

REDEFINING IDENTITY OR RESTRICTING RIGHTS?

(A critical analysis of the ‘Transgender Persons (Protection Of Rights) Amendment Act, 2026’)

Introduction: from self-determination to statutory redefinition

‘Gender’ is not a biological fact alone, but a mixture of social, psychological and biological factors. The central argument of the current article, is also based on this pretext. The society has since, time immemorial ‘favoured’ the binary genders (i.e. the male and female), anything that did not fall within the expected behavioural patterns of the binary was called as unusual, unfit and unacceptable. But, in reality, the society is made up of different kinds of people, some are clearly defined while some are struck between ‘legislative definitions’ and social constructs. Unable to leave those behind but at the same time also not conforming to them. Over the years, there has been a shift in the way, the non-binary are seen, identified and even protected, a prime example of this is the introduction of the *Transgender Persons (Protection of Rights) Act*, in 2019 to define and protect the rights of transgender people, the prohibit discrimination, allow for self-perceived gender identity, and mandate welfare measures.¹ It was a legislative response to the Supreme Court’s landmark judgment in *NALSA v. Union of India (2014)*, which affirmed the right to self-identified gender as part of personal liberty under Article 21 of the Constitution. However, recent amendments to this act, have raised concerns regarding the very objectives the original act aimed to fulfil².

Recently, the *Transgender Persons (Protection of Rights) Amendment Bill, 2026* was passed in the Lok Sabha and subsequently in the Rajya Sabha with an aim to amend the existing 2019 act. The 2026 Bill proposes substantial changes to the framework established to the 2019 Act like revising the definition of a ‘transgender person’, altering the process of legal recognition, modifying provisions relating to gender change, and introducing new offences and penalties³. The act clearly lays down criteria to ‘classify a transgender person’ and categorically prohibits to acknowledge persons with different sexual orientations and self- perceived sexual

¹ *The Transgender Persons (Protection of Rights) Amendment Bill, 2026*, PRS Legislative Research, <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-amendment-bill-2026>(last visited Apr. 28, 2026).

² Vedant Choudhary, *The New Transgender Bill Pushes India Back In Its Fight For Transgender Rights*, (Mar. 24, 2026), <https://www.livelaw.in/articles/transgender-bill-transgender-rights-fight-527560>.

³ Giti Pratap, *Transgender Amendment Bill Gets Presidential Assent amid Protests*, Bar and Bench - Indian Legal news (Mar. 31, 2026), <https://www.barandbench.com/news/transgender-amendment-bill-gets-presidential-assent-amid-protests>.

identities, the very thing, that was central to the 2019 act. This is a major shift, in moving away from a broad, identity-based definition toward a more categorised and, in part, medically mediated classification of beneficiaries. And rightfully so, these changes have triggered significant debate. While the government justifies the amendments on grounds of clarity, administrative feasibility, and targeted welfare delivery (as stated in the *Statement of Objects and Reasons of the Bill*), critics argue that the amendments may dilute constitutional protections and restrict the scope of recognition. The discussion surrounding the Bill thus raises deeper questions about the meaning of ‘protection’, the role of the state in defining identity, and whether the amendments represent *progress or a regression* in the legal understanding of transgender rights in India.

The ‘letter of the law’ v/s Stakeholder’s concerns

The Transgender Persons (Protection of Rights) Amendment Act, 2026 introduces a fundamental restructuring of how transgender identity is defined and recognised under Indian law. It replaces the earlier broad, identity-based definition with a narrower, category-driven framework that recognises specific socio-cultural identities such as ‘*hijra, kinnar, aravani and jogta*’, and also persons with intersex variations defined through biological criteria. At the same time, it explicitly excludes ‘self-perceived sexual identities’ and removes trans men, trans women and genderqueer persons as independent categories. The law also introduces a formal certification process, which requires a medical examination from a medical board before a District Magistrate can issue an ‘identity certificate’. In addition to this, the amendment act mandates reporting of gender-affirming surgeries by medical institutions and provides for revised certification post-surgery. While the Act, has strengthened penal provisions by introducing stringent punishments for offences such as forced gender identity, abduction and exploitation, it also retains relatively lighter penalties for everyday discrimination, such as denial of access to public spaces. Collectively, these changes mark a shift toward a more regulated and ‘state-mediated’ model of recognition⁴.

This shift, has raised substantial constitutional and practical concerns. The removal of the right to self-perceived gender identity which was previously recognised under the 2019 Act and based on the *NALSA* judgment, raise concerns of dignity and personal liberty under *Articles*

⁴ Nikhil.S. Nair, *An Analysis Of The Transgender Persons Act And The 2026 Amendment Bill*, (Mar. 23, 2026), <https://www.livelaw.in/articles/legislative-metamorphosis-constitutional-guarantees-transgender-persons-act-527509>.

19 and 21 of the Constitution⁵. At the same time, by limiting recognition to purely ‘biological and medical criteria’, the amendment prioritises external verification over individual autonomy, and this raises questions about the constitutional validity of the act itself. The requirement of medical certification *may* also create barriers to recognition, exclude individuals who do not meet prescribed criteria, and raise privacy concerns due to mandatory disclosure of sensitive medical information (patient-doctor confidentiality). Furthermore, there is no mechanism for appeals, in case of applications that are rejected on the grounds of these *objective criteria*, this underscores potential gaps in procedural fairness. All these issues, have also been highlighted in the observations made by the ‘Supreme Court-appointed committee’ (as per NALSA judgment) led by *Justice Asha Menon (2026)*, they even suggested to repeal the act.

It is also laughable, as to how, prior to the enactment of the act or even during the time it was debated in the parliament, none of the stakeholders were ever consulted for their opinion or expert advice, this is critical as the Amendment to the 2019 act substantially alters the way the transgenders (the very minority the state aimed to ‘protect’) will be identified and subsequently treated⁶. As a response, LGBTQIA+ groups and members of the *National Council of Transgender Persons (NCTP)* have criticised the law for narrowing recognition and for the lack of prior consultation⁷. Judicial voices have also expressed concern, with the Rajasthan High Court cautioning that the amendment may convert ‘an inviolable aspect of personhood’ into a state-mediated entitlement (although the HC retracted its statement later, as the judgment in which it presented its opinion was based on a different subject-matter)⁸. But, contract to this, the government’s position, as reflected in the Statement of Objects and Reasons, is that a more precise definition is necessary to identify intended beneficiaries and ensure effective implementation of welfare measures. This tension, between the administrative clarity and

⁵ Swapnil Tripathi, *Tryst with the Constitution: Transgender, CAPF Bills and the Limits of Legislative Overruling*, Bar and Bench - Indian Legal news (Apr. 2, 2026), <https://www.barandbench.com/columns/tryst-with-the-constitution-transgender-and-capf-bills-and-the-limits-of-legislative-overruling>.

⁶ Giti Pratap, *Kerala High Court Asks Centre Whether Hormone Therapy, Sex Change Halted Due to Transgender Amendment Act*, Bar and Bench - Indian Legal news (Apr. 7, 2026), <https://www.barandbench.com/news/litigation/kerala-high-court-asks-centre-whether-hormone-therapy-sex-change-halted-due-to-transgender-amendment-act>.

⁷ Giti Pratap, *State Can’t Get into People’s Pants: Listen to What Trans/Queer Lawyers Think of the Transgender Amendment Act*, Bar and Bench - Indian Legal news (Apr. 6, 2026), <https://www.barandbench.com/columns/state-cant-get-into-peoples-pants-listen-to-what-transqueer-lawyers-think-of-the-transgender-amendment-act>.

⁸ Bar & Bench, *Added by Mistake: Rajasthan High Court Deletes Its Comments from Recent Verdict Critical of Transgender Bill*, Bar and Bench - Indian Legal news (Apr. 3, 2026), <https://www.barandbench.com/news/litigation/added-by-mistake-rajasthan-high-court-deletes-its-comments-from-recent-verdict-critical-of-transgender-bill>.

constitutional guarantees of identity and dignity, lies at the centre of the debate surrounding the 2026 amendment.

Conclusion

The 2026 Amendment marks a clear doctrinal shift from a *rights-based* framework grounded in self-identification to a *regulatory model* centred on classification, verification, and state oversight. While the objective of administrative clarity and targeted welfare, as stated in the *Statement of Objects and Reasons* has a rational policy basis, the means adopted to implement it raise constitutional concerns. The removal of self-perceived gender identity, is in direct violation of SC's ruling in the *NALSA judgment*, and at its core lie dignity, autonomy, and personal liberty under *Article 21*. And by conditioning recognition on medical certification and biological criteria, the law risks transforming identity from a matter of personal autonomy into one of institutional validation. Concerns regarding privacy (due to mandatory medical disclosures), exclusion (of those not fitting prescribed categories), and procedural gaps (such as absence of an appeal mechanism) indicate that the framework may not fully achieve its stated protective purpose. Comparative International standards such as the '*Yogyakarta Principles*' which discourage mandatory medical requirements for legal gender recognition and international practices like Argentina's Gender Identity Law (2012) suggest a divergence from evolving global norms

In conclusion, the amendment reflects not merely a legislative update but a conceptual reorientation of 'protection' itself from enabling autonomy to regulating identity. Whether this constitutes a legitimate refinement or a regression depends on its constitutional scrutiny and practical implementation. On balance, the available evidence suggests a movement toward a more restrictive understanding of transgender rights, raising the possibility that the law, while intending to protect, may in effect limit the very agency it seeks to safeguard