to comprise gender identity, consequently extending anti-discrimination protections to transgender persons. The precedent proclaimed that transgender persons are eligible to equal protection of law under Article 14.

The 2026 amendment narrows down the definition and the precedent laid in NALSA. It creates a classification that omits individuals who identifies themselves outside from the prescribed socio-cultural norms and biological categories. Such omission fails to test the reasonable classification as mandated under Article 14 of the Indian Constitution, which stipulates the classification based on intelligible differentia and have a rational nexus with the aim attempted to be achieved. Furthermore, by denying recognition to self-identification of gender to the individuals, it directly contravenes the equality principle laid down in NALSA.

- **Dignity and Transformative Constitutionalism: Navtej Johar**

In *Navtej Singh Johar v. Union of India* (2018)²¹, Supreme Court decriminalised consensual same-sex relations and reiterated the principle of dignity, autonomy and constitutional obligations. The court accentuated that the constitution must be construed in a way that shields marginalized communities and promotes diversity.

The latest amendment seems to be conflicting with the transformative vision. By reintroducing gatekeeping apparatus and curbing recognition, it perhaps reinforces societal taint rather than stripping it. The stress is on medical verification that reflects a retrogressive approach, treats gender diversity as a situation requiring validation rather than an innate aspect of identity.

²⁰ Drishti IAS, Transgender Amendment Bill Analysis.

²¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

- **Doctrine of Constitutional Morality**

A precept underlying contemporary Indian constitutional jurisprudence is constitutional virtue, which requires to uphold values of equality, dignity and inclusivity even in the face of populist social disposition. The Supreme Court has constantly elicited this doctrine to protect transgender persons rights.

The amendment's confining provisions raise questions about whether the government has adhered to this principle. By prioritizing legislative concerns over individuals' autonomy, the legislation perils subordinating constitutional rectitude to bureaucratic amenity.

VI. INTERNATIONAL HUMAN RIGHTS PERSPECTIVE

At the global level, gender identity is escalating recognised as a matter of self-determination. The Yogyakarta Principle (2007)²², which articulate the application of international human rights law with sexual orientation and gender determination, asserts that individual should not be necessary to undergo medical process or certification of verification for gender recognition. An expanding number of countries, including Argentina, Ireland and Malta have embraced self-identification models²³, allows an individual to legally change their gender without medical interference. Such legislations are mandate to understand that gender identity is profoundly personal matter of human dignity.

International Human Rights bodies have repeatedly disregarded with the notion of medical intervention in gender identification for transgender persons. The World Health Organisation's recategorization of gender inconsistency reflects this shift away from pathologization. The 2026 amendment's reliance is on medical verification for gender identification and keeping gender in clinical lens is violative of human rights and a discriminatory law, choosing once gender is purely individuals will and legislative interference is erroneous.

VII. SOCIO-LEGAL IMPLICATIONS

The enactment of the Act marks a crucial crisis in the progress of transgender rights in India. The junction of law and society becomes exceptionally evident in this context, where legal definitions and methodical requirements directly contour identity and dignity.

- **Impact on Identity and Legal Recognition**

One of the most intense ramifications of the 2026 amendment lies in its restructuring of gender identity as a legally controlled rather than self-identification. By mandating medical verification

²² Yogyakarta Principles on the Application of International Human Rights Law (2007).

²³ The News Minute, Human Rights Critique.

and District Magistrate approval, the law metamorphose identity into status granted by legislation.

Gender identity is not solely a legal taxonomy but a core component of personal autonomy, dignity and self-expression. The amendment embarks from the principle laid down in NALSA, reducing individuals to objects of administrative scrutiny rather than subjects of rights.

Besides, the constricting of the definition of transgender persons, excludes individuals who do not comply to stipulated socio-cultural or biological categories.

1. Fortification of Social Stigma

Law does not function in seclusion; it shapes and is shaped by social stance. The medical verification in gender identification under the amendment may unintentionally reinforce the perception the transgender as an identity requires several validations. Such framework is discriminatory and humiliating for transgender persons, this undermines their dignity in society and make them feel unacceptable as a gender between male and female.

Government Justification

- **Prevention from misuse**

The fundamental justification provided by the government is the need to avert misuse of welfare scheme proposed for transgender persons. The chief concern is that self-identification may permit individuals to falsely claim themselves as transgender persons to access benefits²⁴. While the intention of ensuring tailored delivery is legitimate but the means adopted raised questions of proportionality. The imposition of a medical verification and certification may sound excessive, particularly when it restricts fundamental rights.

- **Administrative Clarity**

The government has also argued that the amendment introduces clarity in the definition of transgender persons and standardizes the procedural of recognition²⁵. From legislative point of view, it may facilitate implementation and reduce ambiguity. However, such clarity should not come at a cost of inequality.

- **Strengthening Enforcement Mechanisms**

Another justification is to strengthen enforcement mechanisms, including sanctions for offences against transgender persons. The amendment seeks to improve liability and promote welfare.

²⁴ Statement of Objects and Reasons, Transgender Persons (Protection of Rights) Amendment Bill, 2026.

²⁵ PRS Legislative Research, *Bill Summary: Transgender Persons Amendment Bill, 2026* (2026).

While the objective of the amendment is admirable, but it does not address the core concern of recognition. Mere protection without legal recognition is scanty.

- **Balancing Rights and Regulation**

The government's approach echoes an endeavour to balance individual rights with supervisory affairs. However, this balance emerges to tilt in favour of regulation. The focus on verification and control recommend a prioritization of legislative competence over individual sovereignty. In constitutional terms, any limitation on fundamental rights must gratify the test of proportionality. But critics stated that amendment lacks the test of proportionality.

VIII. RECOMMENDATIONS

- **Restoration of Self-identification**

The virtue of self-identification must be restored as the basis of gender recognition. This harmonizes with the Supreme Court ruling in NALSA and with the human rights. Administrative apprehensions can be tackled through alternative methods that do not subvert autonomy, such as self-declaration system.

- **Adoption of an Inclusive definition**

The definition of Transgender Persons should be widened to include all diverse gender identities, such as non-binary and gender-fluid individuals. Inclusiveness is indispensable to ensure that no individual is ostracized from legal recognition.

- **Removal of Mandatory Medical Certification**

Medical verification and certification should not be a prerequisite for gender identification, instead it should be discretionary and restricted to situations where an individual seeks medical interference. This approach respects individual's dignity and sovereignty.

- **Strengthening Welfare without proviso**

Access to welfare schemes should not be uncertain upon stringent medical verification process. Abridged and simplified procedures and societal based verification mechanisms can secure equality while maintaining responsibility.

- **Community Participation in Policymaking**

The transgender persons must be diligently involved in formulation of such policies and laws and also to its implementation process. This includes depiction in advisory bodies and decision-making process.

- **Alignment with Constitutional Morality and International Standard**

Law must reflect the principle of dignity, morality, equality and sovereignty revered in the constitution. It should also align with the International Human Rights, obligations and Yogyakarta principles.

IX. CONCLUSION

The trajectory of transgender rights in India represents a stratified transformation shaped by culture, colonial interruption, constitutional values and judicial intercession. Traditionally, Indian society exhibited a degree of adjustment towards gender diversity, as reflected in religious traditions, socio-cultural practices and rational thoughts. The post-independence legislative system inherited these structural biases, ensuring in protracted alienation and obscurity of transgender persons.

The Transgender Persons (Protection of Rights) Amendment Act, 2026 exacerbates the tensions and marks a substantial withdrawal from the approach contemplated in NALSA. By tapering the definition of transgender identity, eliminating the self-identification and establishing mandatory medical certification, the amendment redirects the legislative framework towards verification of gender. This change arises fundamental question about government's right to restrain fundamental right of an individual.

Ultimately, the question at the heart of this harangue is not merely legal but normative, a framework that imposes a strict control over identity risks prolonged exclusion of transgender from the society. The evolution of transgender rights in India is distant from perfection, it remains an ongoing process influenced by dispute, endorsement and analysis. The 2026 amendment rather than marking a conclusive terminus, should be viewed as a part of wider discourse, a moment that solicits critical reflection and revived dedication to the principles of constitutional sovereignty and human dignity.
